

# NEW JERSEY REGISTER

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## THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes adopted rules filed through March 13, 1995)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 17, 1995**

**See the Register Index for Subsequent Rulemaking Activity.**

**NEXT UPDATE: SUPPLEMENT FEBRUARY 21, 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, MONDAY, APRIL 3, 1995

# REORGANIZATION PLANS

(a)

## OFFICE OF THE GOVERNOR

Governor Christine Todd Whitman

Reorganization Plan No. 001-1995

### A Plan for the Transfer and Reorganization of the

New Jersey Cemetery Board Within the

Department of Law and Public Safety, Division of  
Consumer Affairs

**PLEASE TAKE NOTICE** that on March 13, 1995, Governor Christine Todd Whitman hereby issues this Reorganization Plan (No. 001-1995) (the "Plan") providing for the transfer and reorganization of the New Jersey Cemetery Board.

The Plan represents an ongoing effort to streamline and downsize the structure and functions of the Executive Branch in the interests of efficiency and economy, without quantitative or qualitative diminution of services to the public.

#### GENERAL STATEMENT OF PURPOSE

Under current law, two departments of the Executive Branch regulate the treatment and disposition of the remains of deceased persons. Pursuant to P.L. 1952, c.340 (C. 45:7-32 *et seq.*), as amended and supplemented, the State Board of Mortuary Science of New Jersey, within the Division of Consumer Affairs in the Department of Law and Public Safety, regulates the preparation of remains for burial or other disposition, including embalming and funeral directing. Pursuant to P.L. 1971, c.333 (C. 8A:1-1 *et seq.*), as amended and supplemented, the New Jersey Cemetery Board "Cemetery Board" in the Department of Banking, regulates all cemetery companies, except religious cemeteries. The Plan provides for the transfer of the Cemetery Board to the Division of Consumer Affairs in the Department of Law and Public Safety, which houses the majority of the State's other professional and occupational boards, and its reorganization to take advantage of the consolidated operations and other economies of scale already available within the Division of Consumer Affairs. As a consequence, the remains of deceased persons in New Jersey will be subject to regulation in a single department of the Executive Branch.

**NOW, THEREFORE**, pursuant to the "Executive Reorganization Act of 1969," P.L. 1969, c.203 (C. 52:14C-1 *et seq.*), I find, with respect to the transfer and reorganization provided for in this Plan, that each aspect is necessary to accomplish the purposes set forth in Section 2 of the Act and that each aspect will:

1. promote the better execution of the laws, the more effective management of the Executive Branch and of its agencies and functions, and the expeditious administration of the public business;
2. reduce expenditures and/or increase economy to the fullest extent consistent with the efficient operation of the Executive Branch;
3. increase the efficiency of the operations of the Executive Branch to the fullest extent practicable;
4. group, coordinate and consolidate agencies and functions of the Executive Branch as nearly as possible according to major purposes;
5. reduce the number of agencies by consolidating those having similar functions under a single head, and abolish such agencies or functions as are not necessary for the efficient conduct of the Executive Branch; and
6. eliminate overlapping and duplication of effort.

#### PROVISIONS OF THE REORGANIZATION PLAN

1. a. The Cemetery Board, created and allocated in the Department of Banking pursuant to P.L. 1971, c.333 (C. 8A:2-1), as amended by Section 81 of P.L. 1973, c.219, and its powers, functions and duties pursuant to P.L. 1971, c.333 (C. 8A:1-1 *et seq.*), are hereby continued and transferred to and into the Division of Consumer Affairs in the Department of Law and Public Safety, subject to the following allocations of said powers, functions and duties.

b. The Cemetery Board shall be subject to oversight by the Attorney General to the same extent as other professional and occupational boards in the Division of Consumer Affairs and to the provisions of statutes generally governing such professional and occupational boards including, but not limited to, the provisions of P.L. 1971, c.60 (C. 45:1-2.1 *et*

*seq.*), as amended and supplemented, the provisions of P.L. 1977, c.285 (C. 45:1-2.5 *et seq.*), as amended and supplemented, P.L. 1974, c.46 (C. 45:1-3.1 *et seq.*), as amended and supplemented, the provisions of P.L. 1978, c.73 (C. 45:1-14 *et seq.*), as amended and supplemented, and the provisions of Section 35 of P.L. 1948, c.439 (C. 52:17B-35), as amended and supplemented, except that the provisions of P.L. 1971, c.333 (C. 8A:2-1i), shall continue to apply to the Cemetery Board.

c. In compliance with the provisions of Section 2b of P.L. 1971, c.60 (C. 45:1-2.2h), as amended and supplemented, the Governor shall appoint two additional public members to the Cemetery Board, with the advice and consent of the Senate. The Commissioner of Health, or the Commissioner's designee, shall continue as a member of the Cemetery Board in lieu of a member appointed pursuant to Section 2c of P.L. 1971, c.60 (C. 45:1-2.2c). The memberships of the Attorney General and the Commissioner of Banking on the Cemetery Board are terminated.

d. The Cemetery Board shall be subject to the provisions of Section 33 of P.L. 1948, c.439 (C. 52:17B-33) with respect to the appointment, employment or removal of its officers.

e. The position of executive director established by P.L. 1971, c.333 (C. 8A:2-1g), as amended and supplemented, and the Cemetery Board's authority to appoint the executive director are abolished and the term of office of the executive director incumbent at the time this Plan takes effect is terminated. The authority, pursuant to P.L. 1971, c.333 (C. 8A:2-1g), as amended and supplemented, to provide the immediate supervision of the work of the Board is continued and transferred to the Director of the Division of Consumer Affairs, to be exercised through such employee or employees as the Director of the Division of Consumer Affairs shall designate.

f. The Cemetery Board's authority, pursuant to P.L. 1971, c.333 (C. 8A:2-1h), as amended and supplemented, to appoint, employ and remove, subject to the provisions of Title 11A, Civil Service, such assistants and employees as may be necessary to carry out the provisions of P.L. 1971, c.333 (C. 8A:1-1 *et seq.*), as amended and supplemented, is continued and transferred to the Attorney General.

I find this Plan is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). In addition to the reasons set forth above, this Plan will result in increased efficiency, due to economies of scale, and also will result in greater coordination and improved functioning of the State's regulation of the disposition of the remains of deceased persons. Further, this Plan will streamline State government for the benefit of all of New Jersey's citizens.

2. All records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to the Cemetery Board are transferred to the Division of Consumer Affairs as necessary to perform the functions transferred to that Division under this Plan, as determined by the Attorney General.

3. Whenever, in P.L. 1971, c.333 (C. 8A:1-1 *et seq.*), or in any rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise thereunder, reference is made to the Commissioner of Banking, the same shall mean and refer to the Attorney General, except that the Commissioner of Banking's membership on the Cemetery Board is terminated.

4. All acts and parts of acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

5. Unless otherwise specified in this Plan, all transfers directed by this Plan shall be effected pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 *et seq.*).

6. If any provisions of this Plan or the application thereof to any person, or circumstances, or the exercise of any power or authority hereunder are held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, which can be given effect without the invalid provisions or applications of the Plan, or affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

7. This Plan is intended to protect and promote the public health, safety and welfare, and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Plan was filed on March 13, 1995 with both Houses of the Legislature and with the Secretary of State for publication in the *New Jersey Register*. This Plan shall become effective in 60 days on May 12, 1995, unless disapproved by each House of the Legislature by the

## THE GOVERNOR

## REORGANIZATION PLANS

passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Plan, or at a date later than May 12, 1995, should the Governor establish such a later date for the effective date of this Plan, or any part hereof, by Executive Order.

**PLEASE TAKE NOTICE** that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the *New Jersey Register* under the heading of "Reorganization Plans."

(a)

**OFFICE OF THE GOVERNOR****Governor Christine Todd Whitman****Reorganization Plan No. 002-1995****A Plan for the Transfer and Reorganization of the Division of Motor Vehicles Within the Department of Transportation**

**PLEASE TAKE NOTICE** that on March 13, 1995, Governor Christine Todd Whitman hereby issues this Reorganization Plan, No. 002-1995, (the "Plan"), to provide for the transfer and reorganization of the Division of Motor Vehicles ("DMV" or "Division") within the Department of Transportation ("DOT").

This Plan furthers an ongoing effort to streamline and downsize the structure and function of the Executive Branch in the interests of efficiency and economy without any diminution of public services, either qualitative or quantitative.

**GENERAL STATEMENT OF PURPOSE**

Pursuant to its present statutory authority, it is the duty of the DMV to regulate the use and registration of motor vehicles in this State. In fulfilling this duty, the DMV provides services to millions of New Jersey motor vehicle operators and owners, including licensing, titling, tracking of driver violations, and registration and vehicle inspection. Additionally, the DMV provides information and support to the law enforcement community and certain intergovernmental agencies, such as the Federal Highway Administration and American Association of Motor Vehicle Administrators.

In order to more efficiently manage and administer the State's motor vehicle services, this Plan provides for the reorganization of the Division and the transfer of the DMV from the Department of Law and Public Safety to the Department of Transportation. This transfer and reorganization will consolidate transportation and motor vehicle related activities and programs administered by the DOT and DMV, and will increase the ability of the State to coordinate and improve activities and programs related to highway safety, inspection and maintenance of vehicles, and transportation programs required to implement provisions of the Federal Clean Air Act.

Moreover, this transfer and reorganization will eliminate duplication of effort in administering various motor vehicle and transportation related activities and programs and will align and assign similar functions within one agency, thereby promoting overall efficiency and effectiveness.

**NOW, THEREFORE**, pursuant to the "Executive Reorganization Act of 1969," P.L. 1969, c.203 (C. 52:14C-1 *et seq.*), I find, with respect to the transfer and reorganization provided for in this Plan, that each aspect is necessary to accomplish the purposes set forth in Section 2 of the Act and that each aspect will:

1. promote more effective management of the Executive Branch and of its agencies by grouping similar transportation and motor vehicle related functions and activities within one agency;
2. promote better and more efficient execution of the laws and the expeditious administration of the public business by consolidating and integrating within one agency similar regulatory functions, particularly the management and use of the State's highway system;
3. group, coordinate, and streamline regulatory functions in a more consistent and practical way;
4. reduce expenditures and promote economy to the fullest extent consistent with the efficient operations of the Executive Branch;
5. increase the efficiency of the operations of the Executive branch to the fullest extent practicable; and
6. eliminate duplication and overlapping of effort by consolidating certain functions which will result in a savings of State funds.

**PROVISIONS OF THE REORGANIZATION PLAN**

1. a. The Division of Motor Vehicles, including the functions, powers, and duties assigned to it pursuant to P.L. 1926, c.147, and provided by L. 1921, c.208, as amended and supplemented, (C. 39:2-1 *et seq.*), and allocated in the Department of Law and Public Safety, is hereby continued as the Division of Motor Vehicles and is transferred to the Department of Transportation, except as hereinafter provided.

b. The Director of the DMV shall be an Assistant Commissioner of the DOT and shall also retain the title of Director of the DMV. The Deputy Director of the DMV shall retain the title of Deputy Director of the DMV.

c. The authority set forth in P.L. 1948, c.439 (C. 52:17B-28), as it applies to the Division of Motor Vehicles, is continued and transferred to the Commissioner of Transportation, subject to the exceptions set forth therein.

d. The DMV shall provide, at no cost, to the law enforcement community, as defined by the Attorney General, the Administrative Office of the Courts and any other agency designated by the Attorney General, the following:

(i) Direct on-line access and file transfer to the complete database contained in the DMV Comprehensive System, including all motor vehicle and vessel operator history, registration, violation and suspension information, with such access to be provided twenty-four hours a day, seven days a week.

(ii) Any and all motor vehicle and vessel related information, assistance and services, including those necessary for investigations, court or administrative proceedings and other confidential purposes, and to otherwise provide any other appropriate information or assistance requested by the Attorney General.

The Attorney General shall establish, in consultation with the Commissioner of Transportation, performance standards for: (1) the provision of the access, file transfer and information contained in the DMV Comprehensive System, and (2) the type of information, assistance and services to be provided by the DMV.

e. Because certain functions, powers and duties of the DMV are closely connected to the criminal, regulatory and administrative authority of the Attorney General, as Chief Law Enforcement Officer of the State and as head of the Department of Law and Public Safety, including, but not limited to, the theft of motor vehicles, the regulation of automobile sales and repair facilities, the provision of information to law enforcement agencies about the motor vehicle laws and regulations and the issuance of fictitious documents, for law enforcement purposes, the DOT and DMV shall continue to cooperate with the Attorney General in the investigation and prosecution of all civil and criminal matters and in the promulgation or implementation of any policies, rules or regulations related to criminal or administrative enforcement activities.

To that end, the Commissioner of Transportation shall seek approval from the Attorney General prior to: (1) engaging in any criminal investigatory or criminal or civil enforcement activity; (2) the issuance of any regulations relating to law enforcement or other civil enforcement activities; (3) the issuance of any legal advice to law enforcement agencies relating to motor vehicles or vessels; (4) implementing any procedures that may affect law enforcement; or (5) making any changes to the manner in which the DMV Comprehensive System and network is managed, operated, maintained or secured or who performs any of those services and functions. In addition, the approval of the State Treasurer shall be required before any changes are made to the manner in which the DMV Comprehensive System and network is managed, operated, maintained or secured or who performs any of those services and functions. The Commissioner of Transportation shall also consult with the Attorney General on all policy statements, implementation of any policy, and any other matters which may relate to the Attorney General's authority as the Chief Law Enforcement Officer of the State and head of the Department of Law and Public Safety.

f. Nothing contained in this Plan shall be construed to diminish or modify the Attorney General's role as the Chief Law Enforcement Officer of the State or to otherwise affect the Attorney General's authority to establish any policies necessary for the uniform and efficient enforcement of the criminal laws and the administration of criminal justice throughout the State.

I find this Plan is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-1 *et seq.*). In addition to the reasons set forth above, this Plan will help to ensure the close coordination and integration of the State's motor vehicle and transportation

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services, while also preserving and maintaining essential functions and powers of the Attorney General, as Chief Law Enforcement Officer of the State.

2. All employees who serve the DMV shall be employees of the Department of Transportation and shall be transferred to the DOT pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 *et seq.*). Additionally, all records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to the DMV, shall be transferred to the DOT pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 *et seq.*).

3. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise thereunder, reference is made to the Division of Motor Vehicles within the Department of Law and Public Safety or the Director thereof, the same shall mean and refer to the Division of Motor Vehicles within the Department of Transportation, or the Assistant Commissioner/Director of the Division thereof.

4. All acts and parts of acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

5. Unless otherwise specified in this Plan, all transfers directed by this Plan shall be effected pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 *et seq.*).

6. If any provisions of this Plan or the application thereof to any person, or circumstances, or the exercise of any power or authority hereunder are held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, which can be given effect without the invalid provisions or applications of the Plan, or affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

7. This Plan is intended to protect and promote the public health, safety and welfare, and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Plan was filed on March 13, 1995 with both Houses of the Legislature and the Secretary of State for publication in the *New Jersey Register*. This 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 this Plan, or at 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 Executive Order.

**PLEASE TAKE NOTICE** that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the *New Jersey Register* under the heading of "Reorganization Plans."

(a)

**OFFICE OF THE GOVERNOR**

**Governor Christine Todd Whitman**

**Reorganization Plan No. 003-1995**

**A Plan for the Reorganization of the Division of Dairy Industry and the Division of Regulatory Services Within the Department of Agriculture**

**PLEASE TAKE NOTICE** that on March 13, 1995, Governor Christine Todd Whitman hereby issues this Reorganization Plan, No. 003-1995 (the "Plan"), to provide for the reorganization of the Division of Dairy Industry and the Division of Regulatory Services within the Department of Agriculture.

This Plan represents an ongoing effort to streamline and downsize the structure and functions of the Executive Branch in the interests of efficiency and economy, without quantitative or qualitative diminution of services to the public.

**GENERAL STATEMENT OF PURPOSE**

Pursuant to its present statutory authority, the Department of Agriculture conducts development, regulatory, service, promotion, and information programs in support of agriculture and agribusiness as well as natural and renewable resources associated with agriculture and open lands, for the benefit of all New Jersey citizens. Under current law, the Department of Agriculture consists of seven divisions, each headed by a division director.

The Division of Dairy Industry is responsible for fostering a stable and competitive dairy industry, including the regulation and enforcement of the production and distribution of fluid dairy products. In addition, the Division of Dairy Industry licenses dealers who purchase milk from New Jersey dairy farmers or who sell fluid dairy products to other dealers and to retail outlets. In order to be licensed, the dealers must post a bond with the Secretary of Agriculture conditioned upon the payment of all amounts due and owing to New Jersey dairy farmers.

Similarly, the Division of Regulatory Services licenses all brokers of perishable agricultural commodities. Brokers buy, on credit, perishable agricultural commodities from New Jersey farmers and subsequently sell them to third parties. In order to be a New Jersey licensed broker, a person must post a bond with the Secretary of Agriculture conditioned upon the payment of all amounts due and owing to New Jersey farmers. The Division of Regulatory Services also is responsible for the quality assurance of animal feeds, fertilizers, agricultural liming materials, and agricultural commodities grading and inspection.

The purpose of this Plan, in part, is to create a governmental structure that will foster the efficient implementation of integrated assistance to New Jersey farmers and the State's citizens. The Plan accomplishes this by consolidating the functions of the Division of Dairy Industry and the Division of Regulatory Services into a new division to be named the Division of Dairy and Commodity Regulation. The consolidation of the two divisions into a single division will reduce management and cross utilization of personnel without affecting essential services to New Jersey farmers, agribusiness, and consumers.

**NOW, THEREFORE**, pursuant to the "Executive Reorganization Act of 1969," P.L. 1969 c.203 (C. 52:14C-1 *et seq.*), I find, with respect to the transfer and reorganization provided for in this Plan, that each aspect is necessary to accomplish the purposes set forth in Section 2 of the Act and that each aspect will:

1. promote more effective management of the Executive Branch and more efficient execution of the laws by consolidating similar functions within one agency;
2. group, coordinate and consolidate functions in a more consistent and practical manner according to major purposes;
3. reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive Branch;
4. increase the efficiency of the operations of the Executive Branch to the fullest extent practicable;
5. reduce the number of agencies by consolidating those having similar functions under a single head; and
6. eliminate duplication and overlapping of effort and, thereby, better utilize State resources.

**PROVISIONS OF THE REORGANIZATION PLAN**

1. a. The Division of Dairy Industry contained within the Department of Agriculture, including the functions, powers, and duties assigned to it pursuant to P.L. 1916, c.268 (C. 4:1-1 *et seq.*), as amended and supplemented, is hereby continued and transferred to a single division, which shall be named the Division of Dairy and Commodity Regulation.

b. The Division of Regulatory Services contained within the Department of Agriculture, including the functions, powers, and duties assigned to it pursuant to P.L. 1916, c.268 (C. 4:1-1 *et seq.*), as amended and supplemented, is hereby continued and transferred to a single division, which shall be named the Division of Dairy and Commodity Regulation.

c. The Director of the Division of Regulatory Services shall become the Director of the Division of Dairy and Commodity Regulation. The Deputy Director of the Division of Regulatory Services shall become the Deputy Director of the Division of Dairy and Commodity Regulation.

I find this Plan is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). In addition to the reasons set forth above, this Plan will promote the increased efficiency, coordination and functioning of the State's programs for the grading and inspection of perishable agricultural commodities; the licensing, testing and enforcement of agricultural chemicals; and the licensing and bonding of brokers of perishable agricultural commodities. Further, this Plan will enable the State to maintain a viable, competitive dairy industry and an ample supply of milk at fair prices to consumers, while providing a fair return to dairy farmers.

2. All employees who serve the Division of Dairy Industry and the Division of Regulatory Services shall be transferred to the Division of Dairy and Commodity Regulation pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 *et seq.*). In addition, all records, property, appropriations, and any unexpended balance of funds ap-

## THE GOVERNOR

## REORGANIZATION PLANS

propriated or otherwise available to the Division of Dairy Industry and the Division of Regulatory Services shall be transferred to the Division of Dairy and Commodity Regulation pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 *et seq.*).

3. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise thereunder, reference is made to the Division of Dairy Industry or to the Division of Regulatory Services, the same shall mean and refer to the Division of Dairy and Commodity Regulation.

4. All acts and parts of acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

5. Unless otherwise specified in this Plan, all transfers directed by this Plan shall be effected pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 *et seq.*).

6. If any provisions of this Plan or the application thereof to any person, or circumstances, or the exercise of any power or authority hereunder are held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, which can be given effect without the invalid provisions or applications of the Plan, or affect

other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

7. This Plan is intended to protect and promote the public health, safety and welfare, and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Plan was filed on March 13, 1995 with both Houses of the Legislature and with the Secretary of State for publication in the *New Jersey Register*. This 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 this Plan, or at 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 Executive Order.

**PLEASE TAKE NOTICE** that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the *New Jersey Register* under the heading of "Reorganization Plans."

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# RULE PROPOSALS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW Uniform Administrative Procedure Rules Settlements

##### Proposed Amendment: N.J.A.C. 1:1-19.1

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 1995-200.

Submit comments by May 3, 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

The Office of Administrative Law's rules concerning settlement currently provide that any settlement must be disclosed and be reviewed by an administrative law judge who determines whether the settlement is voluntary, consistent with the law, and fully dispositive of all issues in controversy. If the agency head is not a party to the settlement, the judge issues an initial decision recommending acceptance of the settlement. If the agency head has consented to the settlement terms, the judge issues a decision approving settlement which does not provide for review by the agency head.

When the agency head has already consented to the settlement terms, the appropriate role of the administrative law judge in reviewing the settlement is unclear. In view of the agency head's jurisdiction to make final decisions in all cases, the authority of an administrative law judge to review a settlement already approved by that agency head is questionable. Additionally, the issuance and processing of additional documents in these cases is inefficient, and places additional administrative burdens on this office.

The proposed amendment provides that when the agency head has approved settlement terms, the parties may either file a signed stipulation of dismissal or a signed consent order disclosing the settlement terms. Either document would be deemed to be the final decision in the case.

The rules continue to provide for review by the administrative law judge of settlements where the agency head has not consented to the settlement terms.

#### Social Impact

The proposed amendment eliminates any ambiguity about the appropriate role of an administrative law judge in reviewing a settlement to which the agency head has already consented. Once the agency head and the party or parties have reached a settlement, the file can be closed upon submission of a signed stipulation of dismissal or signed consent order. In those cases where the parties prefer to disclose settlement terms on the record, the proposed amendment provides for this option.

#### Economic Impact

The proposed amendment eliminates the requirement that a decision approving settlement be issued and processed in settled cases where the agency head has already consented to the settlement. This change should slightly expedite the process and should result in some minor cost savings to the Office of Administrative Law. No other economic impact is foreseen.

#### 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 Statement

The proposed amendment does not impose any reporting, recordkeeping or compliance requirements on small businesses. The proposed amendment concerns the processing of settled cases where the agency head has consented to the settlement.

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

#### 1:1-19.1 Settlements

(a) Where the parties to a case wish to settle the matter, **and the agency head has not consented to the settlement terms**, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or

2. Orally, by the parties or their representatives.

(b) [If] **Under (a) above**, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

[1. Where the agency head has not consented to the settlement terms, the decision shall be an initial decision.

2. Where the agency head has consented to the settlement terms, the decision approving settlement shall not contain the statement required by N.J.A.C. 1:1-18.3(c)12 and shall be deemed the final decision.]

(c) **If the agency head has approved the terms of the settlement, the parties shall:**

1. **File with the Clerk and the assigned judge, if known, a stipulation of dismissal, signed by the parties, their attorneys, or their non-lawyer representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f); or**

2. **If the parties prefer to have the settlement terms incorporated in the record of the case, then the full terms of the settlement shall be disclosed in a consent order signed by the parties, their attorneys, or their non-attorney representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f). The consent order shall be filed with the Clerk and the assigned judge, if known.**

(d) **The stipulation of dismissal or consent order under (c) above shall be deemed the final decision.**

## AGRICULTURE

### (a)

#### DIVISION OF DAIRY INDUSTRY

#### Processors, Dealers and Subdealers

##### Proposed Readoption: N.J.A.C. 2:52

Authorized By: Dhun B. Patel, Ph.D., M.P.H., Acting Director,

Division of Dairy Industry, Department of Agriculture.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.

Proposal Number: PRN 1995-219.

Submit comments by May 3, 1995 to:

Dhun B. Patel, Ph.D., M.P.H., Acting Director  
Division of Dairy Industry  
New Jersey Department of Agriculture  
CN 330  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

N.J.A.C. 2:52 is scheduled to expire on May 1, 1995 pursuant to Executive Order No. 66(1978). This rulemaking action readopts regulations 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 regulations were effective in 1990; this proposal will continue the regulations adopted in 1990.

**AGRICULTURE****PROPOSALS**

A summary of the existing subchapters follows:

Subchapter 1, Processors, Dealers and Subdealers Records and Reports, requires milk processors, dealers and subdealers to maintain accurate records on milk transactions to assist the Division of Dairy Industry in its evaluation of the licensee's business operations concerning the licensee's adherence to applicable New Jersey statutes and the rules of the Division.

Subchapter 2, Dealer and Subdealer Intent to Serve Unlicensed Store, requires licensees to obtain approval from the Director of Dairy Industry before serving an unlicensed store; the giving of two weeks notice to the present supplier of a store requesting to change milk supplier; approval to serve unlicensed store without notice under certain conditions; and listed conditions under which the Director might deny approval to change supplier.

Subchapter 3, Dealer and Subdealer Intent to Change Source of Milk Supply, deals with the conditions pertaining to the changing of a licensee's source of milk supply. It describes the instances when the notice is required; instances when notice is not required; who should file the notice; who should receive the notice; when and why approval to change suppliers may be denied; commencement of the two week period and who will be notified of approval or denial to change source of supply.

Subchapter 4, Processor, Dealer or Subdealer Notice to Stop Serving, requires that a licensee desiring to stop serving an account must give written notice to the customer and the Director, Division of Dairy Industry, at least two weeks prior to the proposed date of discontinuance. The two weeks notice is not required if the customer releases the supplier in writing and sends a copy of the release to the Division.

Subchapters 5 and 6 are reserved.

Subchapter 7, Sales Below Cost: Dealer, prohibits licensed milk dealers from selling milk below cost. The term "cost" is defined in the subchapter and certain costs are required to be averaged. Raw milk cost is also defined in this subchapter.

**Social Impact**

This re-adoption assures that the dairy industry and the consumers will continue to receive the benefit of an effective milk control regulation. Failure to re-adopt the regulation would leave a void in the milk control program and result in unstable markets and destructive competition.

**Economic Impact**

The rules proposed for re-adoption are driven by economics and beneficially affect New Jersey consumers (especially school children, the elderly and the poor), dairy farmers, milk dealers and subdealers, and retail stores.

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 re-adoption benefits consumers by creating a market environment wherein adequate supplies of milk are available to meet consumer demands at reasonable prices. Such benefits are direct results of the market stability and competitiveness provided by enforcement of the Division's rules.

Approximately 254 New Jersey dairy farmers with average investments exceeding \$400,000 per farm receive direct benefits from this proposed re-adoption in the maintenance of the marketing and production infrastructure conducive to the maintenance of efficient farming operations. Revenues of approximately \$50 million, generated by New Jersey dairy farmers each year, are important contributions to the State's economy—particularly for rural communities. The rules proposed for re-adoption are important tools in insuring that dairy farmers receive payment for their products.

Milk dealers, subdealers 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. The notice rules assist dealer and subdealers with the collection of money owed for products delivered, help to insure a continuing source of supply for retail stores and provide for the orderly transfer of business.

The reporting and recordkeeping requirements provide data for economic and accounting analyses. The information derived is beneficial to the dairy industry, government agencies, researchers, and the public. It also provides the source of information for division publications which benefits farmers in their management decisions.

The rules proposed for re-adoption affect the State of New Jersey (the funding source) by providing data on which accurate license fees are

based. The fees of approximately \$381,459, collected during Fiscal Year 1993 represents roughly 83 percent of the Division of Dairy Industry's budget for that year.

**Executive Order No. 27 Statement**

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Director Division of Dairy Industry 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.

**Regulatory Flexibility Analysis**

Re-adoption of N.J.A.C. 2:52 will not add reporting and recordkeeping requirements greater than those which have been followed by milk dealer licensees of the Division since 1977. The proposed re-adoption applies to 351 milk dealers and processors of whom approximately 90 percent are small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq., and approximately 10,000 retail stores of which approximately 85 percent are small businesses. The small businesses will be affected, but to no greater extent than in the past. The rules exempt most small milk dealers from the filing of any monthly reports.

The reports required are designed to be taken directly from ordinary records already kept by the licensees for managerial decision-making purposes. The licensees have the reporting systems in place and will not require additional efforts to comply. Wherever possible, the Division of Dairy Industry has combined several reports and eliminated reports that are no longer necessary.

The initial capital costs and the annual costs of compliance are minimal for both large and small businesses. In fact, the rules are designed to exempt small businesses from several reporting requirements that are not essential to them.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:52.

**(a)****DIVISION OF REGULATORY SERVICES****New Jersey Commercial Fertilizer Plant Food Nutrient Values****Proposed Amendment: N.J.A.C. 2:69-1.11**

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

Authority: N.J.S.A. 4:9-15.26.

Proposal Number: PRN 1995-204.

Submit comments by May 3, 1995 to:  
Dhun B. Patel, Ph.D., Director  
Division of Regulatory Services  
N.J. Department of Agriculture  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-5575

The agency proposal follows:

**Summary**

The purpose of this proposed amendment is to update the commercial values of primary plant nutrients. The current values have been reviewed and no change in the values is proposed at this time. However, the effective dates are being changed to reflect the annual update. The assessed penalties for deficient fertilizers will be based on the values and charged to the manufacturer. The State Treasury will receive all unclaimed penalty fees.

**Social Impact**

All consumers of fertilizers will have more monetary protection when deficient fertilizers are detected. Manufacturers will exhibit more care in controlling their formulating processes to avoid a penalty.

**Economic Impact**

All consumers of fertilizer will be equitably compensated for their losses because these proposed values are accurately adjusted to current market prices.

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## COMMUNITY AFFAIRS

### Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Director of the Division of Regulatory Services, New Jersey Department of Agriculture are dictated by the New Jersey Commercial Fertilizer And Soil Conditioner Law 4:9-15.26., and are not subject to any Federal requirements or standards.

### Regulatory Flexibility Analysis

Both large and small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the proposed changes in the values of the fertilizers. However, differing standards are not deemed necessary because the changes are not burdensome and they reflect the current market value of the nutrients. Furthermore, the nutrient values are used in setting the penalties of manufacturers for compensation to farmers, all of whom are considered small businesses under the Act, when they purchase products that do not meet the analysis as advertised. The amendment in that way provides some measure of protection to small businesses.

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

2:69-1.11 Commercial values

(a) (No change.)

(b) These values shall be effective from July 1, [1994] **1995** through June 30, [1995] **1996**.

## COMMUNITY AFFAIRS

(a)

### DIVISION OF CODES AND STANDARDS

#### Maintenance of Hotels and Multiple Dwellings Inspections

#### Proposed Amendment: N.J.A.C. 5:10-1.10

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13A-13.

Proposal Number: PRN 1995-195.

A public hearing on this proposal will be held on Monday, April 24, 1995 at 10:00 A.M. at 101 South Broad Street, Trenton, New Jersey.

Submit written comments by May 3, 1995 to:

Michael L. Ticktin, Esq.  
Chief, Legislative Analysis  
Department of Community Affairs  
CN 802  
Trenton, New Jersey 08625-0802  
Fax No. (609) 633-6729

The agency proposal follows:

#### Summary

P.L. 1991, c.179, effective June 28, 1991, made various amendments to section 13 of the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-13). Included among the changes was the addition of language allowing the Department to waive the inspection fee for a unit when there was a municipal certificate of occupancy inspection during the previous 12-month period that was conducted in accordance with the maintenance standards adopted under the Hotel and Multiple Dwelling Law. Also included was language allowing the Department to accept a municipal certificate of occupancy for an entire building issued prior to resale, and in accordance with the Department's maintenance standards, in lieu of a current inspection.

On the basis of this statutory authority, the Department has been following the practice of waiving fees for units with proper certificates of occupancy and accepting municipal resale inspections in accordance with the Hotel and Multiple Dwelling rules in lieu of cyclical inspections. However, it has become evident that appropriate procedures are needed so that the Department will have timely notice of any basis for a fee adjustment and will have a reasonable opportunity to avoid scheduling a redundant inspection of a building that has had an acceptable resale inspection.

Instead of relying solely on the permissive language of the statute, the Department is therefore proposing to amend the rules at N.J.A.C.

5:10-1.10(h) and (i) to provide that the fee waiver and acceptance of resale inspections shall be allowed to owners provided certain procedures are followed. The owner has to give timely notice of the prior municipal inspection; this means submitting a copy of the municipal certificate of occupancy within 15 days following the start of the inspection, where a fee exemption for a unit is claimed, and not less than 90 days prior to the fifth anniversary of the previous cyclical inspection, where use of a resale inspection in lieu of a cyclical inspection is desired.

If the Department has not previously been provided with a copy of the ordinance under which the certificate of occupancy inspection was done, the owner must also provide a copy of the ordinance within 10 business days of his or her receipt of the Department's request for a copy of the ordinance. The Department is also proposing to add a provision at N.J.A.C. 5:10-1.10(j) that will allow the Department to maintain a file of municipal certificate of occupancy ordinances and housing codes and a listing, which shall be available to property owners and other interested parties upon request, indicating which municipalities' ordinances have been reviewed and, of those, which have and have not been approved as being substantially identical in their requirements to the Regulations for the Maintenance of Hotels and Multiple Dwellings.

#### Social Impact

By including in the rules fee and inspection waiver provisions that have thus far been in effect solely on the basis of permissive statutory language, and by establishing time limits and procedural rules, the proposed amendments will ensure certainty and uniformity in actual practice.

#### Economic Impact

By clearly establishing an owner's right to the waiving of fees for units that have had an acceptable municipal certificate of occupancy during the previous 12-month period and to the postponement of inspections of buildings that have had an acceptable sales inspection during that period, the proposed amendment will ensure that owners realize the cost savings that the statutory amendment allows but does not require.

#### Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because this rule is 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.

#### Regulatory Flexibility Statement

The great majority of persons who own multiple dwellings and hotels in New Jersey would qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments would allow cost savings to all owners of units or buildings subject to municipal certificate of occupancy inspections performed in accordance with Department standards. The requirement that owners provide copies of the certificate of occupancy and, if necessary, the ordinance to the Department is not burdensome; these documents are needed in order to determine which units are exempt from fees and whether a cyclical inspection should be deferred to a later date. This is true regardless of whether or not the owner qualifies as a "small business."

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

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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.

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. Copies of this list shall be made available upon request, without charge, to owners of hotels and multiple dwellings and other interested persons.

(a)

### DIVISION OF CODES AND STANDARDS

#### Rooming and Boarding Houses

#### Proposed Readoption with Amendments: N.J.A.C. 5:27

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13B-4.

Proposal Number: PRN 1995-205.

Submit written comments by May 3, 1995 to:

Michael L. Tickin, Esq.  
Chief, Legislative Analysis  
Department of Community Affairs  
CN 802  
Trenton, NJ 08625  
FAX # (609) 633-6729

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), the Rooming and Boarding House rules, N.J.A.C. 5:27, are scheduled to expire on May 2, 1995. The Department has examined these rules and finds that they continue to be necessary and appropriate for the implementation of the Rooming and Boarding House Act of 1979.

N.J.A.C. 5:27 contains rules concerning administration and enforcement of the act, the rights of residents, general building requirements, security, residents' comfort, maintenance of records, food and laundry services, financial services and fire safety loans. These rules are intended to implement the Rooming and Boarding House Act of 1979 by assuring rooming and boarding house residents a homelike environment in which their health, safety and welfare are adequately protected.

Amendments are proposed for the purposes of correcting a cross-reference, clarifying language concerning applicability of the Uniform Construction Code, updating the name of the Division responsible for enforcement of the act and making pronouns gender-inclusive or neutral.

#### Social Impact

The rules proposed for readoption contain the standards under which rooming and boarding houses must be operated and upon which they are judged during license inspections. These standards are designed to protect the health, safety and welfare of the residents of these facilities, many of whom are elderly or handicapped in one way, and thus in special need of protection.

#### Economic Impact

The standards for the operation of rooming and boarding houses set forth in the rules proposed for readoption impose compliance costs on both facility owners and operators and those seeking licensure of such facilities. The amount of such costs varies depending upon the extent of non-compliance. Grants are available for owners/operators under N.J.A.C. 5:27-12 as long as a building continues as a boarding house. Compliance costs are, of course, recoverable through the rental and service rates charged residents. Cost components are as follows:

Under subchapter 1, annual licenses are required to own or operate a rooming or boarding house. License fees vary by license class and the number of residents, but do not exceed a total of \$150.00. The administrative cost of providing the license applicant and building information as part of the application is borne by the applicant. Subchapter 4 sets forth general building requirements related to water supply; sink/lavatory/bathtub or shower facilities; garbage and rubbish storage; lighting and electrical service; ventilation; heating; maintenance; and use and occupancy of space. An owner or operator whose building is not in compliance with these requirements will incur the cost to effect compliance, which may include the cost of parts and services of, for example, plumbers, electricians, contractors.

The security requirements of subchapter 6 impose costs for various types of locks, certain hinges, a doorbell, and an in-house safe or a safe-deposit box in a banking institution. The services of a locksmith may be required. Subchapter 7's costs include those for a weekly change of linens and towels; housekeeping; bedroom and common living room furnishings; and, possibly, recreational equipment. Certain resident information and documentation is required to be maintained under subchapter 8. In addition, a licensee is required to maintain detailed financial records for each boarding or rooming house; such financial recordkeeping may require the services of a bookkeeper. Subchapter 9 requires for Class B and Class C licensed facilities that each resident be provided a nutritionally adequate diet of good quality food (at least three well-balanced and appetizing meals per day, with snacks available), and prescribes food sanitation requirements. Food service providers may have to be employed or contracted with to meet these requirements. Minimum requirements are set forth for laundry services, if provided.

Subchapter 10 sets standards for other personal services which may be offered or provided by Class C licensees, including assistance in dressing, bathing and personal hygiene; transportation to health services; monitoring of medication; and supervision of self-administration of medicine. Costs will vary with the services provided. The provision of financial services to residents is governed by subchapter 11, including check cashing, holding of personal funds and assistance in purchasing. Licensees must maintain a transaction ledger for resident personal funds entrusted to the licensee. Licensees may obtain financial assistance for compliance with the chapter's requirements under the rental assistance agreement provisions in subchapter 12.

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### Executive Order No. 27(1994) Statement

No Executive Order No. 27 analysis is 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.

### Regulatory Flexibility Statement

The rules proposed for readoption impose reporting, recordkeeping and compliance requirements on owners and operators of rooming and boarding houses, most of which are small businesses as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The capital costs incurred by such small businesses to comply with these rules, and the need for professional services to effectuate compliance, depends upon the degree of non-compliance and the internal staff resources of the facility. Requirements and costs are discussed in the Economic Impact above. Since compliance with the rules is necessary for the safety, health and welfare of facility residents, no differentiation in the requirements can be granted based upon business size or form of organization.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:27.

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

#### 5:27-1.5 Construction and alteration; change of use

(a) [No] **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**, except that alterations required by this chapter shall be made in accordance with this chapter and higher requirements]. **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 [him] **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)[6]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 [Housing] **Codes and Standards** of the Department of Community Affairs.

...

"Director" means the Director of the Division of [Housing] **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;

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 [his] **an employee of the licensee** is stationed nearby for the

## COMMUNITY AFFAIRS

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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 [his] 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 commencing 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 [his] the licensee's own use, or require payment to [him] 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."

(a)

## OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

### Ombudsman Practice and Procedure

### Proposed Readoption with Amendments: N.J.A.C. 5:100

Authorized By: Bonnie Kelly, Acting Ombudsman for the Institutionalized Elderly.

Authority: N.J.S.A. 52:27G-1 et seq., specifically 52:27G-5 and 5.1.

Proposal Number: PRN 1995-201.

Submit comments by May 3, 1995 to:

Veronica Anthony, General Counsel

Office of the Ombudsman for the

Institutionalized Elderly

101 South Broad Street

CN 808

Trenton, NJ 08625-0808

The agency proposal follows:

#### Summary

Pursuant to the provisions of Executive Order No. 66(1978), the rules of the Office of the Ombudsman for the Institutionalized Elderly (the "Office"), N.J.A.C. 5:100 will expire June 18, 1995. As required by the Executive Order, the Office of the Ombudsman has reviewed these rules and determined them to be necessary, reasonable and effective, as amended and supplemented, for the purpose for which they were originally promulgated. The Office of the Ombudsman has determined that the rules provide adequate information regarding an individual's right to participate, control and determine treatment decisions, as well as outline the Ombudsman's role in the investigative, fact finding and referral process necessary for protecting and advocating for the rights and well being of the vulnerable institutionalized elderly.

A summary of the rules and the proposed amendments are as follows:

N.J.A.C. 5:100-1.1 indicates the basic scope and objective of the Office of the Ombudsman for the Institutionalized Elderly and also provides information on the Office's mandate.

N.J.A.C. 5:100-1.2 defines words and phrases deemed essential to establishing the operative intent of this subchapter. One change in part of a definition is proposed ("facility"); this change clarifies the jurisdiction of the Office to make it apparent that "acute care medical centers" are excluded. Also, the terms "Volunteer Advocate" and "Regional Volunteer Coordinator" are added and defined as they pertain to the Office's Volunteer Program.

N.J.A.C. 5:100-1.3 provides information on the right of individuals to contact the Office and of the Office's accessibility. There are two changes proposed: the Office's new toll-free telephone number and the fact that the Office is now officially part of the Department of Community Affairs.

N.J.A.C. 5:100-1.4 explains the Office's complaint procedure.

N.J.A.C. 5:100-1.5 indicates the reporting requirements under the Mandatory Adult Abuse and Exploitation Reporting Law.

N.J.A.C. 5:100-1.6 explains the information confidentiality provisions under the Office's enabling statute.

N.J.A.C. 5:100-1.7 prohibits discrimination, disciplinary or retaliatory action against anyone who, in good faith, reports to or aids the Office in carrying out its duties.

N.J.A.C. 5:100-1.8 delineates the penalties for hindering the Office or refusing to comply with the Office in the course of an investigation.

N.J.A.C. 5:100-1.9 is a proposed new rule which incorporates the Office's Volunteer Advocate Program into the rules so that the Program will officially be recognized as an authorized unit of the Office. Explained are: the Volunteer Advocate Program; the Office's responsibility to that program's development; and the responsibility of the Volunteer Advocate Program's Regional Volunteer Coordinator. The development of an Ombudsman Volunteer Advocate Program shall serve to promote community contact and involvement with residents of long-term care facilities. The Office shall be responsible for the training and coordi-

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nating of these Volunteer Advocates to resolve problems and or concerns within a facility. Volunteer Advocates shall elicit complaints and serve as advocates on behalf of the institutionalized elderly.

N.J.A.C. 5:100-2.1 clarifies the Office's role in circumstances involving proposals to withhold or withdraw life-sustaining medical treatment from elderly nursing home residents. N.J.A.C. 5:100-2.1(b) is a proposed new subsection which outlines and clarifies the Office's availability and provision of necessary technical assistance and dispute resolution when problems arise regarding medical treatment decisions for institutionalized elderly residents.

N.J.A.C. 5:100-2.2 defines words and phrases deemed essential in establishing the operative intent of this subchapter.

N.J.A.C. 5:100-2.3 explains when it is required that the Office be informed of a proposal to withhold or withdraw life-sustaining treatment, and it also indicates when the reporting procedures do not apply.

N.J.A.C. 5:100-2.4 provides the procedures for residents who are in a persistent vegetative state and therefore not capable of making healthcare decisions.

N.J.A.C. 5:100-2.5 provides the procedures for residents who are not in a persistent vegetative state but are incapable of making their own healthcare decisions.

### Social Impact

The individuals who will benefit from the Office's advocacy function are over 100,000 patients, residents and clients aged 60 and older of approximately 700 different healthcare facilities throughout New Jersey. These include, but are not limited to, nursing homes, psychiatric hospitals, residential healthcare facilities, class "C" and "D" boarding homes and adult medical day care programs. These facilities are licensed by the New Jersey Department of Health, the New Jersey Department of Human Services and/or the New Jersey Department of Community Affairs. Some of these are public institutions, more are private.

The State of New Jersey has recognized that institutionalized elderly persons are particularly vulnerable, have special needs and problems and are generally isolated from other non-institutionalized members of the community. The Office was created as an advocate for the State's institutionalized elderly patients, residents and clients. The Legislature declared as the public policy of the State that the Office secure, preserve and promote the health, safety and welfare of the State's institutionalized elderly and ensure that they enjoy the same civil and human rights guaranteed to all New Jersey residents.

The proposed readoption and amendments will provide residents and their families with some feeling of security, since Volunteer Advocates will become a permanent part of nursing home life. The Volunteer Advocates will be operating under the direction and with the full support of the Office, giving more credence to the reason for their placement at long-term care facilities. Their presence will assist the institutionalized elderly and others concerned with their welfare by facilitating access to more direct contact with the Office. In this way, the Volunteer Advocates will serve as the eyes and ears of the Office. More importantly, the presence of Volunteer Advocates will help to enlighten the community about the problems faced by nursing home residents and will better promote community contact, awareness and involvement with residents of these institutions.

The proposed readoption and amendments reaffirms the Office's role as an advocate for the institutionalized elderly in the area of withholding and withdrawing life-sustaining medical treatment, as directed by the New Jersey Supreme Court.

The proposed readoption with amendments places no new requirements upon the elderly themselves, their caregivers, physicians, or facility administrators. Instead, they provide guidance and assistance so that the civil and human rights of all New Jersey's institutionalized elderly are recognized.

### Economic Impact

The proposed readoption and amendments simply reaffirm what was previously clarified and is already expressly provided by statute or court decisions. Therefore, the readoption and amendments themselves will not have an economic impact on affected parties.

There is no tax, fee, charge or other economic cost to the institutionalized elderly who derive benefits through the Office's protective and advocacy roles described and structured by these rules. Those who report or file a complaint with the Office about any condition affecting the institutionalized elderly incur no cost if they use the Office's toll-free "hotline" telephone number available within the 609, 908 and 201 telephone area codes. Any cost of reporting or complaining to the Office

is either voluntarily incurred, if the report or complaint is optional, or mandatorily incurred, if the report is required under N.J.S.A. 52:27G-7.1. At most, any such economic cost would be that of a letter and postage or telephone toll charges. Any costs are likely to be minimal.

Any costs incurred due to the procedures described in the rules already exist as a result of N.J.S.A. 52:27G-1 et seq., and the requirements imposed by the New Jersey Supreme Court. In addition, the proposed amendments come under Title VII of the Older Americans Act which provides funding for the establishment of volunteer programs. There will also be no significant economic impact on the Office since the Federal grants from Title VII will be used to establish and maintain the volunteer program.

### Executive Order No. 27 Statement

The proposed readoption and amendments do not exceed analogous Federal requirements, since there are no existing statutes or requirements governing the Ombudsman program. The amendments to the Older Americans Act of 1965 required only that states maintain a long-term care Ombudsman program to intervene in and resolve a range of problems faced by residents of long-term care facilities.

### Regulatory Flexibility Statement

Reporting to the Office allegations of elderly abuse, neglect or exploitation is at times mandatory and at times optional. Where reporting to the Office is mandatory, it is mandated by law (N.J.S.A. 52:27G-7.1). The mandatory reporting requirement, where it exists, makes reporting incumbent upon only natural persons, facility administrators, physicians, nurses, aides, physical therapists, social workers and other professional persons rendering care or employed to render care to the institutionalized elderly. Reporting is optional under the law for all other persons.

The readoption and proposed amendments have no impact, including capital expenditure impact, on any small business in New Jersey, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14D-16 et seq. The Volunteer Advocate Program to be established under these proposed amendments will be funded, managed and maintained from grants allocated for this purpose through Title VII of the Older Americans Act. The Office received approximately \$140,000 for the current fiscal year for the Volunteer Program. However, this amount is subject to change yearly, since funding is based on appropriations from the Federal government.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:100.

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

### 5:100-1.2 Definitions

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

...  
 "Facility" means any facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential healthcare facilities, class "C" and "D" boarding homes, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, and medical day care centers. "Facility" shall not mean an acute care [hospital] **medical center**.

...  
 "Regional Volunteer Coordinator" means an individual trained and qualified to administer and supervise the Volunteer Advocate Program, and who is capable and willing to promote the Program's philosophy throughout the community being served.

...  
 "Volunteer Advocate" means an individual trained and certified by the Office to make regular weekly visits to assigned long-term care facilities. A Volunteer Advocate may exercise, but need not be limited to, such functions as visitation, consultation, problem solv-

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ing, eliciting complaints and generally serving as an advocate on behalf of the institutionalized elderly.

5:100-1.3 Contact with the Office; information about rights and entitlements; communications

(a) (No change.)

(b) The Office may be contacted by calling its toll-free telephone number (800-[624-4262]792-8820), 24 hours per day, any day of the year; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, Department of Community Affairs, CN 808, Trenton, New Jersey 08625-0808.

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

### 5:100-1.9 Volunteer Advocate Program

(a) The Office shall develop programs for use, training and coordination of volunteers and shall also be responsible for the development of policies and procedures for the administration of the Volunteer Advocate Program. These Volunteer Advocates shall serve to promote the well-being and quality of life of residents of long-term care facilities. They shall be required to report to the Regional Volunteer Coordinator.

(b) The Office shall retain responsibility for its volunteer advocates by acquiring the services of a Regional Volunteer Coordinator who shall be responsible to the Ombudsman. The Regional Volunteer Coordinator shall recruit, train and supervise Volunteer Advocates to advocate on behalf of the institutionalized elderly 60 years of age and over.

(c) The Ombudsman shall coordinate the efforts of the Office concerning volunteers with all relevant government agencies and with the administrators of such private facilities as may be deemed appropriate to ensure coordination and to avoid duplication of effort, so that the Volunteer Program will genuinely serve the interests of the institutionalized elderly without disrupting the legitimate function of any facility.

### 5:100-2.1 Purpose

(a) (No change.)

(b) Where there is no clear "duty to report" as outlined in N.J.A.C. 5:100-2.3, the Office is available to provide technical support, assistance and dispute resolution, should there be disagreement regarding the withholding or withdrawal of life-sustaining treatment, whether or not the resident has the capacity to make a healthcare decision, and whether or not an Advance Directive ("Living Will") or Proxy Directive ("Durable Power of Attorney for Health Care") is involved. The Office's function in any such situation is to promote, advocate and ensure the rights of the institutionalized elderly resident, pursuant to New Jersey Supreme Court guidelines and the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq.

## HEALTH

### (a)

### DIVISION OF HEALTH CARE PLANNING, FINANCING AND INFORMATION SERVICES

### Certificate of Need: Designation of Trauma Centers, Level I and Level II

### Proposed New Rules: N.J.A.C. 8:33P

Authorized By: Len Fishman, Commissioner of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1995-199.

Submit comments by May 3, 1995 to:

John J. Gontarski, Acting Director  
Health Planning and Community Initiatives  
New Jersey State Department of Health  
CN 360, Room 604  
Trenton, New Jersey 08625-0360

The agency proposal follows:

### Summary

The Department is proposing as new rules the certificate of need rules providing for designation of Level I and Level II trauma centers at N.J.A.C. 8:33P, which expired on March 19, 1995, in accordance with Executive Order No. 66(1978). The rules, which were adopted in March 1990, are based on standards published by the Committee on Trauma of the American College of Surgeons (ACS). These rules provide for regionalizing trauma services and designating specialized trauma centers based on 24 hour, in-house surgical and related capabilities and compliance with strict clinical standards and quality review systems. Research has shown that such an organized trauma system can significantly reduce preventable death and disability.

The rules are codified as Chapter 33P of N.J.A.C. Title 8, with five subchapters. Subchapter 1, General Provisions, includes definitions and a prohibition on the advertising and marketing of trauma services by non-designated hospitals. Subchapter 2, Criteria for Planning and Certificate of Need Review, describes the review process, which involves the filing with the Department of Health of a certificate of need application that follows the review process described in N.J.A.C. 8:33. This subchapter also includes a population-based need methodology which limited the number of Level I trauma centers in the State to three and the combined number of Level I and Level II centers to eight, as well as minimum volume requirements and other review criteria.

Subchapter 3, Hospital Organization, requires that the hospital establish a separate trauma service with a qualified trauma surgeon director. In addition, the hospital must have a surgery department and an emergency department staffed with qualified physicians in a number of different surgical and non-surgical specialties. These requirements include having qualified 24 hour in-house staff in emergency medicine, surgery and anesthesiology so that both emergency treatment and trauma surgery are always immediately available.

Subchapter 4, Special Facilities/Resources/Capabilities, defines staffing and equipment requirements for a number of different departments and services within the hospital, including the emergency department, the intensive care unit, and radiology. Subchapter 5, Other Requirements, establishes standards for several additional components of the trauma center, including the operating suite, the clinical laboratory, quality assurance, and the trauma center's involvement with other parts of the EMS and trauma system in New Jersey. Chapter Appendix A is a map of the State Emergency Medical Services (EMS) Regions, and Appendix B is a map of the five State Health Service Areas.

Two hospitals had received certificate of need approval as Level I trauma centers in 1981, prior to adoption of this chapter. Certificate of need trauma center applications submitted pursuant to N.J.A.C. 8:33P resulted in the designation in late 1990 of an additional Level I trauma center and five Level II trauma centers. Selections were made among competing applications within regional planning areas.

A 1991 amendment to these rules (at N.J.A.C. 8:33P-2.4(c)) allowed up to two additional Level II designations, beyond the five already approved, in areas where compelling access problems are demonstrated. Four applications submitted in 1991 pursuant to this language were not acted upon due to a general certificate of need moratorium which occurred at that time. An application for designation as a sixth Level II trauma center serving Hudson County was approved in November 1994.

The Department is not proposing changes to the rules at this time for two reasons.

First, both the certificate of need review process and the regulatory requirements as currently defined in the rules have been successful and effective in initially designating Level I and Level II trauma centers and ensuring that they comply with appropriate clinical standards. Additionally, the current rules give the Department the authority and flexibility to designate an additional Level II trauma center, should a need be identified by the Commissioner of Health in the next two years.

Second, the Department's Emergency Medical Services program is just starting a process to develop closely related rules for the operation, monitoring, and evaluation of trauma centers and trauma services in New Jersey. The Department intends to identify and propose any changes needed in N.J.A.C. 8:33P as part of this process, which will involve extensive review and input from advisory groups, including the New Jersey Trauma Center Council, the newly formed New Jersey EMS Council, and other EMS and hospital organizations in the state prior to the formal rule-making process. It is expected that this process may require a year or more to complete.

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The new trauma rules will address an ongoing compliance process for the designated trauma centers, as called for in the current rules at N.J.A.C. 8:33P-2.9. All of the currently designated trauma centers have been officially verified by the ACS as meeting Level I or Level II standards, as required by their certificates of need, and they are also seeking re-verification by the ACS after three years, even though it is not explicitly required by N.J.A.C. 8:33P. The Department intends to incorporate the ACS verification and re-verification process into the new rules and to generally define the Department's oversight authority over the trauma centers. The proposed new rules would also address the role of non-designated hospitals in the New Jersey trauma system, such as participation in the statewide trauma registry which is currently under development.

For the foregoing reasons, therefore, the Department is proposing N.J.A.C. 8:33P as new rules without change from the expired rules, for a two year "sunset" period, during which the Department and all interested parties will have a full opportunity to address and discuss the regulatory requirements needed for trauma centers and trauma services in New Jersey in a comprehensive and thorough manner. The readoption will also provide the Department with the ongoing authority necessary for designation and oversight of Level I and Level II trauma centers during the interim period.

### Social Impact

N.J.S.A. 26:2H-1 recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, the State Department of Health . . . shall have the central responsibility for the development and administration of the State's policy with respect to health planning, hospitals and health care services, and health facility cost containment programs. . ."

In accordance with this State policy, the criteria and standards contained in the proposed new rules are designed to promote high quality, accessible, and responsive regionalized specialized services for trauma patients, which are provided at a reasonable cost. The regionalization and coordination of Level I and Level II trauma center services as part of an integrated statewide EMS network has the documented potential for saving lives by improving the timeliness and effectiveness of treatment intervention.

### Economic Impact

These new rules have no negative economic impact on existing or potential Level I or Level II trauma centers, as the requirements they must meet will not change. The requirements centers must meet have an economic impact, based on costs incurred for data collection and transmission for the trauma registry and for added personnel. While the services required would ordinarily be present in a hospital providing trauma care, added expenses would result from the trauma specific staff (trauma surgeon, trauma coordinator) and from the addition of staff to fulfill the 24-hour-a-day availability requirement. There is evidence that the overall impact of a regionalized trauma system is to conserve economic resources by having the most severely injured patients promptly and effectively treated at efficiently organized, high volume trauma centers. This approach has economic and other benefits by minimizing long term disability and returning trauma victims to a productive life as quickly as possible.

### Executive Order No. 27 Statement

The proposed new rules do not impose standards on trauma providers in New Jersey that exceed those contained in Federal law or regulation. There is no direct Federal regulation of trauma centers or trauma services. The Federal policy expressed in the "Trauma Care Systems Planning and Development Act of 1990", 42 U.S.C. §300d et seq., is to encourage states to develop standards concerning trauma center designation, as well as trauma triage, transfer, and transportation policies (see 42 U.S.C. §300d-13(b)). Developing and maintaining these rules and related trauma policies conforms to this Federal policy and permits the State of New Jersey to continue to receive Federal funding authorized by the Act for its efforts to maintain an efficient and effective statewide trauma network.

### Regulatory Flexibility Statement

The proposed new rules apply only to New Jersey hospitals which are designated, or seek designation, as Level I or Level II trauma centers. None of these hospitals is a small business, as defined in the New Jersey

Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they have far more than 100 employees. No differentiation based on business size is needed because only relatively large hospitals with significant resources can meet the standards in the rules.

The purpose of the proposed new rules is to continue the Department's authority to designate Level I and Level II trauma centers and to ensure that they comply with the standards established by the rules. Concurrently, the Department will undertake a careful and thorough public review of these rules as part of a broader effort to develop regulatory standards for the ongoing oversight of the New Jersey trauma system.

Full text of the expired rules proposed herein as new may be found in the New Jersey Administrative Code at N.J.A.C. 8:33P.

## HUMAN SERVICES

### (a)

### DIVISION OF YOUTH AND FAMILY SERVICES

#### Manual of Requirements for Family Day Care Registration

**Proposed Amendments: N.J.A.C. 10:126-1.2, 1.3, 2.4, 4.6, 5.3, 5.7 and 5.8**

**Proposed New Rule: N.J.A.C. 10:126-5.3**

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

Authority: N.J.S.A. 30:5B-16 et seq.

Proposal Number: PRN 1995-213.

Submit comments in writing by May 3, 1995 to:

Richard Crane, Chief  
Bureau of Licensing  
Division of Youth and Family Services  
CN 717  
Trenton, New Jersey 08625-0717

The agency proposal follows:

### Summary

The Division of Youth and Family Services (DYFS) in the Department of Human Services is authorized to regulate family day care sponsoring organizations and voluntarily registered family day care providers in New Jersey pursuant to N.J.S.A. 30:5B-16 et seq. The Division's Manual of Requirements for Family Day Care Registration (N.J.A.C. 10:126) constitutes rules that govern 16 family day care sponsoring organizations and some 4,200 voluntarily registered family day care providers throughout the State. The Family Day Care Provider Registration Law (N.J.S.A. 30:5B-16 et seq.) was amended by legislation (P.L. 1993, c.350) that was enacted on December 29, 1993, and will take effect on June 29, 1995. These legislative amendments require corresponding amendments to the Manual of Requirements.

The Family Day Care Provider Registration Law (N.J.S.A. 30:5B-16 et seq.) established a two-tiered system of voluntary regulation for family day care providers, who provide child care for up to five children in a private residence. Under the law, family day care providers are not required to register; but if they choose to register, they must comply with State requirements. The Division of Youth and Family Services inspects, approves and contracts with selected family day care sponsoring organizations to carry out the voluntary registration system in specific geographic areas (which may include one or more counties). In turn, each sponsoring organization is responsible for inspecting, registering and monitoring family day care providers to ensure their compliance with registration requirements, and providing technical assistance, training and consultation to providers to assist them in maintaining compliance.

The amendments to the registration law require the Division to search its central registry of child abuse and neglect investigations to determine whether a report of child abuse or neglect has been filed against a registered family day care provider, applicant for registration, assistant, substitute or household member at least 14 years old. If an allegation of child abuse or neglect against such a person has been substantiated, the law precludes the issuance or renewal of a Certificate of Registration.

The law requires the Division to obtain each person's written consent for a central registry search. However, if a person refuses to consent

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to a search, the application for registration or renewal is required by law to be denied. The law also requires the Division to adopt rules to enable the applicant or provider to appeal the denial of the application for registration or renewal, and to establish time limits for conducting a central registry search and providing a family day care sponsoring organization with the results of the search. The proposed amendments are designed to implement all of these legislative amendments, and to add to the provisions concerning adverse actions by the Bureau against a sponsoring organization's approval.

Specifically, the proposed amendments to N.J.A.C. 10:126-1.2, Definitions, add "central registry search" and "household member" to the list of terms defined in the manual, and clarify the definition of the term "family day care provider applicant." The proposed amendments at N.J.A.C. 10:126-1.3 add procedures for adverse actions by the Bureau against a sponsoring organization's approval, and permit the sponsoring organization to request an administrative hearing in such a case. The proposed amendments to N.J.A.C. 10:126-2.4 and 4.6 contain only recodifications, corrections of citations and minor technical changes. A new section, N.J.A.C. 10:126-5.3, is proposed to address procedures for child abuse central registry searches, known as Child Abuse Registry Information (CARI) background checks, as explained below.

The applicant/provider is required at N.J.A.C. 10:126-5.3(a) to consent in writing to a CARI background check; to obtain written consent for CARI background checks from the substitute provider, provider assistant, alternate provider and household members at least 14 years old; and to identify all such persons to the sponsoring organization. The sponsoring organization is required at N.J.A.C. 10:126-5.3(b) to deny the application or to suspend, revoke or refuse to renew the Certificate of Registration, as applicable, if any such person refuses to consent to a CARI background check. However, the applicant/provider is permitted to remove or replace the person before the denial, suspension, revocation or nonrenewal takes effect.

The sponsoring organization is required at N.J.A.C. 10:126-5.3(c) to submit specified identifying information for the above persons to the Division, which will search the central registry and inform the sponsoring organization of the results of the CARI background check within 15 days. If the CARI background check reveals no substantiated incident of child abuse or neglect, the sponsoring organization is permitted at N.J.A.C. 10:126-5.3(d) to continue the registration process.

If the CARI background check reveals that an incident of child abuse or neglect has been substantiated, the sponsoring organization is required at N.J.A.C. 10:126-5.3(e) to deny the application or to suspend, revoke or refuse to renew the Certificate of Registration. The applicant/provider is permitted to remove or replace the substitute provider, provider assistant, alternate provider or household member against whom the incident was substantiated, before the denial, suspension, revocation or nonrenewal takes effect. The sponsoring organization is permitted to disclose the name of the perpetrator to the applicant/provider, but both the sponsoring organization and the applicant/provider are required to keep the person's identity confidential and not disclose it to any other person. The applicant/provider is permitted at N.J.A.C. 10:126-5.3(f) to appeal the denial, suspension, revocation or nonrenewal to the Division's Bureau of Licensing, which will follow the procedures already established in this chapter for arranging an administrative hearing through the Office of Administrative Law.

The proposed amendments to N.J.A.C. 10:126-5.3 (recodified as N.J.A.C. 10:126-5.4) clarify the requirement for notification of a provider's change of residence, by indicating that such notification must be made either in advance or by the next day.

The proposed amendments to N.J.A.C. 10:126-5.7 (recodified as N.J.A.C. 10:126-5.8) add to the existing rules specifying the grounds for denying an application or suspending, revoking or refusing to renew a Certificate of Registration. Such grounds will now include: refusal by anyone in the home to consent to a CARI background check, and a CARI background check that reveals an incident of child abuse or neglect that has been substantiated against anyone in the home at least 14 years of age.

The proposed amendments to N.J.A.C. 10:126-5.8 (recodified as N.J.A.C. 10:126-5.9) modify the existing provisions for the Division to take corrective action in case of child abuse or neglect in a family day care home. The existing rules permit corrective action other than denial of the application or suspension, revocation or nonrenewal of the Certificate of Registration, if child abuse or neglect is substantiated. For example, the existing rules permit the Division to have the affected person suspended from child care duties or reassigned to other duties,

or removed from the home while children are present. However, the recent legislative amendments do not permit such corrective action to be taken when an incident of child abuse or neglect is substantiated, since these actions do not preclude the provider from becoming or remaining registered. The proposed amendments provide for such corrective action only while an investigation of child abuse or neglect is in progress. Once the investigation is completed, the suspension, denial, revocation or nonrenewal will proceed if the incident of child abuse or neglect is substantiated.

It should be noted that a separate process is being established by the Division to give the perpetrator the opportunity to appeal the finding of substantiation of child abuse or neglect. The rules governing this appeal process will be proposed by the Division in the near future as new rules at N.J.A.C. 10:120A, Dispute Resolution. The proposed amendments to N.J.A.C. 10:126 apply only to the family day care registration process, not to the specific circumstances surrounding the substantiation of child abuse or neglect.

The CARI background checks will be prospective; that is, they will only reveal child abuse/neglect incidents that are substantiated against persons who are notified of their right to appeal the finding of substantiation. Such notifications will begin as soon as the Division's proposed dispute resolution policy is in place. No opportunity to challenge substantiations has been available in the past to perpetrators identified in the central registry. As a result, past central registry records can not legally be used to preclude a family day care applicant/provider from registration. The Division anticipates that the dispute resolution process for substantiated child abuse/neglect incidents will be in operation by the time the proposed amendments to N.J.A.C. 10:126 are adopted, enabling the central registry searches to begin.

### Social Impact

The proposed amendments will have a positive social impact by ensuring that children in registered family day care homes are not cared for by persons with a substantiated history of child abuse or neglect. The procedures for CARI background checks will enable the Division to identify when such persons seek to operate, live or work in a registered family day care home, and to preclude such homes from becoming or remaining registered. The proposed amendments will reduce the risk of harm to children in registered family day care homes.

The proposed amendments concerning actions by the Bureau against a sponsoring organization's approval will have a positive social impact by affording sponsoring organizations the same appeal process available to other entities approved or licensed by the Division, such as child care centers, children's residential facilities, and adoption agencies. All entities regulated by the Division will now be permitted to request an administrative hearing in case of adverse action by the Bureau. While the Division did not intend to preclude any sponsoring organization from requesting such a hearing, the existing rules fail to specify a sponsoring organization's right to request one.

### Economic Impact

The proposed amendments will have some economic impact on those applicants/providers who are precluded from being or becoming registered because child abuse or neglect has been substantiated against them or someone living or working in the family day care home. Since family day care registration is voluntary, these applicants/providers can still provide child care without being registered, but may find it difficult to attract parent-consumers to use their services. However, the economic impact is mitigated when the substantiated perpetrator is another household/staff member in the family day care home, since the rules allow for that person to be removed or replaced where possible. The social benefit of reducing children's risk of harm far outweighs any economic impact on applicants or providers.

The proposed amendments will have some economic impact on the Division by requiring CARI background checks for all applicants for registration or renewal, which may amount to several thousand checks per year. However, the legislative amendments to the Family Day Care Provider Registration Law (N.J.S.A. 30:5B-16 et seq.) appropriated funds to the Division to conduct these checks. The funds are intended to address the need for additional computer equipment, software and staff to conduct the checks.

### Executive Order No. 27 Statement

The existing rules and proposed amendments do not exceed analogous Federal counterparts, since there are no existing statutes or requirements

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pertaining to family day care providers or family day care sponsoring organizations imposed by Federal law.

### Regulatory Flexibility Analysis

These proposed amendments will affect 16 family day care sponsoring organizations and some 4,300 registered family day care homes, all of which fall within the definition of a small business, as defined in the State Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since all the regulated entities are small businesses, no differential provisions for smaller and larger entities are required. The proposed amendments as described in the Summary above are necessary to comply with State law, and do not involve any capital expenditures or use of special professional services by sponsoring organizations or providers.

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

#### 10:126-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

...  
**"Central registry"** means the central registry of the Division of Youth and Family Services in the New Jersey Department of Human Services established pursuant to the Child Abuse and Neglect Law (see N.J.S.A. 9:6-8.11), which summarizes the results of the Division's investigations of substantiated incidents of child abuse and neglect.  
 ...

"Family day care provider applicant" or "provider applicant" or **"applicant"** means a person at least 18 years of age who has applied for a Certificate of Registration.  
 ...

**"Household member"** means an individual at least 14 years of age who resides in the home of a registered family day care provider or applicant for registration.  
 ...

#### 10:126-1.3 Approval requirements for sponsoring organizations (a)-(k) (No change.)

(l) When a sponsoring organization is found to be in violation of any provision(s) of this chapter, the Bureau will notify the sponsoring organization of the violation(s) in writing and afford the sponsoring organization an opportunity to abate the violation(s). If the sponsoring organization fails to abate the violation(s), the Bureau may deny, suspend, revoke or refuse to renew the sponsoring organization's approval.

(m) When the Bureau proposes to deny, suspend, revoke or refuse to renew a sponsoring organization's approval, the Bureau will:

1. Notify the sponsoring organization in writing of the reasons for such action; and

2. Afford the sponsoring organization an opportunity to request an administrative hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

#### 10:126-2.4 Sponsoring organization records

(a) The sponsoring organization shall maintain in files located at its office the following records:

1. (No change.)

2. Records on providers:

i. (No change.)

ii. A copy of the provider's Certificate of Registration, as specified in N.J.A.C. 10:126-[5.3 and] 5.4 **and 5.5**;

iii.-x. (No change.)

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

#### 10:126-4.6 Complaints and violations

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

(c) When the sponsoring organization proposes to deny[,] an **application or to suspend, revoke or refuse to renew a Certificate of Registration**, the sponsoring organization shall follow the procedures specified in N.J.A.C. 10:126-[5.7]5.8.

(d) (No change.)

#### 10:126-5.3 Child Abuse Registry Information background check procedures

(a) Prior to the issuance or renewal of a Certificate of Registration, the applicant or provider shall obtain written consent from the applicant or provider, substitute provider, provider assistant and alternate provider, if any, and all members of the applicant's or provider's household who are at least 14 years of age, for the Division to conduct a Child Abuse Registry Information CARI background check to determine whether an incident of child abuse or neglect has been substantiated against any such person.

1. Each person specified in (a) above shall complete a signed consent form provided by the Division that indicates the identifying information necessary to conduct a CARI background check, including the person's name, address, date of birth, sex, race, and Social Security number. Pursuant to the Federal Privacy Act of 1974 (P.L. 93-579), the Division will advise each such person that the disclosure of his or her Social Security number is voluntary, and that the Social Security number will only be used for the purpose of conducting a CARI background check.

2. The applicant or provider shall submit to the sponsoring organization the consent forms specified in (a)1 above for all persons specified in (a) above.

3. The provider shall inform the sponsoring organization of any additional persons at least 14 years of age who begin living or working in the home during the three-year registration period, and expect to remain in the home longer than 60 consecutive days. The provider shall submit to the sponsoring organization a signed consent form as specified in (a)1 above for each such person.

(b) If any person specified in (a) above refuses to consent to a CARI background check, the sponsoring organization shall deny the application or suspend, revoke or refuse to renew the Certificate of Registration, as applicable, in keeping with P.L. 1993, c.350. The applicant or provider may choose to remove or replace the person who refuses to consent to a CARI background check, if other than the applicant or provider, before the denial, suspension, revocation or nonrenewal takes effect. If the applicant or provider removes or replaces such person, the sponsoring organization shall continue the registration process.

(c) The sponsoring organization shall submit the completed consent forms specified in (a)1 above to the Division upon receipt of the forms from the applicant or provider. The Division will conduct a search of its central registry for child abuse and neglect incidents for which the perpetrator was afforded an opportunity to appeal the substantiation. Within 15 working days of receipt of the completed forms from the sponsoring organization, the Division will inform the sponsoring organization in writing as to whether such an incident of child abuse or neglect has been substantiated against any person specified in (a) above. If such an incident has been substantiated, the Division will inform the sponsoring organization in writing of the name of the perpetrator and the type of incident.

(d) If the CARI background check reveals no substantiated incident of child abuse or neglect involving a person specified in (a) above, the sponsoring organization may issue or renew the Certificate of Registration, provided that all other applicable requirements of N.J.A.C. 10:126, this chapter have been met.

(e) If the CARI background check reveals that an incident of child abuse or neglect has been substantiated against a person specified in (a) above, the sponsoring organization shall deny the application or suspend, revoke or refuse to renew the Certificate of Registration, as applicable, in accordance with P.L. 1993, c.350.

1. The sponsoring organization shall notify the applicant or provider in writing that the denial, suspension, revocation or nonrenewal is based on the results of a CARI background check.

2. The sponsoring organization shall disclose to the applicant or provider the name of the perpetrator, but shall not disclose any other information concerning the incident.

3. The applicant or provider may choose to remove or replace the perpetrator, if other than the applicant or provider, before the denial, suspension, revocation or nonrenewal takes effect. If the applicant or provider removes or replaces such a perpetrator, the sponsoring organization shall continue the registration process.

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4. The sponsoring organization and the applicant or provider shall keep confidential and shall not disclose to any other person the identity of the perpetrator and all other information concerning the incident, in accordance with the confidentiality provisions of the State Child Abuse and Neglect Law, N.J.S.A. 9:6-8.10a.

(f) The sponsoring organization shall inform the applicant or provider in writing that he or she may appeal the denial, suspension, revocation or nonrenewal to the Bureau, as specified in N.J.A.C. 10:126-5.8.

10:126-[5.3]5.4 Issuance of a Certificate of Registration

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

(f) If the provider changes residence:

1. The provider shall notify the sponsoring organization [by] in advance, or by no later than the beginning of the sponsoring organization's next working day, as specified in N.J.A.C. 10:126-[5.9(b)5]5.10(b)5;

2.-5. (No change.)

(g)-(h) (No change.)

Recodify existing 10:126-5.4-5.6 as 5.5-5.7. (No change in text.)

10:126-[5.7]5.8 Denials, suspensions, revocations, nonrenewals, and provider appeal procedures

(a) The sponsoring organization may deny an application for a Certificate of Registration or suspend, revoke or refuse to renew a Certificate of Registration for good cause, including:

1.-4. (No change.)

5. Refusal to permit a parent of an enrolled child or an authorized representative of the sponsoring organization or Division to gain admission to the family day care home during normal operating hours; [or]

6. A determination by the Division's Institutional Abuse Investigation Unit or District Office that children in the home are at risk of harm[.];

7. Refusal by any person specified in N.J.A.C. 10:126-5.3(a) to consent to a Child Abuse Registry Information background check; or

8. A Child Abuse Registry Information background check that reveals an incident of child abuse or neglect that has been substantiated against any person specified in N.J.A.C. 10:126-5.3(a).

(b)-(j) (No change.)

10:126-[5.8]5.9 Special requirements to prevent child abuse and neglect

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

(c) The Division, during the course of investigating an allegation of child abuse or neglect, may determine that corrective action is necessary to protect the children whenever:

1. (No change.)

2. [The] An allegation has been received by the Division that the provider or another person in the home has committed an act of child abuse or neglect[, as substantiated by the Division]; or

3. (No change.)

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

(f) [Substantiation of the child abuse or neglect allegation by the Division shall not, in itself, automatically result in the termination of the affected person from his or her position in the home, or in the denial, suspension, revocation or nonrenewal of the provider's Certificate of Registration, but shall constitute grounds for such action if the person's continued presence in the home would place the children at risk. Such determination shall be made by the Bureau after considering information provided by the provider, the affected person, the sponsoring organization, the Division's Institutional Abuse Investigation Unit and/or District Office, and law enforcement authorities, as applicable and available.] If the allegation of child abuse or neglect is substantiated by the Division, the sponsoring organization shall deny the application for registration or suspend, revoke or refuse to renew the Certificate of Registration, as applicable, as specified in N.J.A.C. 10:126-5.3(e) and (f).

Recodify existing 10:126-5.9-5.10 as 5.10-5.11 (No change in text.)

## INSURANCE

(a)

### DIVISION OF PROPERTY AND CASUALTY

#### Private Passenger Automobile Insurance: Standard Minimum Premium Quotation

#### Proposed Amendments: N.J.A.C. 11:3-15.6 and 11:17A-1.2 and 1.7

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

Authority: N.J.S.A. 17:1C-6; 17:29A-15.1; 17:33B-18a(1) and 42;  
and 39:6A-23 and 23.1.

Proposal Number: PRN 1995-211.

Submit comments by May 3, 1995 to:

Donald Bryan

Assistant Commissioner

Regulatory Affairs

New Jersey Department of Insurance

CN 325

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

These proposed amendments would require insurers and producers to provide a "standard minimum premium" quotation to all new applicants for personal private passenger automobile insurance. In the case of existing policies, such a quotation would be issued upon the insured's request.

The purpose of these proposed amendments is to assist consumers in comparing rates and to focus the attention of consumers on the choices that can and should be made in coverage selection. These amendments establish a benchmark of primary insurance coverages which are basic and required by law. The "standard minimum premium" coverage includes the following: bodily injury liability (verbal threshold): \$15,000/\$30,000; property damage liability, \$5,000; uninsured/underinsured motorists: \$15,000/\$30,000/\$5,000; and personal injury protection (\$250.00 deductible, 20 percent copay up to \$5,000, \$100.00 per week income continuation with a lifetime maximum of \$5,200, essential services of \$12.00 per day with a lifetime maximum of \$4,380, basic death benefit and \$1,000 funeral expense benefit). For companies that offer a combined single limit, the standard minimum premium coverage will include \$35,000 combined single limit liability coverage.

Currently, N.J.S.A. 17:33B-18A(1) and N.J.A.C. 11:17A-1.7(a)2 require insurers and producers to provide each new applicant seeking auto insurance a premium quotation for the types of coverage and forms of insurance requested. These proposed amendments will require insurers and producers also to issue a standard minimum premium quotation to new applicants. In the case of existing policies, a standard minimum premium quotation will be issued upon request of the insured. The applicant/insured is directed to the potential premium savings and/or added coverages by making choices in the selection of coverage. The Department believes that these proposed amendments will help educate consumers about coverage options that are available and encourage selection of those that adequately address their insurance needs. Notwithstanding these amendments, it still remains the primary obligation of producers and insurers (in the case of direct writers) to fully explain the choices available to consumers.

N.J.A.C. 11:3-15.6(o) sets forth the amendatory language to be included in the Buyer's Guide.

N.J.A.C. 11:3-15.6(t) provides that the Buyer's Guide shall be amended to include reference to the right to secure the standard minimum premium quotation.

N.J.A.C. 11:17A-1.2 is proposed to be amended to include the definition of standard minimum premium quotation.

N.J.A.C. 11:17A-1.7(a)4 will provide that a standard minimum premium quotation shall be provided to all new applicants for auto insurance and to those already insured upon request.

#### Social Impact

The proposed amendments will directly benefit applicants and insureds in selecting an insurer as well as the extent of coverages. The primary purpose of these amendments is to help educate and consumers to

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consider the choices that are offered in auto insurance so that all consumers can make informed choices and will purchase policies that meet their needs and that they are able to afford. These amendments will also create a reference point from which consumers can compare the rates offered by various insurers and producers. Standard minimum premium coverage includes the basic coverages required by law and which does not require any choice or selection by the applicant. This standard minimum premium quotation does not yield the lowest possible premium since applicants may select personal injury protection options that reduce cost. For instance, the basic coverage included in the standard minimum premium quotation does not account for the resulting premium reduction when the consumer selects his or her health insurer to the primary payor of no-fault medical expense claims or selects a higher deductible copay option for PIP coverage.

In taking this action, the Department is not suggesting that the standard minimum premium coverage is adequate or acceptable for any or all insureds. These proposed amendments are intended to provide information from which consumers can compare rates, select an insurer and consider choices of coverage.

### Economic Impact

These proposed amendments may require some small capital expenses by some insurers and will require ongoing expenses related to implementing and maintaining the necessary systems and procedures. The capital expense will be for system modifications required, if necessary, to provide this additional quote. The amount of expense will vary depending upon the capability of the present system. Ongoing expenses will be those required to provide the additional quote routinely to all new applicants. All of these costs should be minimal, however, since this quotation is based on premiums for basic coverages and is readily available to all insurers and producers. Insurers and producers already have the systems in operation to acquire the data and render the quote.

There is no economic impact on the Department.

### Executive Order No. 27 Statement

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

### Regulatory Flexibility Analysis

These proposed amendments apply to all private passenger automobile insurers and licensed producers. Some insurers and most producers are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed amendments will require all insurers and producers to adjust their systems and processes in order to provide all new applicants with a standard minimum premium quotation in addition to any other quotation that might be requested by the applicants. In the case of existing policies, the proposed amendments require insurers and producers to provide the quote upon request. No professional services will be needed for compliance.

Costs incurred as a result of these proposed rules will be outweighed by the anticipated benefits which are to be derived by the consumer. In order for consumers to fully benefit from this requirement, it is important that all insurers and producers, regardless of size, be required to provide a quotation for the standard minimum premium coverage for comparison purposes. The need to provide uniformity in the information provided to the public must be achieved regardless of what producer or insurer they use.

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

#### 11:13-15.6 Minimum standards for New Jersey Auto Insurance Buyer's Guide

(a)-(n) (No change.)

(o) The text of the New Jersey Auto Insurance Buyer's Guide follows:

#### New Jersey Auto Insurance Buyers' Guide

This contains only general information and is not a legal document.

### Summary

There have been several important changes in New Jersey law that affect your insurance coverage.

...

You also have the right to receive from your agent auto insurance premium rates from all the insurance companies he represents for which you qualify.

**In addition to receiving a quotation for the coverages that you requested, you will also be provided with the following information which may be helpful in selecting coverages or in choosing an insurance company.**

**In the case of new applicants, your agent or the insurance company will automatically supply you with a standard minimum premium quotation in addition to any other quotation requested by you. In the case of existing policies of insurance, upon request, your insurer will provide you with a standard minimum premium quotation. You will then be able to secure a standard minimum premium quotation from other insurers in order to compare prices.**

The inclusion of a standard minimum premium quotation does not indicate that the coverages provided in that quotation are deemed adequate or advisable. The purpose of the standard minimum premium quotation is to make it easier for you to compare the rates offered by various insurance companies. The standard minimum premium quotation should emphasize to you that choices can and should be made as to the various types of coverages available and the availability of premium discounts.

The law requires that you maintain auto liability coverage which, subject to the terms and limits of the policy, protects you in case you are sued, and pays for damages that you cause to someone else's property. Please see page XX.

...

(p)-(s) (No change.)

(t) **The Buyer's Guide shall contain information pertaining to the following:**

**1. All applicants for auto insurance are entitled to and will be provided with a standard minimum premium quotation as defined in N.J.A.C. 11:17A-1.2.**

**2. All insurers, upon request by their insured, shall provide a standard minimum premium quotation.**

#### 11:17A-1.2 Definitions

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

...

"Standard minimum premium quotation" is a quotation of the premium for that combination of private passenger automobile insurance coverages required by law and which does not require any choice or selection on the part of the applicant, which shall include the following:

**1. Bodily injury liability (verbal threshold): \$15,000 for one injured person; \$30,000 for more than one injured person;**

**2. Property damage liability: \$5,000;**

**3. Uninsured/underinsured motorists coverage: \$15,000/30,000/5,000; and**

**4. Personal injury protection coverage which shall include:**

**i. Medical expense benefits in an amount not to exceed \$250,000 with a deductible of \$250.00 and 20 percent copay in amounts between \$250.00 and \$5,000 per accident;**

**ii. Income continuation: \$100.00 per week to a maximum lifetime amount of \$5,200;**

**iii. Essential services: \$12.00 per day to a maximum lifetime amount of \$4,380;**

**iv. Death Benefits: up to the total of 4ii and iii above;**

**v. Funeral Benefits: maximum of \$1,000.**

**5. For insurers offering combined single limit liability coverage the standard minimum premium quotation shall include the premium for a combined single limit of \$35,000 with \$500.00 deductible on each claim in place of 1 and 2 above.**

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### 11:17A-1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting private passenger automobile insurance, shall:

1. (No change.)
2. Provide each applicant seeking automobile insurance with premium quotations for the forms or types of coverage requested by the applicant, which are offered by all insurers represented by the agent or broker for personal private passenger automobile insurance or with which the agent or broker places personal private passenger automobile risks. If the request for a quotation was made orally, the agent or broker may provide the applicant with an oral quotation; but shall provide the applicant at minimum with information about rate levels in the territory;

3. Provide each new applicant a standard minimum premium quotation as defined in N.J.A.C. 11:17A-1.2.; and thereafter provide a standard minimum premium quotation upon request of the insured;

Recodify existing 3 through 6 as 4 through 7 (No change in text.)  
(b) (No change.)

(a)

## 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

#### Proposed Amendment: N.J.A.C. 11:3-16.7

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-36.2 and 36.3,  
and 17:33B-31.

Proposal Number: PRN 1995-202.

Submit comments by May 3, 1995 to:  
Donald Bryan  
Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
CN 325  
Trenton, NJ 08625-0325

The agency proposal follows:

#### Summary

P.L. 1994, c.188 (enacted December 23, 1994) amends N.J.S.A. 17:33B-31 to authorize private passenger automobile insurers to use rating organizations and advisory organizations to develop and disseminate model year, vehicle series and symbol programs and factors for comprehensive and collision coverages.

N.J.A.C. 11:3-16.7(i), as extended through model year 1994 by Bulletin 92-13, permitted insurers to use symbol, vehicle series and model year rating programs, and permitted insurers to jointly develop symbol assignments, vehicle series and model year data and to determine adjustments to symbol assignments.

On February 22, 1994, the Department proposed amendments to this rule which would have extended its application through model year 1995, but which would also have required each insurer to file replacement rating systems for use beginning January 1, 1995 (see 26 N.J.R. 900(a)). In light of the enactment of P.L. 1994, c.188, those amendments were never adopted and the Department now proposes to amend N.J.A.C. 11:3-16.7(i) to be consistent with the underlying statute.

Pending adoption of these amendments, the Department, by Bulletin No. 94-16, has notified private passenger automobile insurers that they may use model year, vehicle series and symbol programs and factors developed and disseminated by rating organizations or advisory organizations for comprehensive and collision coverages.

#### Social Impact

New Jersey private passenger automobile insurers and purchasers of private passenger auto insurance are affected by these proposed amendments which continue uniformity in ratemaking.

These amendments are consistent with the provisions of P.L. 1994, c.188. The impact of these amendments on consumers will be minimal since the amendments conform Department regulations to P.L. 1994, c.188 and allow private passenger insurers to continue activities of long-standing duration.

#### Economic Impact

The proposed amendments continue present symbol, vehicle series and model year automobile rating programs for physical damage coverages. Thus, no economic impact is expected since most insurers use programs originally filed and still serviced by rating organizations.

Symbol, vehicle series and model year rating plans establish standardized indicia for private passenger automobiles that consider price, depreciation, cost to repair and loss experience in order to rate them individually for physical damage coverage. The annual servicing includes the provision of symbols for new models as they are introduced. While servicing these plans is primarily an administrative and technical function, there is some actuarial judgment (and corresponding cost) involved.

The Department of Insurance will incur no additional cost in the implementation of these amendments or continuation of the present rating programs.

Since symbol, vehicle series and model year rating programs help determine the cost of automobile insurance physical damage coverage, insureds are affected in terms of how much they are required to pay for their coverage. However, current programs maintained jointly by insurers will have little impact on insureds in terms of the premiums they are ultimately required to pay.

#### Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.A.C. 11:3-16.7(i) is not subject to any Federal requirements or standards.

#### Regulatory Flexibility Statement

These proposed amendments may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are insurance companies authorized to write private passenger automobile insurance.

A regulatory flexibility analysis is not required because amendments to N.J.S.A. 17:33B-31 and these proposed amendments to N.J.A.C. 11:3-16.7(i) continue a rule already in effect.

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

11:3-16.7 Jointly developed historical data

(a)-(h) (No change.)

(i) Insurers may [continue to] use symbol, vehicle series and model year rating programs for physical damage coverages; [for model years 1991 and 1992. Pursuant to this section, insurers may] jointly develop symbol assignments, vehicle series and model year data; and jointly determine adjustments to [the] symbol assignments [through model year 1992].

(b)

## DIVISION OF PROPERTY/LIABILITY

### Personal Lines Insurance: Prospective Loss Costs Filing Procedures

#### Proposed New Rules: N.J.A.C. 11:4-9

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

Authority: N.J.S.A. 17:1C-6(e), 17:1C-8.1 and 17:29A-1 et seq.  
Proposal Number: PRN 1995-212.

Submit comments by May 3, 1995 to:  
Donald Bryan, Assistant Commissioner  
New Jersey Department of Insurance  
Division of Regulatory Affairs  
20 West State Street  
CN-325  
Trenton, New Jersey 08625-0325

The agency proposal follows:

#### Summary

These proposed new rules provide the regulatory framework under which advisory/rating organizations and participating insurers in rating organizations will operate in a loss cost system for personal lines property/liability insurance except private passenger automobile insurance. Use of advisory/rating organization is presently prohibited for private passenger automobile insurance by N.J.S.A. 17:33B-31. Most states already have procedures for addressing prospective loss costs filings. The Department of Insurance ("Department") rules do not require rating organizations to file prospective loss costs but these rules establish procedures for permitting prospective loss costs filings in this State. Under this system, rating organizations will develop and file for approval, for lines, coverages and classes of insurance that are subject to N.J.S.A. 17:29A-1 et seq., a filing containing advisory prospective loss costs and supporting actuarial and statistical data.

Loss costs are the portion of the rate which will cover losses and loss adjustment expenses for the prospective interval during which a rate will be in effect. Under the Department's proposed new rules, a rating organization will file prospective loss costs, and individual participating insurers will then add their own underwriting expenses and profit provisions to determine a complete rate. The Department anticipates that rates will vary from insurer to insurer according to an insurer's expense and profit provisions. This variation should promote competition.

Rating organizations will still be able to develop and file rules, relativities and supplementary rate information on behalf of their member/subscriber insurers. A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:4-9.1 provides the purpose and scope of these rules;

N.J.A.C. 11:4-9.2 provides the definitions for terms used in this subchapter;

N.J.A.C. 11:4-9.3 provides the filing requirements for rating organizations;

N.J.A.C. 11:4-9.4 provides the filing requirements for insurers; and

N.J.A.C. 11:4-9.5 provides penalties for failure to comply with the provisions of this subchapter.

#### Social Impact

The Department anticipates that these proposed rules will stimulate competition among insurers which will benefit the insurance market. The Department rules do not require advisory/rating organizations and participating insurers in rating organizations to participate in the prospective loss costs system. The Department's rules establish procedures for permitting prospective loss costs filings to be filed in this State. Under the Department's proposed rules, a rating organization will file prospective loss costs, and individual participating insurers will then add their own underwriting expenses and profit provisions to determine a complete rate. The individual insurer will then file its loss cost multiplier (which reflects expenses, profit loading, etc.) with the Department for approval. The Department believes that rates will vary from insurer to insurer according to an insurer's own loss experience and expenses. This variation in rates should promote price competition. Additionally, these rules should provide a better indication of an insurer's actual experience than current advisory rates provide, as a result of the reflection of individual insurer's loss experience, expenses and profit loading in final rates.

#### Economic Impact

The Department expects these rules to increase the number of rate filings that it receives for the various lines of business written by insurers licensed in this State. The Department rules do not require advisory/rating organizations and participating insurers in rating organizations to participate in the prospective loss costs system. The Department's rules establish procedures for permitting prospective loss costs filings in this State.

As a result of these rules insurers which rely totally on rating organizations for their rate filings may incur additional staffing expenses.

The Department also believes that the introduction of loss costs filings by rating organizations can encourage competition in personal lines based on the cost of providing service.

#### Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because these new rules are subject to the requirements of N.J.S.A. 17:29A-1 et seq., and are not subject to any Federal requirements or standards.

#### Regulatory Flexibility Analysis

The Department's proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent these new rules apply to small businesses, these small businesses will be rating organizations that choose to file prospective loss costs instead of rates or insurers which are participating in these rating organizations. The Department rules do not require advisory/rating organizations and participating insurers in rating organizations to participate in the prospective loss costs system. The Department's rules establish procedures for permitting prospective loss costs filings to be filed in this State.

These proposed new rules do not provide additional reporting, recordkeeping or compliance requirements based on the size of the rating organization or insurer. Insurers presently submit their expense information to rating organizations. These rules require insurers to file this information with the Department on the expense exhibits provided in these rules (see Appendices). Additionally, these rules do not require insurers to gather new information but instead require insurers to report certain information to the Department.

The Department is unable to estimate the costs that will be incurred or the need for professional services that may be required by small business rating organizations and/or insurers to comply with these rules. The Department believes that insurers have all the professional personnel needed to provide the required information.

The Department recognizes that insurers may have to make data system changes so as to extract some of the information that was formerly reported to a rating organization and now will be reported to the Department instead. The Department does not know the cost involved because it will vary based on each insurer's present data processing system and ability to make changes in house.

These costs are primarily a one-time capital cost of changing systems to produce data to be filed with the Department. There are also minor costs to actually submit data. The information required to be sent is the minimum necessary for the Department to execute its statutory responsibility to review personal lines insurance rates pursuant to N.J.S.A. 17:29A-7 and 17:29A-14. The Department recognizes that all insurers will eventually incur a \$250.00 filing fee once the insurer files its loss costs multiplier.

Full text of the proposed new rules follows:

#### SUBCHAPTER 9. PERSONAL LINES INSURANCE: PROSPECTIVE LOSS COSTS FILING PROCEDURES

##### 11:4-9.1 Purpose and scope

(a) This subchapter establishes data requirements and filing procedures for participating insurers in rating organizations to adopt or modify a rating organization's approved prospective loss costs.

(b) This subchapter applies to all rating organizations which file prospective loss costs and all insurer filings which adopt or modify a rating organization's prospective loss cost filing for personal lines property/liability insurance made pursuant to N.J.S.A. 17:29A-1 et seq. This does not apply to private passenger automobile insurance rate filings for which the use of rating organizations are specifically prohibited by N.J.S.A. 17:33B-31.

(c) All filings made pursuant to this subchapter shall be made in accordance with N.J.S.A. 17:29A-1 et seq., N.J.A.C. 11:1-2 and 11:1-32.

##### 11:4-9.2 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Expenses" means that portion of a rate attributable to commissions and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees.

"Loss costs multiplier" means the adjustment reflecting expenses, profit loading and any modifications that the insurer uses on the loss costs to produce final rates.

"Minimum premium" means the smallest amount of premium for which an insurer will issue coverage under a given policy.

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"Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

"Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium. The unit charge may be expressed as a single number or as a prospective loss cost and an adjustment to account for the treatment of expenses, profit and variations in loss experience.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

"Supplementary rate information" means any manual or plan of rates, statistical plan, classification, rating schedule, rating rule and any other rule used by an insurer in making rates. This includes policy-writing rules, rating plans, territory codes and descriptions, and rules which include factors or relativities such as increased limits factors, classification relativities or similar factors used to determine the rate in effect or to be in effect.

#### 11:4-9.3 Prospective loss cost filing requirements for rating organizations

(a) A rating organization that desires to file prospective loss costs with the Commissioner shall develop a filing containing advisory prospective loss costs and supporting actuarial and statistical data.

(b) Rating organizations that file advisory prospective loss cost filings with the Commissioner shall:

1. Submit a filing that contains the advisory prospective loss costs and the underlying loss data and other supporting actuarial information for any calculations or assumptions underlying those loss costs. Filings of prospective loss costs shall be filed and become effective in accordance with N.J.S.A. 17:29A-1 et seq. and N.J.A.C. 11:1-2; and

2. No longer develop or file minimum premiums with the filing of prospective loss costs.

(c) A rating organization may print and distribute manuals of prospective loss costs, as well as rules and other supplementary rate information filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

(d) Rating organizations shall continue to develop and file rules, relativities and other supplementary rate information on behalf of their member/subscriber insurers.

#### 11:4-9.4 Prospective loss costs filing requirements for insurers

(a) In order for an insurer to incorporate a rating organization's approved prospective loss costs to establish its own rates, an insurer shall:

1. Be a participating insurer in the rating organization; and
2. File its loss costs multiplier using the Filing Adoption Form (as set forth in Appendix A to this subchapter and incorporated herein by reference). An insurer's loss costs multiplier shall be filed and become effective in accordance with N.J.S.A. 17:29A-1 et seq. and N.J.A.C. 11:1-2. An insurer's final rates shall be a combination of the approved prospective loss costs and the approved loss costs multiplier.

- i. An insurer may file modifications to the rating organization's approved prospective loss costs filing based on its own anticipated experience by using the Filing Adoption Form. Supporting documentation shall be filed for any modification (upwards or downwards) to the rating organization's prospective loss cost filings.

- ii. An insurer's approved loss costs multiplier shall remain in effect until the insurer withdraws the multiplier or until a revised

Filing Adoption Form is filed by the insurer and approved by the Department.

(b) An insurer may vary expense loads by individual lines, sublines or classifications of insurance. An insurer may use variable or fixed expense loads or a combination of these to establish its expense loadings by using the Filing Adoption Form, items 17-21.

1. An insurer's loss cost multiplier based on its expenses plus any profit provision shall not include the automobile insurance surtax pursuant to N.J.S.A. 17:33B-49, the Property-Liability Insurance Guaranty Association's assessments on private passenger automobiles pursuant to N.J.S.A. 17:30A-8a(9), recoupment of paid apportioned shares of Market Transition Facility losses and expenses pursuant to N.J.S.A. 17:33B-11d, a reinsurance loading or any other similar loading.

2. An insurer shall provide documentation to support its profit loading.

3. An insurer shall provide the overall dollar impact and the number of New Jersey policies affected by the filing.

(c) Any participating insurer of a rating organization shall continue to use all rates and deviations currently in effect for its use until disapproved pursuant to N.J.S.A. 17:29A-14 or until the insurer revises its rates, either upon approval of an independent filing or upon approval of a Filing Adoption Form.

(d) Once an insurer has an approved loss costs multiplier on file with the Department, such multiplier shall be deemed to be automatically applicable to subsequent rating organization prospective loss costs filings, subject to the following requirements:

1. An insurer which intends to use a subsequent revision of approved prospective loss costs and the effective date of the rating organization shall not file anything unless final printed rate pages were previously submitted. If final printed rate pages were previously submitted, then new rate pages shall then be submitted to reflect the revision;

2. An insurer, which intends to use a subsequent revision of approved prospective loss costs but with a different effective date, shall file with the Department its proposed effective date before the effective date of the rating organization's prospective loss costs;

3. An insurer which intends to use a subsequent revision of approved prospective loss costs and to change its loss costs multiplier shall file a revised Filing Adoption Form for approval in accordance with N.J.S.A. 17:29A-1 et seq. before the effective date of the rating organization's prospective loss costs filing; and

4. An insurer, which does not intend to use a subsequent revision of approved prospective loss costs, shall notify the Department before the effective date of the rating organization's prospective loss costs filing. The insurer shall file a Non-Adoption of Prospective Loss Cost Form (as set forth in Appendix B to this subchapter and incorporated herein by reference) with the Department.

(e) An insurer which has filed to adopt a rating organization's prospective loss cost filing shall also file with the Department, within 30 days of the effective date of the insurer's rates, either:

1. A final printed manual page indicating the loss cost multiplier to be applied to the rating organization's prospective loss costs, including its effective date; or

2. Final printed manual pages indicating the final rates developed by application of the loss cost multiplier to the rating organization's loss costs, including the effective date.

#### 11:4-9.5 Penalties

Rating organizations and insurers which fail to comply with the filing submission requirements of this subchapter shall be subject to penalties as provided by law.

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

APPENDIX A

Date of filling out Form: \_\_\_\_\_

Space Reserved for Insurance Department Use

NEW JERSEY INSURER RATE FILING  
ADOPTION OF ADVISORY ORGANIZATION  
PROSPECTIVE LOSS COSTS  
FILING ADOPTION FORM

1. INSURER NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PERSON RESPONSIBLE FOR FILING \_\_\_\_\_

TITLE \_\_\_\_\_ TELEPHONE # \_\_\_\_\_

2. INSURER GROUP NAIC # \_\_\_\_\_

2A. INSURER COMPANY NAIC # \_\_\_\_\_

3. LINE OF INSURANCE \_\_\_\_\_

4. ADVISORY ORGANIZATION \_\_\_\_\_

5. ADVISORY ORGANIZATION REFERENCE FILING # \_\_\_\_\_

6. The above insurer hereby declares that it is a member, subscriber or service purchaser of the named advisory organization for this line of insurance. The insurer hereby files to be deemed to have independently submitted as its own filing the prospective loss costs in the captioned Reference Filing.

The insurer's rates will be the combination of the prospective loss costs and the loss cost multipliers.

7. PROPOSED RATE LEVEL CHANGE \_\_\_\_\_% EFFECTIVE DATE \_\_\_\_\_

8. PRIOR RATE LEVEL CHANGE \_\_\_\_\_% EFFECTIVE DATE \_\_\_\_\_

9. ATTACH "FILING ADOPTION FORM" FOR EACH INSURER  
IF SELECTED LOSS COST MULTIPLIER IS DIFFERENT.

\*\* The Filed Loss Cost Level Change Factor for the initial filing is the Ratio of Revised Loss Costs to Current Rates divided by the Deviation which the insurer applied to the Current Rates (expressed as a decimal); and for subsequent filings, the Ratio of Revised Loss Cost Level to Current Loss Cost Levels.

INSURANCE

PROPOSALS

Insurer Name: \_\_\_\_\_  
 NAIC #: Group:— Company:—

Date of filling out Form: \_\_\_\_\_

NEW JERSEY INSURER RATE FILING  
 ADOPTION OF ADVISORY ORGANIZATION PROSPECTIVE LOSS COSTS  
 PROSPECTIVE LOSS COSTS  
 FILING ADOPTION FORM

CALCULATION OF COMPANY LOSS COST MULTIPLIER

10. Line, Subline, Coverage, Territory, Class, etc. combination to which this page applies: \_\_\_\_\_

11. Loss Cost Modification:

A. The insurer hereby files to adopt the prospective loss costs in the captioned reference filing:

(CHECK ONE)

☐ Without modification. (Factor = 1.000)

☐ With the following modification(s). (Cite the nature and percent modification and attach supporting data and/or rationale for the modification.)

\_\_\_\_\_  
 \_\_\_\_\_

B. Loss Cost Modification Expressed as a Factor: \_\_\_\_\_

(See examples below.)

NOTE: IF EXPENSE CONSTANTS ARE UTILIZED, ATTACH 'EXPENSE CONSTANT SUPPLEMENT' OR OTHER SUPPORTING INFORMATION, AND DO NOT COMPLETE ITEMS 12–16 BELOW.

12. Development of Expected Loss Ratio.

(Attach exhibit detailing insurer expense data and/or other supporting information.)

	Selected Provisions
A. Total Production Expense	_____ %
B. General Expense	_____ %
C. Taxes, Licenses & Fees	_____ %
D. Underwriting Profit & Contingencies	_____ %
E. Other (explain)	_____ %
F. TOTAL	_____ %

13A. Expected Loss Ratio:  $ELR = 100\% - 12F =$  \_\_\_\_\_ %

13B. ELR in decimal form = \_\_\_\_\_

14A. Company Loss Cost Multiplier:  $(11B / 13B) =$  \_\_\_\_\_

14B. Company Selected Loss Cost Multiplier = \_\_\_\_\_

15. Company Current Loss Cost Multiplier (Only on subsequent Loss Cost Filings): \_\_\_\_\_

16. Rate level change for the coverages to which this page applies: \_\_\_\_\_ %

i.e.  $[(14B/15) \times \text{Filed Loss Cost Level Change Factor} - 1.00]$ .

(Note that for the initial Loss Cost Filing, Item 15 = 1.000).

Example 1: Loss Cost modification factor: If your company's loss cost modification is –10%, a factor of 0.9 (1.000 – .100) should be used.

Example 2: Loss Cost modification factor: If your company's loss cost modification is +15%, a factor of 1.15 (1.000 + .150) should be used.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**INSURANCE**

Insurer Name: \_\_\_\_\_ Date of filling out Form: \_\_\_\_\_  
 NAIC #: Group :- \_\_\_\_\_ Company:- \_\_\_\_\_

**NEW JERSEY EXPENSE CONSTANT SUPPLEMENT**

**CALCULATION OF COMPANY LOSS COST MULTIPLIER**

17. Development of Expected Loss Ratio.  
 (Attach exhibit detailing insurer expense data and/or other supporting information).

	Selected Provisions		
	Overall	Variable	Fixed
A. Total Production Expense	_____ %	_____ %	_____ %
B. General Expense	_____ %	_____ %	_____ %
C. Taxes, Licenses & Fees	_____ %	_____ %	_____ %
D. Underwriting Profit & Contingencies	_____ %	_____ %	_____ %
E. Other (explain)	_____ %	_____ %	_____ %
F. TOTAL	_____ %	_____ %	_____ %

- 18 A. Expected Loss Ratio:  $ELR = 100\% - \text{Overall } 17F =$  \_\_\_\_\_ %  
 B. ELR expressed in decimal form = \_\_\_\_\_  
 C. Variable Expected Loss Ratio  $VELR = 100\% - \text{Variable } 17F =$  \_\_\_\_\_ %  
 D. VELR in decimal form = \_\_\_\_\_

19. Formula Expense Constant:  
 $[(1.00 / 18B) - (1.00 / 18D)] * \text{Average Proposed Loss Cost} =$  \_\_\_\_\_  
 Formula Variable Loss Cost Multiplier:  $(11B / 18D) =$  \_\_\_\_\_

20. Selected Expense Constant = \_\_\_\_\_  
 Selected Variable Loss Cost Multiplier = \_\_\_\_\_

21. Rate level change for the coverages to which this page applies \_\_\_\_\_ %

APPENDIX B

NEW JERSEY FORM NA-1

NON-ADOPTION OF PROSPECTIVE LOSS COST

1. Insurer: \_\_\_\_\_ NAIC# : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Rating Organization Affiliation: \_\_\_\_\_
3. Line of Insurance: \_\_\_\_\_
4. Rating Organization Designation Number: \_\_\_\_\_
5. Effective Date of Non-Adoption: \_\_\_\_\_
6. Rating Organization Designation Number  
Currently Being Used: \_\_\_\_\_
7. Effective Date of Use: \_\_\_\_\_  
\_\_\_\_\_

# LAW AND PUBLIC SAFETY

## (a)

### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MEDICAL EXAMINERS

#### Alternative Resolution Program

#### Proposed New Rules: N.J.A.C. 13:35-11

Authorized By: New Jersey State Board of Medical Examiners,

Kevin B. Earle, Executive Director.

Authority: N.J.S.A. 45:9-2 and 45:9-19.4.

Proposal Number: PRN 1995-214.

Submit written comments by May 3, 1995 to:

Kevin B. Earle

Executive Director

New Jersey State Board of Medical Examiners

140 East Front Street, 2nd Floor

Trenton, New Jersey 08608

The agency proposal follows:

#### Summary

For more than five years the Board of Medical Examiners has been desirous of implementing a program to encourage physicians and other health care professionals under Board jurisdiction who are suffering from chemical dependencies and other impairments to disclose their status to an entity which would allow for confidential oversight. The Board believes that, if licensees and their colleagues could be assured that reports would be handled confidentially and would not necessarily result in certain public forms of discipline, it would learn of more licensees suffering from impairments and thus would be in a better position to determine appropriate practice and to monitor recovery.

In October of 1988, Senator Richard Codey introduced legislation, known as the Professional Medical Conduct Reform Act, which expanded hospital and insurer reporting. That legislation, enacted in January of 1990, also created a colleague reporting provision, which compels practitioners to report other practitioners to the Board demonstrating impairments or gross incompetence. Failure to do so can subject the practitioner with such knowledge to disciplinary action and civil penalties. N.J.S.A. 45:9-19.5. In the five years that have passed since the enactment of this section the Board has received only a handful of colleague reports.<sup>1</sup>

In the private sector the Medical Society for many years now has operated a program, first denominated as the Impaired Physicians Program and now known as the Physicians' Health Program (PHP) which has endeavored to assist physicians suffering from chemical dependencies and psychiatric problems in seeking help. The PHP reports that since its inception the program has had more than 850 participants in various stages of recovery. It is staffed by two physicians and a clergyman, who jointly provide support, monitoring and advocacy services. It is funded through Medical Society dues and monies received from the State's two major medical malpractice insurers. Upon receiving a report about a physician, the program will make a preliminary assessment and, if warranted, in the judgment of the director, schedule a confrontation. If the problem is acknowledged, the staff will arrange for treatment, lining up an in-patient rehabilitation stay or out-patient services. Upon discharge from an in-patient stay the treating physician is expected to enter into an after-care contract with the program which spells out the monitoring regimen and schedule of support group meetings or therapy visits. At present, if the physician is cooperative and compliant, or if the PHP concludes that there is no problem, the Board may never be advised that the physician is a participant or was evaluated. With respect to those participants about whom the Board does have knowledge, the terms of the after-care contract very often are incorporated in a consent order which may also place practice restrictions on the doctor for a period of probation. At present the Board receives periodic reports from the PHP on a number of licensees. With respect to many others, for example, those who have remained chemically free for five years or more, the PHP has agreed to provide notice of any relapse which comes to its attention.

While throughout these years the Boards has relied, and continues to rely, on the PHP to provide it with reports concerning those licensees about whom it has knowledge, and is appreciative of the prompt and thorough responses it receives from the program director, the Board has

firmly believed that it should play a more active role in identifying and reviewing the monitoring of any Board licensee who has been recognized as having an impairment, including those who are PHP participants. The Board recognizes that there are distinct differences in the objectives and implementation resources available to the Board and to the PHP. The Board's first obligation is to assure that a rehabilitation plan is adequately protective of the public; the PHP's goal is to rehabilitate the doctor. Moreover, because of its investigatory authority and resources, the Board may have a better ability to assess the veracity of the licensee's history. By contrast, the PHP must necessarily accept at face value what the licensee reports. Although the Board would readily recognize other groups or programs which might offer the same package of services (and clearly could do so under the standards set forth in these proposed rules), it has little experience to suggest that there are at present any comparable programs available to the medical community.

The Board continues to embrace the premise that physicians ought to be able to seek and receive help for problems relating to chemical dependency without public disclosure or discipline—provided that the public is protected during the rehabilitation process. Thus the Board is proposing to establish a mechanism, or an alternative track, by which an impaired physician may secure treatment, agree to appropriate practice restrictions, and be monitored under a regimen subject to the oversight of an entity which includes in its composition representatives of the Board, without the creation of a public disciplinary formal order. By this rule, the Board would accord recognition to professional assistance programs, such as the PHP, conditioning approval on the program's agreement to adhere to Board imposed standards. (Failure to conform to these standards could result in a rescission of the program's recognition.)

The mechanism proposed herein contemplates the creation of an impairment review committee ("IRC") to review summary reports of approved professional assistance programs without reference to the participant's identity but with adequate information concerning the nature of the practice and the problem to assess the appropriateness of the plan. It is contemplated that the IRC will include two individuals who are appointed by the Board President from either the Board or the Medical Practitioner Review Panel, two representatives from approved professional assistance programs that represent at least one-third of the participating licensees and one individual designated by the Commissioner of Health.

The proposed new rules call for the Director of the Professional Assistance Program to disclose the actual identity of every participant to the Executive and Medical Directors of the Board of Medical Examiners so that the IRC may be made aware of concurrent investigations or consumer complaints which present information in conflict with that being presented by the licensee. If needed, the IRC can request the appearance by the physician. Thereafter a summary report embodying the plan of treatment and certain terms protective of the public would be submitted by the sponsoring professional assistance program to the IRC and then in turn to the Board for review. Based on coded narrative reports, without utilizing information from which the identity of the impaired licensee could be discerned, the IRC would review the proposed plan or direct reconsideration of terms with which it may be unsatisfied.

By creating a confidential program, colleagues of the impaired licensee may be encouraged to report more promptly if they have a reasonable expectation that their reports will not result in discipline or public disclosure. Accordingly, by this proposal, the Board is giving notice to its licensees that it will recognize direct referrals to approved professional assistance programs, as well as reports to the IRC utilizing a code number assigned by an approved professional assistance program, to satisfy the colleague reporting requirements set forth at N.J.S.A. 45:9-19.5. The rule allows for an assessment of the program at the conclusion of the two year pilot period as set forth in N.J.A.C. 13:35-11.7.

In accordance with N.J.A.C. 1:40-3.3A(d)4, it should be noted that the hearing officer at the August 5, 1993 public hearing on a previous proposal on this subject made no recommendations. See 25 N.J.R. 2824(b). The hearing record may be reviewed by contacting Kevin B. Earle, Executive Director, Board of Medical Examiners, 140 East Front St., Trenton, N.J. 08608.

<sup>1</sup>This legislation also amended N.J.S.A. 26:2H-12.2, requiring health care facilities to promptly report privilege actions which have not risen to the level of a suspension by the governing body. The Board has seen a marked increase in the number of reports received from hospitals.

**Social Impact**

The Board believes that voluntary self-reports will become more common if licensees are informed that a non-disciplinary route may be available. The Board will retain the option of public pursuit of impairment cases which come to light from other sources (hospitals, insurance companies, patients, and law enforcement agencies). Referral of even some of these cases to this alternate track may be desirable. In creating this program, the Board will be limiting its ability to provide the public with information about health care providers. In the traditional disciplinary format—if a prosecution is successful or if a consent order is negotiated—restrictions and penalties, if any, are memorialized in a document available to the public on request. Obviously, these new rules, if adopted, would assure confidentiality to compliant participants who had sought help voluntarily or who were reported by colleagues. Thus, public access to some information about some health care professionals to which many would argue it is entitled. The Board, however, firmly believes that the public is better served if physicians with impairment problems come forward voluntarily before their problems reach a point which could jeopardize their patients. Reasonable practice monitoring regimes fashioned with input and oversight by State representatives should assure the public that these practitioners are practicing with requisite skill and safety. The Board expects that the benefits to be derived through the anticipated increase in reporting and the greater ability to monitor and to oversee the rehabilitation process will clearly outweigh the countervailing interest in revealing the identity of some impaired physicians.

**Economic Impact**

While it is difficult to quantify the economic impact of the proposed new rules, certainly the mechanisms being set up will entail some administrative costs. Board members who participate in the IRC will, of course, be reimbursed for time spent at meetings at the standard rate. Staff support is also necessary. Significantly, however, the Board believes that once this program is operational it may represent an ultimate savings since those who are complying may never have to be directed into the disciplinary track, thus providing a savings in both investigation and prosecution costs. More significantly this program enables the Board to intervene in impairment problems in their incipient stages. It is designed to enable practitioners to secure the help they need before their impairments have a negative impact on patients. Although it is often suggested that physician impairments are demonstrable in social spheres before professional performance is impacted, the Board believes that early intervention can serve to protect the public from both monetary and human costs associated with ineffective or inappropriate care.

**Executive Order No. 27 Statement**

An Executive Order No. 27 statement is not required because the program established pursuant to this rule involves no federal standards or requirements.

**Regulatory Flexibility Statement**

To the extent that the professional assistance programs may be considered small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., those choosing to seek approval from the Board will have to agree to provide the IRC with periodic reports on the monitoring results and rehabilitative progress of the participants whom they sponsor. Such reports are deemed necessary to assure the Board and the public that the IRC and the programs are adequately overseeing the rehabilitative process and practice safeguards. Participating licensees, and sometimes their partners or employers, may also be required to provide periodic reports relating to practice performance and rehabilitative efforts. It is not known how many programs may ultimately seek approval, nor can the actual costs associated with the operation of a program in conformance with the standards as established by the Board be accurately calculated at this time.

Individual licensees who seek admission to the program are not small businesses, and thus the analysis mandated by the Regulatory Flexibility Act is not required.

Full text of the proposed new rules follows:

**SUBCHAPTER 11. ALTERNATIVE RESOLUTION PROGRAM****13:35-11.1 Definitions**

As used in this subchapter the following words and terms have the following meanings, unless the context indicates otherwise:

“Alternative Resolution Program” or “ARP” means a program established pursuant to this subchapter for those subject to Board jurisdiction who are suffering from chemical dependencies and other impairments which shall permit such licensees to disclose their status to an entity which would allow for confidential oversight.

“Board” means the New Jersey State Board of Medical Examiners.

“Chemical dependency” means a condition involving the continued misuse of chemical substances.

“Chemical substances” is to be construed to include alcohol, drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber’s direction, as well as those used illegally.

“Confidential” means that a participating licensee’s identity (as well as any information from which a licensee’s identity could be deduced) shall be maintained in a limited access file maintained by the Impairment Review Committee (“IRC”), with disclosure provided only to those persons whom the IRC determines have a need to know, in order to perform their role in the review process.

“Impairment” means an inability to function at an acceptable level of competency, or an incapacity to continue to practice with the requisite skill, safety and judgment, as a result of alcohol and/or chemical dependency, a psychiatric and/or emotional disorder, senility or a disabling physical disorder.

“Impairment Review Committee” or “IRC” means the subcommittee of the Board created pursuant to this subchapter.

“Licensee” means a physician (including a resident or intern), podiatrist, bioanalytical laboratory director, certified nurse midwife, physician assistant or other professional subject to regulation by the Board.

“Panel” means the Medical Practitioner Review Panel.

“Professional assistance program” or “PAP” means a publicly or privately organized entity offering services to facilitate the rehabilitation of licensees suffering from chemical dependencies or other impairments. A program may limit its services to specific categories of licensees.

**13:35-11.2 Creation of Impairment Review Committee**

The Board shall establish a committee to review matters involving practitioners suffering from chemical dependencies or other impairments. This committee shall be comprised of five members to include: two members of either the Board or the Panel, to be appointed by the Board President; two individuals representing approved professional assistance programs which provide services to at least one third of the ARP participants; and one individual designated by the Commissioner of Health, who is acceptable to both the Board President and the individuals representing approved professional assistance programs. This committee shall be known as the Impairment Review Committee (“IRC”) and shall meet on a regular basis. The Medical Director of the Board and the Executive Director of the Board shall serve as staff to the IRC and shall be available to assist the IRC at its meetings. With regard to independent referrals (not made by an approved professional assistance program), the Executive Director shall provide the IRC with all of the information, including the identity of the licensee about whom the referral has been made, which was provided with the referral, along with any information concerning concurrent investigations or consumer complaints relating to the licensee. With respect to those referrals made by approved professional assistance programs, the Executive Director shall advise the IRC of any information concerning concurrent investigations or consumer complaints, without disclosing the identity of the licensee, so that the IRC will be in a position to assess whether participation in the program is appropriate.

**13:35-11.3 Duties of an approved professional assistance program**

(a) An approved professional assistance program shall:

1. Promptly conduct appropriate inquiry with regard to every referral received to determine whether the information indicating licensee impairment is sufficiently reliable to warrant further review;

2. Make a summary report to the IRC concerning every referral which suggests that a licensee has a chemical dependency or any other impairment within 30 days of receipt of a referral. That report

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shall indicate the licensee's code number and sufficient information concerning the suspected impairment and the nature of the practice for the IRC to conduct a meaningful review. The report shall address: the nature of the impairment; whether the licensee rendered or was expected to render patient care while impaired; whether patients were harmed either directly or indirectly by the licensee's conduct; whether the licensee has engaged in an activity which could render that licensee subject to criminal penalty including, but not limited to, the illegal distribution of controlled dangerous substances or sexual abuse of patients; and whether the licensee previously has undergone a rehabilitation program, and, if so, when that occurred, the nature and the duration of the prior treatment and the results thereof. The summary report shall also include recommendation to the IRC concerning a proposed plan of treatment; the services which will be provided by the sponsoring program; practice restrictions which should be imposed, if any; the monitoring regimen to be instituted, if any; the supervision and reporting to be required and by whom and the frequency of its periodic reports to the IRC. Alternatively, the PAP may recommend no further action be taken when, after inquiry, it is determined that there is insufficient information upon which to conclude that the licensee is suffering from a chemical dependency or any other impairment;

3. Conduct such supplemental inquiry as may be directed by the IRC and may request of the IRC that further investigation be conducted by staff, investigative personnel or the Attorney General, if appropriate;

4. Prepare a letter agreement, including a plan for recovery relating to each referral, setting forth the participant's obligations and memorializing his or her consent to the release of all pertinent medical, psychiatric or personnel records to the IRC should such documents become necessary as part of its review, as well as the licensee's consent to provide the notice to the IRC of all events as set forth in (a)7 below and notice to comparable PAPs or licensing boards as set forth in (a)8 below;

5. Secure from each participant his or her signature on both the summary report and a letter agreement, maintain the original of both in a secure place and provide a coded copy, without identifying information, to the IRC;

6. Immediately report to the IRC and disclose the identity of the participating licensee if that licensee:

- i. Has not complied with the terms of the letter agreement or the plan as set forth in the summary report;
- ii. Has been the subject of a urine or blood test report which is positive for the presence of a substance not appropriately prescribed for a legitimate documented reason;
- iii. Has otherwise demonstrated a relapse or impairment;
- iv. Has engaged in deceptive behavior (including, but not limited to, an attempt to invalidate a drug screen, substitute a specimen, present a fraudulent attendance record);
- v. Has suffered an exacerbation of a condition rendering the licensee incapable of practicing with requisite skill and safety; or
- vi. Has had a change of status (including, but not limited to, the initiation of a disciplinary proceeding at a health care facility, an arrest or a disappearance);

7. Provide notice of program participation to comparable professional assistance programs in other jurisdictions if the licensee should elect to leave this State or should apply for initial licensure in another state, if such programs exist. If the jurisdiction to which the licensee is planning to move does not have a professional assistance program which has an arrangement with the licensing board in that jurisdiction, the PAP shall provide notice directly to the licensing board. A copy of such notice shall be provided to the IRC; and

8. Prepare periodic report as to the progress of all of the participants which it is sponsoring, pursuant to a schedule as established by the IRC, and, as appropriate, coordinate the submission of any other documentation directed.

### 13:35-11.4 Duties of the Impairment Review Committee

(a) The IRC shall perform the following duties, as well as such others as the Board may require. The IRC:

1. Shall accept from licensees, and from other members of the public, reports (with the individual's identity) concerning licensees who may be suffering from chemical dependencies or other impairments;

2. Shall accept referrals (with the individual's identity) from the Board;

3. Shall accept coded summary reports from approved professional assistance programs (without any information from which the individual's identity can be discerned);

4. May request additional information from staff, the sponsoring PAP, the participant or persons with knowledge concerning a participant's condition or progress in rehabilitation;

5. Shall promptly review each referral to determine if participation in the ARP is appropriate. In making this determination, the IRC shall give consideration to the following factors:

- i. The nature of the impairment;
- ii. Whether the licensee rendered or attempted to render or was expected to render care at a time when impaired;
- iii. Whether patients were harmed either directly or indirectly by the licensee's conduct;
- iv. Whether the licensee has engaged in an activity which could render the licensee subject to criminal penalty, including, but not limited to, the illegal distribution of controlled dangerous substances or sexual abuse of patients;
- v. Whether the licensee previously has undergone a rehabilitation program, and, if so, when that occurred, the nature and the duration of the prior treatment and the results thereof; and
- vi. Whether such factors in a particular case would make participation in the Alternative Resolution Program inconsistent with the public interest;

6. With respect to PAP referrals, shall transmit to the Board the coded summary report (without the disclosure of any information from which the individual's identity could be discerned) as prepared by the PAP either upon completion of its review or within 30 days, whichever occurs first;

7. With respect to referrals from the Board, the public or other practitioners, shall prepare the summary report, reflecting the factors set forth at (a)5 above to be transmitted to the Board. If the IRC review has been initiated by a self-referral or by a report by another practitioner, reports to the Board shall be coded (without the disclosure of any information from which the individual's identity could be discerned). If the IRC has concluded that, based upon its review, there is insufficient information upon which to conclude that the licensee is suffering from a chemical dependency or other impairment, it shall so state in its confidential summary report, indicating the extent of its review. If the IRC has determined that participation should be permitted, the summary report shall address the following, as appropriate:

- i. What treatment is warranted;
- ii. What services will be provided by the sponsoring program;
- iii. What practice restrictions should be imposed, if any;
- iv. What monitoring regimen should be instituted, if any;
- v. What supervision and reporting should be required and by whom; and
- vi. At what frequency periodic interviews with the IRC should be scheduled;

8. Shall conduct such supplemental inquiry as may be directed by the Board;

9. Shall review coded letter agreements between the PAP and [with] participating licensees embodying the terms of participation as reviewed by the Board and mandating that certain notice shall be provided to other jurisdictions if the licensee should elect to leave this State or should apply for initial licensure in another state, or in response to a particular inquiry from another state or regulatory agency or a health care facility at which the participating licensee has applied for privileges;

10. Shall notify the Board of any rejection by the licensee of a term of participation, including a refusal to consent to the release of records, and if no new agreement can be reached, shall notify the licensee that he or she may not participate in the program and

shall disclose the licensee's identity and transmit the entire IRC file to the Board for appropriate disciplinary review;

11. Shall promptly review all reports submitted pursuant to such letter agreements, requesting supplemental investigation or appearances, as appropriate;

12. Shall immediately review any report indicating that a participating licensee has not complied with the terms of the letter agreement or has otherwise demonstrated a relapse or impairment, and shall thereafter provide the Board with notice of any information, which appears to be reliable and for which no acceptable explanation has been proffered, concerning noncompliance;

13. Shall provide the Board with periodic coded reports, submitted in accordance with a schedule established by the IRC, as to the status of all participating licensees and any recommendations for modification of the terms of agreement;

14. Shall, throughout the duration of the term of the agreement, maintain the agreement and information relating to the licensee as a matter under investigation relating to possible licensee misconduct and thus shall, except as provided herein, afford confidentiality pursuant to N.J.S.A. 45:9-19.3, except that nothing herein shall preclude the Board, the IRC or the Attorney General from conducting appropriate investigation of the relevant facts, securing opinions from consultants and complying with judicial directives; and

15. Shall, upon a licensee's successful completion of the terms as provided by the letter agreement, advise the Board that it deems the matter to be closed without a finding of cause for action, except that nothing herein shall preclude the Board or the Panel from reviewing and relying upon all relevant materials should it receive a subsequent referral regarding the licensee.

#### 13:35-11.5 Professional assistance program approval

A professional assistance program seeking to sponsor participants in the ARP first shall seek approval from the Board. A PAP applying for approval shall be required to enter into a formal agreement with the Board, attesting to its willingness and ability to provide necessary services to participants and to work with the IRC in the discharge of its responsibilities. Upon request, any PAP seeking approval shall provide the Board with sufficient information concerning its staffing, the services it provides, available treatment referrals and monitoring contracts so that the Board can be assured that the program is in a position to discharge its obligations under the agreement. Each program shall designate a plenary licensed physician who shall serve as program director and who shall be responsible to assure that the program fulfills its obligations under the agreement. By that agreement the Board shall grant its approval and delineate the conditions upon which approval could be rescinded.

#### 13:35-11.6 Colleague referrals

The Board authorizes the IRC and approved professional assistance programs to accept reports from practitioners pursuant to N.J.S.A. 45:9-19.5 and any practitioner who files such a report directly with the IRC, an approved PAP or with any of the report recipients otherwise authorized by law shall be deemed to have discharged the obligation imposed by statute. Although the PAP need not disclose to the IRC, the Panel or the Board the identity of colleagues who file such report, it shall maintain that information on file and shall make it available to the Board in the event that an inquiry is initiated as to whether the reporting colleague discharged his or her obligation pursuant to N.J.S.A. 45:9-19.5. If the reporting practitioner elects to file a report directly with the IRC, the Panel or the Board, he or she may utilize that licensee's code number in the report. These reports shall be retained confidentially if the licensee agrees to the terms of participation in the program.

#### 13:35-11.7 Alternate Resolution Program pilot period

Two years following the operative date of this subchapter, the Board shall determine, after study and consultation, whether the program established pursuant to this subchapter should be continued, altered, expanded or discontinued. Should the Board conclude that the program should be terminated, those currently participating shall be permitted to continue with the confidentiality protection set forth in this subchapter. Should an approved

professional assistance program cease offering services, the Board shall allow participating licensees a period of 30 days to seek the sponsorship of another approved professional assistance program provided that interim monitoring provision are proposed and acceptable to the Board.

## (a)

### DIVISION OF CONSUMER AFFAIRS

#### Personnel Services

#### Placement of Health Care Practitioners

#### Definition of Health Care Practitioners Supervisor

#### Proposed Amendment: N.J.A.C. 13:45B-15.1

Authorized By: Mark Herr, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 34:8-54 and 56:8-1 et seq.

Proposal Number: PRN 1995-220.

Submit written comments by May 3, 1995 to:

Mark Herr, Director  
Division of Consumer Affairs  
P.O.B. 45028  
Newark, N.J. 07101

The agency proposal follows:

#### Summary

The Division of Consumer Affairs is proposing to amend the definition of "health care practitioner supervisor" in N.J.A.C. 13:45B-15.1. This section has been adopted elsewhere in this issue of the New Jersey Register as part of a comprehensive set of rules relating to personnel services and registration requirements for health care service firms, as well as standards for placement of health care practitioners.

The definition of "health care practitioner supervisor" elicited a large number of adverse comments when proposed on November 7, 1994, at 26 N.J.R. 4316(a). Under the present wording, a health care practitioner supervisor is required to be "a New Jersey licensed physician or a registered nurse in good standing holding a Bachelor of Science degree, with a major in nursing and at least two years of full time or full time equivalent experience as a registered professional nurse within the five year period immediately preceding employment with an agency." One year of that experience must be in community health, public health or home care.

Commenters pointed out that these standards for practice as a health care practitioner supervisor exceed the standards for a nurse supervisor mandated by the State Department of Health. Furthermore, they predicted that if the Division's standards prevailed, an additional financial burden would fall upon employment agencies supplying home health care personnel, and they would have problems obtaining nurses with the required degree to function in the supervisory position. One commenter stated also that the B.S.N. requirement would have "a harmful impact on the employment of many registered nurses with excellent qualifications and experience."

The Division considered it imperative to adopt the bulk of its home health care regulations without delay, an action that could not be taken without a working definition of "health care practitioner supervisor." The adoption appears in this issue of the New Jersey Register. However, in light of the extensive and serious comments received, the Division determined that reconsideration of the definition was in order, and it has accepted the recommendation made by a number of persons that the definition conform to that of the State Department of Health. Because the intended changes are substantive, they require additional notice and comment, an opportunity now provided.

This proposal amends N.J.A.C. 13:45B-15.1 by substituting the State Department of Health's nurse supervisor standards. The term "health care practitioner supervisor" is now defined as a New Jersey-licensed physician, or a registered professional nurse in good standing who has at least one of the following qualifications: (1) a Bachelor of Science degree in nursing and two years combined public health nursing and progressive professional responsibilities in public health nursing; or (2) three years combined public health nursing and progressive professional responsibilities in public health nursing.

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Pending resolution of the definition, the Division as a matter of operating policy will consider acceptable the standard set forth in the previous paragraph, despite the fact that it is less stringent than the standard concurrently adopted.

### Social Impact

The proposed amendment will be beneficial to those agencies providing homemaker-home health care services, in that they will not be required to employ as health care practitioner supervisors only nurses who possess a Bachelor of Science degree. The inflexibility of this requirement may cause the agencies staffing difficulties and additional expense. Under the proposed amendment, the pool of available health care practitioner supervisors will be greater than if the more stringent requirements remained in place, thus easing possible personnel shortages. Also, currently-employed supervisors who lack the degree but have the requisite experience will be able to retain their present positions in home health care agencies and nursing registries. The public health, safety and welfare will not be adversely affected, because the Department of Health standards now proposed for substitution provide an alternate path of experience and progressive professional responsibilities that ensures the competence of health care practitioner supervisors.

### Economic Impact

Requiring all health care practitioner supervisors to hold a Bachelor of Science degree may well cause shortages of persons available for employment in this area. Because of this scarcity, an increase in salaries and benefit expenses might occur, with an inevitable rise in cost to the consumer of home health care services. The proposed amendment avoids that result by setting forth more flexible standards. It is also economically advantageous to present and future supervisors who lack a B.S.N. and under the present rule would be forced to expend money for tuition in order to obtain the degree.

### Executive Order No. 27 Statement

Federal regulations set forth qualifications of home health care agency supervisory personnel only as conditions of participation for Medicare reimbursement, but there are no Federally-required standards for home health care practitioner supervisors in general. The amendment being proposed does not therefore exceed any applicable Federal standards.

### Regulatory Flexibility Analysis

Almost all of the approximately 322 health care service firms and nurses' registries affected by this amendment qualify as "small businesses" under the criteria set forth in the Regulatory Flexibility Act, N.J.S.A. 52:14B-6 et seq. The amended rule will in fact ease the regulatory burden upon these small businesses because the proposed new definition is more flexible than the definition it would replace.

There are no reporting or recordkeeping requirements, the services of professionals are not required in order to comply with the rule, and no capital investment is necessary. The amendment merely sets forth those qualifications needed in order to work as a health care practitioner supervisor in a health care service firm or nurses' registry. Since varying requirements for businesses of differing sizes would destroy the effectiveness of the rule in safeguarding the public's health, safety and welfare, the standards must be uniform for all firms.

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

### 13:45B-15.1 Definitions

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Health care practitioner supervisor" means a New Jersey licensed physician, or a registered nurse in good standing holding \*[at least]\* a Bachelor of Science degree\*[\*, with a major]\* in nursing \*[and at least two years of full time or full time equivalent experience as a registered professional nurse within the five year period immediately preceding employment with an agency. One year of said experience shall have been in community health, public health or home care.]\* **\*and two years combined public health nursing and progressive professional responsibilities in public health nursing; or three years combined public health nursing and progressive professional responsibilities in public health nursing.\***

(a)

## OFFICE OF HIGHWAY TRAFFIC SAFETY

### Drunk Driving Enforcement Fund

#### Proposed New Rules: N.J.A.C. 13:86

Authorized By: Col. Peter J. O'Hagan, Jr., Director, Office of Highway Traffic Safety.

Authority: N.J.S.A. 39:4-50.8, 52:14D-1, 27:5F-35, 52:17B-4, 52:17B-27, Reorganization Plan No. 004-1992.

Proposal Number: PRN 1995-37.

Submit written comments by May 3, 1995 to:

Col. Peter J. O'Hagan, Jr., Director  
Office of Highway Traffic Safety  
CN 048  
Trenton, NJ 08625

The agency proposal follows:

### Summary

The Drunk Driving Enforcement Fund (Fund) was established by N.J.S.A. 39:4-50.8. This Fund has been used to establish a Statewide drunk driving enforcement program supervised by the Director of the Office of Highway Traffic Safety.

On a conviction of a violation of N.J.S.A. 39:4-50, the court collects a \$100.00 surcharge from the defendant and forwards it to the Division of Motor Vehicles. Ninety-five dollars of the \$100.00 surcharge is deposited into a Fund which is administered by the Office of Highway Traffic Safety (OHTS). The remaining \$5.00 is used for administrative purposes.

The Fund was originally administered and overseen by the Division of Motor Vehicles, but these responsibilities were transferred to the Office of Highway Safety by Reorganization Plan No. 004-1992, the State Agency Transfer Act, N.J.S.A. 52:14D-1 et seq., and N.J.S.A. 27:5F-35. The rules that govern the administration of this Fund are proposed herein.

The purpose of this Statewide enforcement program is to assist police agencies with the maintenance and enhancement of the enforcement of N.J.S.A. 39:4-50. Eligible entities are informed of the availability of Fund monies. Subchapter 1 describes the purpose and scope of the rules and contains definitions. Subchapter 2 describes the requirements for eligibility and the mechanism for application for grants from the Fund. Applicants must submit an outline of the proposed activities for which the monies will be expended and submit it to the director of OHTS for review. The director will recommend approval or disapproval to the Attorney General. The proposed new rules provide a system of monitoring, reporting and auditing the approved enforcement activities as outlined in the grant application form.

### Social Impact

The proposed new rules will have a positive social impact. Continued enforcement of N.J.S.A. 39:4-50 is critical to public health and safety. The enforcement community's ability to better serve this purpose will ensure its continued role in providing a deterrent to violations of N.J.S.A. 39:4-50.

### Economic Impact

Continued availability of funds to the Division of State Police, interstate and county law enforcement agencies, and municipalities for better measures to enforce N.J.S.A. 39:4-50 enhances their ability to achieve this purpose. Taking into consideration the societal costs of fatalities, serious injuries and property damage that result from drunk driving, that is, each fatality costs \$702,300 and injury costs vary from \$6,145 for a minor injury to \$589,055 for a critical one, according to data developed by the National Highway Traffic Safety Administration, each crash avoided results in immediate savings to society.

### 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 the Drunk Driving Enforcement Fund. Rulemaking requirements are dictated by N.J.S.A. 39:4-50.8.

### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined in the Regulatory Flexibility

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Act, N.J.S.A. 52:14B-17. The proposed new rules apply only to the Division of State Police, interstate and county law enforcement agencies, and municipalities, and have no effect or impact on small businesses or private industry in general.

**Full text** of the proposed new rules follows:

### CHAPTER 86 DRUNK DRIVING ENFORCEMENT FUND

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:86-1.1 Purpose and scope

The purpose of this chapter is to set forth the rules that govern the administration of the Drunk Driving Enforcement Fund established by N.J.S.A. 39:4-50.8. The rules in this chapter provide the procedures and functions for the administration of the Drunk Driving Enforcement Fund and set forth the requirements for grant awards from the Fund.

##### 13:86-1.2 Definitions

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

"Director" means the Director of the Office of Highway Traffic Safety.

"Fund" means the Drunk Driving Enforcement Fund.

"OHTS" means the Office of Highway Traffic Safety in the Department of Law and Public Safety.

#### SUBCHAPTER 2. CRITERIA AND GUIDELINES FOR PROGRAMS

##### 13:86-2.1 Funding

Funding is to be used for maintained enforcement of N.J.S.A. 39:4-50. The Division of State Police, interstate or county law enforcement agencies or municipalities shall use grants from the Fund to subsidize additional law enforcement patrols and for other measures approved by the director in support of these objectives.

##### 13:86-2.2 Availability of funds

(a) OHTS shall calculate the amount of grant money from the Fund that is available to each eligible municipality, county or interstate law enforcement agency, or the Division of State Police, on a quarterly basis. OHTS will notify each eligible entity quarterly of this available funding amount by sending each entity an application listing the total amount of its proportionate contribution to the Fund to date, the amount of its contribution to the Fund as of that quarter, and the total amount of Fund monies that are available to the entity. An entity which has less than \$500.00 of available Fund monies will not receive a letter of notification. This money will remain in the entity's account until the contribution to the Fund reaches \$500.00 or more. At that time an application will be sent to the entity. OHTS will allocate monies deposited in the Fund in accordance with N.J.S.A. 54:43-1.1 and 26:2B-35 to the Fund accounts of municipalities, county or interstate law enforcement agencies, or the Division of State Police, in accordance with each entity's proportionate contribution to the Fund under N.J.S.A. 39:4-50.8.

(b) The Division of State Police, interstate and county law enforcement agencies and municipalities may apply to OHTS for Fund monies for additional N.J.S.A. 39:4-50 enforcement patrols and any other appropriate measures pertaining to such enforcement. The applicant entity shall complete an application and return it to the OHTS for approval. Applicants may request information regarding the Fund at any time by writing to OHTS at CN 048, Trenton, New Jersey 08625.

(c) The Division of State Police, interstate and county law enforcement agencies and municipalities who have contributed to the Fund will be notified of any monies that are unclaimed by that entity at the end of each operational year. The notification will be in the form of a supplemental application and will list the total amount of Fund monies that are available to the entity. An entity which has less than \$500.00 of unclaimed Fund monies will not receive a letter of notification. The entity shall complete the supplemental

application form in accordance with the requirements for the application forms that are sent each quarter. The information requested on the supplemental application is the same in scope as on the quarterly application. The entity shall submit the completed supplemental application to OHTS within 90 days of receipt. In the event the Division of State Police, interstate or county law enforcement agency, or municipality does not submit the completed supplemental application to OHTS within 90 days of the entity's receipt of the supplemental application, the unclaimed funds will be transferred to a general account to be expended on alcohol related issues as determined by the Director. Each entity that does not submit a completed supplemental application within the time limit will be informed by letter that the unclaimed funds have been transferred.

##### 13:86-2.3 Proposal

On the application, the applicant shall list proposed primary programs, which are supplemental patrols to enforce N.J.S.A. 39:4-50, and/or proposed secondary programs, which are equipment or activities, other than supplemental patrols, that enhance the ability of police agencies to enforce N.J.S.A. 39:4-50, for which Fund monies are sought. The applicant shall indicate what portion of the requested Fund monies will be used for primary programs and what portion will be used for secondary programs. The applicant shall further delineate and itemize proposed primary and/or secondary program expenses. The applicant shall indicate the amount of previously granted Fund monies that have not been spent as of the date of the application. The Project Director, Chief Fiscal Officer, and an authorizing official shall sign and date the application. The applicant shall forward the original application to the OHTS.

##### 13:86-2.4 Approval; denial; modification; payment

(a) OHTS will review each application and will provide the Attorney General with recommendations for approval or disapproval of the application. The OHTS will recommend that an application be approved if it determines that the proposed expenditures will enhance the ability of the entity to enforce N.J.S.A. 39:4-50 and at least 50 percent of the Fund monies requested are for proposed primary programs, which are supplemental patrols to enforce N.J.S.A. 39:4-50.

(b) The Attorney General will review the application and recommendation. The Attorney General will approve the application if the OHTS has recommended approval and the Attorney General determines that the proposed expenditures will enhance the ability of the entity to enforce N.J.S.A. 39:4-50.

(c) If the request is not approved, OHTS will notify the applicant in writing of reason for denial.

(d) If additional information is required, OHTS will contact the applicant by letter or telephone.

(e) Upon approval, OHTS will notify the Department of Treasury, which will issue the check directly to the eligible entity.

##### 13:86-2.5 Schedule

(a) OHTS will establish a monitoring schedule for each applicant. The monitoring schedule will vary according to the amount of Fund monies the entity seeks.

(b) OHTS will provide a special annual report form to each entity which has contributed to the Fund. Entities which have received a grant from the Fund shall submit the completed annual report, including an expenditure summary, salary summary and expenditure documentation, to OHTS within 90 days after the close of the calendar year.

##### 13:86-2.6 Audit

(a) The applicant agrees to provide OHTS access to all records including, but not limited to, reports, accounts, payrolls and documents necessary to verify that grants from the Fund have been expended by the applicant in accordance with program standards and guidelines. Failure to comply with OHTS regarding access to such records may result in denial of future applications.

(b) If the records reveal that funds have been expended contrary to the terms of the entity's approved application, or contrary to program standards and guidelines, the entity will be required to reimburse the Fund for the amount of the unauthorized expenditure.

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TRANSPORTATION

(c) Each entity should establish a separate budgetary account for allocations from the Fund.

## TRANSPORTATION

(a)

### 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 in Atlantic County

#### Proposed Amendment: N.J.A.C. 16:28-1.42

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 1995-203.

Submit comments by May 3, 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. 16:28-1.42 to revise certain "speed limit" zones along Route N.J. 152 in the City of Somers Point and the Township of Egg Harbor in Atlantic County for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based on a letter from Senator Gormley dated January 4, 1995 to Commissioner Frank Wilson requesting a review to investigate safety concerns in the vicinity of Route N.J. 152 and the exit to Seaview Harbor, 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. 152 in the City of Somers Point and the Township of Egg Harbor in Atlantic 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 40 miles per hour "speed limit" zone along Route N.J. 152 in the City of Somers Point and the Township of Egg Harbor in Atlantic County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

#### Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

#### 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]):

16:28-1.42 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 in the City of Somers Point and 1300 feet east of Bay Avenue in the Township of Egg Harbor (mileposts 0.00 to 0.245); thence

(2) Township of Egg Harbor:

(A) Zone 2: 50 miles per hour between 1,300 feet east of Bay Avenue and the westerly abutment line of the John F. Kennedy Memorial Bridge over Risley Channel (mileposts 0.245 to 3.17).]

(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 between 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).

(b)

### DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

#### Motorist Service Signing for Non-Urban Interstate and Limited Access Highways

#### Proposed Repeal: N.J.A.C. 16:41D

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:5-10, 27:5-11, 27:5-12, 27:7-21, 39:4-183.1, 39:4-183.6 and 39:4-183.27.

Proposal Number: PRN 1995-215.

Submit comments by May 3, 1995 to:

Renee Rapciewicz

Deputy Administrative Practice Officer

New Jersey Department of Transportation

Bureau of Policy and Legislative Analysis

1035 Parkway Avenue

CN 600

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Department of Transportation proposes to repeal N.J.A.C. 16:41D, Motorist Service Signing for Non-Urban Interstate and Limited Access Highway. The rules were proposed on July 6, 1993 at 25 N.J.R. 2836(a) and were adopted on March 21, 1994 at 26 N.J.R. 1359(a).

The rules were adopted to help provide the traveling public on non-urban interstate and limited access highways with timely and specific directions to nearby fuel, food, lodging and camping services readily

## OTHER AGENCIES

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accessible from highway exits. Under this program, the Department would erect and maintain logo signs paid for by participating businesses through a fee schedule.

The program was intended to have signs indicating available services and showing the business trademark logo on signs posted by intersections to inform motorists of nearby fuel, food, lodging and camping services. These signs are solely for the convenience of the motorist and authorized and approved under the Federal "Manual on Uniform Traffic Control Devices." This information was to be of particular significance and value to individuals who are travelling longer distances and may not be familiar with local businesses that are easily accessible, but not visible, from the highway.

Due to operational, management and budgetary concerns, the Department has decided not to implement the logo signage program in the fashion prescribed by the rules at N.J.A.C. 16:41D. Therefore, the Department proposes the repeal of its logo signage rules which are found at N.J.A.C. 16:41D.

In accordance with the Governor's objective to deregulate as much as possible, the Department, therefore, proposes to repeal these rules since the program has not, and will not, be implemented in its present form.

### Social Impact

These rules primarily affected signage of select information of specific interest to the motoring public. However, the proposed repeal will have no direct impacts since the program outlined in the rules proposed for repeal have never been implemented. Participation in this program by all interested parties was voluntary. No signs will be removed, and no existing contractual terms, rights or agreements will be affected, as a result of the proposed repeal.

### Economic Impact

The proposed repeal should have no negative economic impact since the program was never implemented and no fees were ever paid.

### Executive Order No. 27 Statement

"Logo" signage is an authorized form of "official sign" under N.J.S.A. 27:5-12, which is part of the 1991 Roadside Sign Control and Outdoor Advertising Act (P.L.1991, c.413). Placement of such signs is wholly voluntary. If such signs are placed, they are subject to guidelines found in the Manual of Uniform Traffic Control Devices (MUTCD), as published by the United States Department of Transportation. MUTCD guidelines are intended to promote national uniformity in roadside and traffic control signage. Individual states have significant discretion in implementing the provisions of the MUTCD, as they apply to the specific traffic conditions that prevail in their state and specific locality.

### Regulatory Flexibility Statement

The proposed repeal does not place any bookkeeping, 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. since this program has never been implemented.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:41D.

## OTHER AGENCIES

### (a)

### CASINO CONTROL COMMISSION

#### Accounting and Internal Controls Plans for Revised Supervision; Low Limit Table Games

#### Proposed Amendment: N.J.A.C. 19:45-1.12

#### Proposed Repeal: N.J.A.C. 19:45-1.12A

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-70(f) and (j).

Proposal Number: PRN 1995-196.

Submit written comments by May 3, 1995 to:

E. Dennis Kell  
Assistant General Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, NJ 08401

The agency proposal follows:

### Summary

N.J.A.C. 19:45-1.12(e) permits a casino licensee to implement a plan for revised supervision by floorpersons and pit bosses. The proposed amendment would also permit the participation of poker shift supervisors in such a plan.

N.J.A.C. 19:45-1.12(b)7 currently provides that a poker shift supervisor shall be responsible, during a given shift, for directly supervising all activities related to the operation and conduct of poker, and further provides that the supervisor is not precluded from performing other functions as approved by the Commission. Pursuant to the latter provision poker shift supervisors have been permitted to exercise some administrative oversight in casino simulcasting facilities in which poker is the predominant authorized game which is offered. Poker shift supervisors have not been permitted to directly supervise the conduct of other games.

Under the proposed amendment, a poker shift supervisor could, under a plan of revised supervision, supervise up to 24 gaming tables provided such tables include all open poker tables. For example, such a plan would permit a poker shift supervisor to supervise 20 poker tables and four blackjack tables, provided that only 20 poker tables are open. Since the proposed amendment would expressly permit a poker shift supervisor to perform duties unrelated to the conduct and operation of poker, the provision in N.J.A.C. 19:45-1.12(b)7, referenced above, providing that a poker shift supervisor is not precluded from performing other functions, would be deleted.

N.J.A.C. 19:45-1.12(c)5iv currently permits a floorperson to supervise not more than eight poker tables or, if no floorperson assigned to poker has any responsibility for seating players, not more than ten tables. This level of supervision exceeds that permissible by floorpersons at other table games due, in part, to the required presence of a poker shift supervisor who cannot supervise other games at the same time. Since a poker shift supervisor under a plan of revised supervision would be required to supervise other games, the proposed amendment would limit to six the number of poker tables a floorperson may supervise if a casino licensee has implemented such a plan.

Finally, N.J.A.C. 19:45-1.12A is proposed for repeal. That rule permits a casino licensee to offer table games which do not meet the minimum staffing requirements of N.J.A.C. 19:45-1.12, subject to Commission approval and provided the affected table games have minimum wagers of no higher than \$5.00 and maximum wagers of \$25.00.

N.J.A.C. 19:45-1.12A was proposed by the Commission in an effort to make the offering of low limit table games economically viable to casinos and was adopted prior to the adoption of the amendments to N.J.A.C. 19:45-1.12 permitting plans for revised supervision. Shortly thereafter, the amendments to N.J.A.C. 19:45-1.12 were adopted at the request of casino licensees, which did not want the flexibility of reduced staffing limited solely to low limit games.

Since the Commission would not approve levels of supervision lower than the minimums available under a plan for revised supervision pursuant to N.J.A.C. 19:45-1.12(e), regardless of the limits, N.J.A.C. 19:45-1.12A would be repealed.

### Social Impact

The proposed amendment and repeal is not anticipated to have any measurable social impact.

### Economic Impact

The proposed amendment and repeal may result in a minimal cost saving to casino licensees which offer the game of poker and elect to institute a plan for revised supervision which includes poker shift supervisors.

### 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.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

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**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]):

19:45-1.12 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.-6. (No change.)

7. Poker shift supervisor shall be licensed as a casino key employee and shall be the supervisor assigned and present during a shift with the responsibility for directly supervising all activities related to the operation and conduct of poker. [Nothing in this section shall be deemed to preclude the poker shift supervisor from having other responsibilities as may be approved by the Commission pursuant to the standards set forth in N.J.A.C. 19:45-1.11(a).]

8.-9. (No change.)

(c) Each casino licensee shall maintain the following standard levels of staffing:

1.-4. (No change.)

5. One floorperson shall supervise:

i.-iii. (No change.)

iv. Not more than eight poker tables or, if no floorperson assigned to poker by a casino licensee has any responsibilities for seating players, not more than [ten] **10** tables; **provided, however, if a casino licensee has implemented a plan for revised supervision which includes poker shift supervisors pursuant to the provisions of (e)4 below, one floorperson shall supervise not more than six poker tables.**

6. (No change.)

(d) (No change.)

(e) Notwithstanding the provisions of (c) above, a casino licensee may implement a plan for revised supervision by floorpersons, **poker shift supervisors** or pit bosses. In any plan for revised supervision:

1. One floorperson may supervise not more than six blackjack, roulette, minibaccarat, sic bo, red dog or big six tables, or any combination thereof; [and]

2. One pit boss may supervise not more than 24 gaming tables; **and**

3. **One poker shift supervisor may supervise not more than 24 gaming tables, provided that they include all poker tables which are open to the public.**

(f)-(j) (No change.)

19:45-1.12A [Personnel assigned to the operation and conduct of low limit table games] **(Reserved)**

[(a) Notwithstanding the provisions of N.J.A.C. 19:45-1.12 or any other Commission rule to the contrary, a casino licensee may offer table games which do not meet the minimum staffing requirements of N.J.A.C. 19:45-1.12 provided that:

1. The maximum wager on such table games shall be \$25.00;

2. The minimum wager on such table games shall be no higher than \$5.00; and

3. The casino licensee has received Commission approval of its low limit table games submission in accordance with (b) below.

(b) Each casino licensee may request Commission approval to operate low limit table games pursuant to this section by filing a submission at least 30 days before the operation of such table games is to commence or before changes in a previous submission are to become effective, unless otherwise permitted by the Commission. Each such submission shall contain, without limitation, the following information:

1. A floor plan of the casino and casino simulcasting facility showing the type, location and configuration of all low limit table games proposed by the casino licensee and all other table games located within the same pit as a low limit table game;

2. The minimum staffing requirements proposed by the casino licensee for the low limit table games, the pits within which they are located and an explanation of any differences between the proposal and the requirements of N.J.A.C. 19:45-1.12; and

3. Any proposed amendments to the casino licensee's accounting and internal control submission which are necessary to enable the casino licensee to comply with the requirements of the regulations as a result of a reduction in the number of supervisory personnel or dealers involved in the operation of low limit table games.

(c) In explaining why a reduced staffing requirement is sufficient for its low limit table games, a casino licensee may justify its proposal in any way it deems appropriate including, without limitation, the elimination of the availability of credit at such tables.]

**(a)**

**CASINO CONTROL COMMISSION**

**Persons Doing Business with Casino Licensees  
General Provisions; Definitions; Gaming-Related  
Casino Service Industry License Requirements**

**Reproposed Amendments: N.J.A.C. 19:51-1.1 and 1.2  
Proposed Amendment: N.J.A.C. 19:51-1.2A**

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 70i, 92 and 94.

Proposal Number: PRN 1995-197.

Submit written comments by May 3, 1995 to:

Antonia Z. Cowan, Senior Counsel  
Casino Control Commission  
Tennessee Avenue and the Boardwalk  
Atlantic City, New Jersey 08401

The agency proposal follows:

**Summary**

N.J.A.C. 19:51-1.1 and 1.2 were the subject of a previous proposal, PRN 1994-578, published November 7, 1994 at 26 N.J.R. 4344(a), which has not been adopted. Upon consideration of a comment submitted and additional review by the Commission, a specified provision of the previous proposal has been modified and thus reproposed, with two new amendments also proposed. The terms used to describe the processes affecting gross revenue in N.J.A.C. 19:51-1.2(b)iv are simplified in this proposal and focused on the functions performed by various equipment. A new amendment is proposed to another criteria, N.J.A.C. 19:51-1.2(b)liii, concerning the capacity to affect the outcome of the play of an authorized game which is modified to place greater emphasis on the outcome of the play of an authorized game or simulcast wagering. An additional new amendment which eliminates certain specific equipment is made to the definition of "gaming equipment" in N.J.A.C. 19:51-1.1. There is no change from the previous proposal to amendments made in N.J.A.C. 19:51-1.1 and 1.2(b) concerning a servicer or repairer of gaming equipment. Any comments submitted on the original proposal must be resubmitted to be considered.

The Casino Control Act, N.J.S.A. 5:12-1 et seq. ("Act") and Casino Control Commission ("Commission") rules require that casino service industries offering goods or services directly related to casino or gaming activity, including gaming equipment manufacturers, suppliers and repairers, be licensed as gaming-related casino service industries. N.J.S.A. 5:12-92a(1) and N.J.A.C. 19:51-1.2.

N.J.A.C. 19:51-1.2(b)li through liii provides criteria for evaluating whether an enterprise manufactures, supplies or distributes devices, machines, equipment, items or articles which are so utilized in gaming as to require that the enterprise be licensed as gaming-related. However, the present criteria fail to address equipment which is gaming-related because of its relationship to gross revenues. "Gross revenue," defined at N.J.S.A. 5:12-24, is the total of all sums received by a casino licensee from gaming operations after monies are paid out as winnings to patrons and deductions for certain uncollectible gaming receivables. The State has a financial stake in gross revenue and because the integrity of gross revenue is considered integral to the integrity of the gaming industry, N.J.A.C. 19:51-1.2(b) is proposed to be amended to specifically include criteria concerning equipment related to gross revenue. The terms "calcu-

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lation, storage, collection, or control of gross revenue" are used to describe the processes and functions performed by various equipment involving gross revenue.

Also, these proposed amendments address the related issue of a "servicer of gaming equipment" which requires a gaming-related casino service industry license. N.J.A.C. 19:51-1.2(b)2 is proposed to be amended to refer to the definition of gaming equipment servicer in N.J.A.C. 19:51-1.1. The definition of "gaming equipment servicer" is proposed to be amended to include, in addition to the service of gaming equipment, the service of any device governed by N.J.A.C. 19:51-1.2(b)1 and to require that the type of service which requires a gaming-related license be such maintenance, service or repair that would have the capacity to affect the outcome of the play or gross revenue. These changes would amend the rules concerning the "service of gaming equipment" to be consistent with existing rules concerning "gaming equipment."

In the Commission's continuing effort to streamline rules at the same time it maintains the integrity of the industry, certain items previously designated as gaming equipment or equipment subject to the requirements of N.J.A.C. 19:51-1.2A(f) are now considered nongaming equipment. Thus, N.J.A.C. 19:51-1.1, 1.2(c)1 and 1.2A(f) are proposed to be amended to eliminate gaming tables, layouts and roulette balls from illustrative lists of gaming equipment and N.J.A.C. 19:51-1.2A(f) equipment.

**Social Impact**

The proposed amendments implement the legislative requirement that the Commission regulate the participation of casino service industries in the gaming industry. The proposed amended definition and rules are not expected to significantly change the number of gaming-related or nongaming-related casino service industries but does codify standards to determine the type of casino service industry license required with greater specificity.

**Economic Impact**

The proposed amendments are expected to assure that enterprises which manufacture, supply or distribute gaming equipment or provide services or repairs to gaming equipment are appropriately licensed. The specificity provided by the amendments may allow the downgrading or require the upgrading of certain casino service industry licenses. The elimination of certain equipment from the designation of "gaming" may allow the downgrading of certain casino service industry licenses. The amendments are not expected to significantly increase or decrease the number of gaming-related or nongaming-related casino service industry licenses or the licensing fees paid by casino service industries or the fees collected by the regulatory agencies.

**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 Analysis**

The proposed amendments affect casino service industries and their employees, some of which may be "small business" as defined in N.J.S.A. 52:14B-16 et seq. The criteria provided is expected to assure that the appropriate type of casino service industry license, gaming-related or nongaming-related, is required based on the service or goods provided. The specificity provided by the amendments may allow the downgrading or require the upgrading of certain casino service industry licenses. The elimination of certain equipment from the designation of "gaming" may allow the downgrading of certain casino service industry licenses.

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

## 19:51-1.1 Definitions

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

"Gaming equipment" means any mechanical, electrical or electronic contrivance or machine used in connection with gaming or any game and includes, without limitation, roulette wheels, [roulette tables,] big six wheels, [craps tables, tables for card games, layouts,] slot machines, slot tokens, prize tokens, cards, dice, chips, plaques, match play coupons, card dealing shoes, drop boxes, and other

devices, machines, equipment, items or articles determined by the Commission to be so utilized in gaming as to require licensing of the manufacturers, distributors or servicers, or as to require Commission approval in order to contribute to the integrity of the gaming industry or to facilitate the operation of the Commission or the Division.

... "Gaming equipment servicer or repairer" means any person who [maintains, services or repairs gaming equipment] **provides maintenance, service or repair of gaming equipment or devices, machines, equipment, items, or articles governed by N.J.A.C. 19:51-1.2(b) in any manner which has the capacity to affect the outcome of the play of an authorized game or simulcast wagering or calculation, storage, collection, or control of gross revenue.**

## 19:51-1.2 Gaming-related casino service industry license requirements

(a) (No change.)

(b) In determining whether an enterprise shall be licensed pursuant to this section, the Commission shall consider, without limitation, whether the enterprise satisfies one or more of the following criteria:

1. Whether the enterprise manufacturers, supplies or distributes devices, machines, equipment, items or articles which:

i. (No change.)

ii. Are needed to conduct an authorized game or simulcast wagering; [or]

iii. Have the capacity to affect the [play or] outcome of **the play** of an authorized game or simulcast wagering; **or**

iv. **Have the capacity to affect the calculation, storage, collection, or control of gross revenue.**

2. Whether the enterprise [provides maintenance, service, or repair pertaining to simulcast wagering equipment, devices, machines, equipment, items, or articles governed by (b)1 above] **is a gaming equipment servicer or repairer;**

3-4. (No change.)

(c) Enterprises required to be licensed in accordance with subsections 92a and b of the Act and (a) above shall include, without limitation, the following:

1. Manufacturers, suppliers, distributors, servicers and repairers of roulette wheels, [roulette balls,] big six wheels, [gaming tables,] slot machines, cards, dice, gaming chips, gaming plaques, slot tokens, prize tokens, dealing shoes, drop boxes, computerized gaming monitoring systems, totalisators, pari-mutuel machines, self-service pari-mutuel machines and credit voucher machines;

2-3. (No change.)

## 19:51-1.2A Nongaming-related casino service industry and junket enterprise license requirements

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

(f) Based upon an analysis of the factors contained in (d) above, the Commission may, in its discretion, require an enterprise which is otherwise governed by the provisions of N.J.S.A. 5:12-92c and (a) above to be licensed as a subsection 92c casino service industry enterprise prior to conducting any business whatsoever with a casino licensee or applicant if the Commission determines that such action is necessary in order to contribute to the public confidence and trust in the credibility and integrity of the gaming industry in New Jersey. Enterprises subject to this requirement shall include manufacturers, suppliers and distributors of [gaming table layouts and] non-value gaming chip sorters and licensors of authorized games to casino licensees and applicants.

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

(a)

**CASINO CONTROL COMMISSION**

**Equal Employment and Business Opportunity  
Provisional Certification of Women and Minority  
Businesses**

**Proposed Amendments: N.J.A.C. 19:53-1.1, 1.2, 1.4,  
1.5, 2.2, 2.4, 5.3, 5.4, 5.5, 5.7, 5.9, 6.3, 6.5, 6.6 and  
6.12**

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-63, 69, and 184 through 190.

Proposal Number: PRN 1995-198.

Submit written comments by May 3, 1995 to:

David C. Missimer, Assistant General Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

In 1993, the Commission adopted a new chapter of rules at N.J.A.C. 19:53 concerning the equal opportunity and affirmative action obligations that are imposed on persons regulated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (see 25 N.J.R. 3843(b)). Included in these new rules were various provisions regulating the relationship of casino licensees with women business enterprises (WBEs) and minority business enterprises (MBEs).

More specifically, these rules require casino licensees to make a good faith effort to spend specified percentages of the dollar value of their contracts for goods and services with certified and provisionally certified MBEs and WBEs. See N.J.A.C. 19:53-5.3. Pursuant to the laws of the State of New Jersey, whether an enterprise is qualified to be officially certified as an MBE or WBE is finally determined by the Department of Commerce and Economic Development (DCED).

When the Commission's rules concerning casino business with certified MBEs and WBEs were originally proposed and adopted, only a small number of companies had been certified by DCED as MBEs or WBEs and DCED did not have any procedures pursuant to which some form of preliminary certification could be obtained. Since it would have been unfair to expect casino licensees to achieve their MBE and WBE business participation goals under these circumstances, the Commission and DCED entered an agreement pursuant to which a women or minority business could be provisionally certified as such by the Commission if the enterprise filed an affidavit with the Commission declaring its eligibility for certification. See N.J.A.C. 19:53-5.4. In order to retain its provisional certification, the enterprise was further required to file an application for DCED certification within 60 days of the date of its provisional certification.

Since 1993, there has been a significant increase in the number of businesses that have been certified as MBEs or WBEs by DCED. As a result of this increase in the number of certified MBEs and WBEs available to do business with the casino industry, the Commission has determined to propose the deletion of its provisional certification process.

The vast majority of the proposed amendments simply delete the words "or provisionally certified" wherever the phrase "certified or provisionally certified MBE or WBE" is included in the rules. Significant amendments are proposed to N.J.A.C. 19:53-5.4, however, since that section currently governs the issuance of provisional certifications by the Commission.

First, all of the provisions included in N.J.A.C. 19:53-5.4 that relate to the process by which provisional certification could be obtained from the Commission are deleted by the proposal. Second, the substantive standards establishing the qualifications for provisional certification are proposed for deletion. Finally, all references to "successor businesses" in this section and N.J.A.C. 19:53-1.2 are deleted since this concept was only used to identify certain enterprises that were ineligible for provisional certification. These latter amendments should not, however, be viewed as an abandonment of the Commission's belief that successor businesses should be required to withstand rigorous regulatory review

in order to qualify as a certified MBE or WBE. The Commission has previously supported the adoption of rules by DCED that would require successor businesses to establish their entitlement to MBE or WBE certification under specific criteria designed to assure their independence and legitimacy and the Commission will continue to support the adoption of such rules in the future.

**Social Impact**

The proposed amendments are not anticipated to have any significant social impact. Both the Commission's provisional certification process and the certification procedures utilized by DCED are designed to assure that programs that are intended to assist minority and women's enterprises do in fact benefit businesses that qualify as such.

**Economic Impact**

There is no way to determine how many enterprises will be more or less likely to apply for certification by DCED if provisional certification by the Commission is no longer available. Therefore, it is impossible to predict whether the proposed amendments will result in more or less MBE and WBE enterprises applying for DCED certification and thus being available to do business with casino licensees. However, the Commission does not anticipate that the proposed amendments will have any significant economic impact on MBEs, WBEs or casino licensees.

**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 Analysis**

The proposed amendments may affect various enterprises that would qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not, however, impose any compliance, reporting or recordkeeping requirements on such enterprises. To the contrary, the amendments eliminate a process pursuant to which certain information had to be filed with the Commission by any enterprise that sought provisional certification.

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

19:53-1.1 Scope, policy and purpose

(a) (No change.)

(b) These rules are adopted in order to establish equal employment opportunity and equal business opportunity requirements for casino licensees and applicants, casino service industry enterprise licensees and applicants and construction contractors and subcontractors engaged in construction projects for casino licensees and applicants. These rules also establish affirmative action requirements for casino licensees and applicants, certain casino service industry enterprise licensees and applicants and construction contractors and subcontractors with regard to the employment of women and minorities. Finally, these rules establish affirmative action requirements for casino licensees with regard to the purchase of goods and services from certified [and provisionally certified] minority and women business enterprises.

19:53-1.2 Definitions

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

...

["Provisionally certified MBE" or "provisionally certified WBE" means an enterprise which has attested to its status as an MBE or WBE, respectively, pursuant to the provisions of N.J.A.C. 19:53-5.4.]

...

["Successor business" means a business enterprise which satisfies the definition of MBE or WBE set forth in N.J.A.C. 19:53-5.4 but, within the past two years, either was acquired as an ongoing business or more than 50 percent of the assets of the business, as valued in accordance with generally accepted accounting principles, were acquired, other than by inheritance, from a person or persons in whose ownership or control the business enterprise would not qualify as an MBE or WBE.]

...

19:53-1.4 Designation of equal opportunity officer by casino licensee or applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. A casino license applicant shall designate its equal opportunity officer prior to the start of actual construction by the applicant or by any affiliated entity of any structure or facility to be used as an approved casino hotel, or prior to the recruitment and employment of personnel necessary to undertake the business of the hotel or casino, whichever first occurs. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees, that equal business opportunity is afforded to all persons, that affirmative efforts are made to recruit and employ women and minorities for positions in which the licensee or applicant is below the applicable employment goals, that the casino licensee makes affirmative efforts to achieve the applicable participation goals for business with certified [and provisionally certified] MBEs and WBEs, that a policy advocating the employment and advancement of persons with disabilities is promulgated and enforced, and that the licensee or applicant achieves full implementation of its approved EEBOP. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved EEBOP. The position of equal opportunity officer shall require a casino key employee license endorsed as such.

(b) (No change.)

(c) In addition to the responsibilities specified in (b) above, the equal opportunity officer shall have the responsibility to:

1.-2. (No change.)

3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement of the Act and this chapter, which responsibility shall include, without limitation, the obligation to prepare and submit such reports, documentation and statistical information as the Commission shall require concerning the activities of the licensee or applicant with certified [and provisionally certified] MBEs and WBEs in contracting and purchasing; and

4. (No change.)

(d)-(f) (No change.)

19:53-1.5 Advisory boards

(a) The Commission may establish an advisory board consisting of local or State officials, representatives of area businesses and communities, women and minority organizations, union officials, disabled persons, casino industry representatives or other interested parties. Such advisory board may make recommendations to the Commission, upon its request, concerning policies or techniques to assure equal employment opportunity for all persons and the participation of certified [and provisionally certified] MBEs and WBEs in purchasing and contracting in the casino industry and the casino-related construction industry.

(b) (No change.)

19:53-2.2 Obligation of casino licensee or applicant to monitor all construction activity

(a) (No change.)

(b) The monitoring system shall provide for systematic coordination between the equal opportunity officer, the relevant departments within the organization of the casino licensee or applicant which contract for construction work and the purchasing department. The monitoring system shall include, without limitation, procedures which:

1.-7. (No change.)

8. Ensure that certified [and provisionally certified] MBEs and WBEs are afforded equal opportunity to compete in the bidding for construction contracts and subcontracts; and

9. Track the participation of certified [and provisionally certified] MBEs and WBEs in construction projects.

19:53-2.4 Reporting obligations of casino licensees and applicants concerning the construction work force

(a) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee

or applicant shall be required to file each of the following monthly reports or submissions regarding its construction work force with the Commission and Division:

1. (No change.)

2. A Project Status Report, which shall describe all construction projects involving contractors or subcontractors which have started or are scheduled to start prior to the filing of the next Project Status Report and shall include: the name and project number for each project; a listing of all contractors and subcontractors working or scheduled to work on each project; the name of any certified [or provisionally certified] MBE or WBE working or scheduled to work on each project, and the scheduled or actual start date and anticipated finish date of construction. The Project Status Report shall be submitted in a format prescribed by the Commission and shall be filed in accordance with a schedule proposed by the casino licensee or applicant and approved by the Commission.

3. (No change.)

(b) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall file an Annual Summary of Construction Activity with the Commission and Division at least four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing. The Annual Summary of Construction Activity shall include a summary of all construction projects started by the casino licensee or applicant during the four calendar quarters immediately preceding the filing deadline for the Annual Summary of Construction Activity. The summary shall, without limitation, describe:

1.-3. (No change.)

4. The total dollar amount of construction expenditures made with certified [or provisionally certified] MBE or WBE construction firms.

19:53-5.3 Participation goals for casino licensee purchases of goods and services from minority and women businesses

(a) Beginning on the date of receipt of its casino license, every casino licensee shall make a good faith effort to spend each year at least five percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified [and provisionally certified] MBEs and WBEs.

(b) Effective January 1, 1991, or three years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 10 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified [and provisionally certified] MBEs and WBEs.

(c) Effective January 1, 1994, or six years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 15 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified [and provisionally certified] MBEs and WBEs.

(d) Every casino licensee shall make a good faith effort, considering the availability of both groups, to distribute the dollar value of its contracts for goods and services equitably between[.]

[1. Certified and provisionally] certified MBEs[;] and

[2. Certified and provisionally] certified WBEs.

19:53-5.4 [Provisional certification] **Commission directory of certified minority and women [businesses] business enterprises; removal from directory; obligation to obtain registration or license**

[(a) An enterprise may qualify for provisional certification as an MBE, a WBE, or both. A successor business is not eligible for provisional certification as an MBE or WBE pursuant to this section but may apply for DCED certification as an MBE or WBE by complying with the requirements of N.J.A.C. 12A:11.

(b) In order to qualify for provisional certification as an MBE or WBE, an enterprise must be independently owned, operated and controlled. An enterprise shall be deemed to be independently

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owned, operated or controlled if its management is responsible for both its daily and long term operation and owns at least 51 percent of the enterprise.

(c) In order to qualify for provisional certification as an MBE, an enterprise must be:

1. A sole proprietorship owned and controlled by a minority; or
2. A partnership or joint venture owned and controlled by minorities in which at least 51 percent of the ownership interest is held by minorities and the management and daily business operations are controlled by one or more of the minorities who own it; or
3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51 percent owned by one or more minorities or, if stock is issued, at least 51 percent of the stock is owned by one or more minorities.

(d) In order to qualify for provisional certification as a WBE, an enterprise must be:

1. A sole proprietorship owned and controlled by a woman; or
2. A partnership or joint venture owned and controlled by women in which at least 51 percent of the ownership interest is held by women and the management and daily business operations are controlled by one or more of the women who own it; or
3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by one or more women or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

(e) Any enterprise which meets the requirements in (b) and either (c) or (d) above shall be provisionally certified by the Commission if the enterprise files an affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide MBE or WBE. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith pursuant to (i) below if the enterprise makes any material misrepresentation of fact in its application for certification or provisional certification.

(f) Upon filing of the documents required in (e) above, the enterprise shall be notified that it has been provisionally certified and] **(a) Any enterprise that is currently certified by the Department of Commerce and Economic Development as an MBE or WBE shall be listed in the Commission's directory of certified [and provisionally certified] MBEs and WBEs (Commission MBE/WBE Directory). Any enterprise that has its MBE or WBE certification revoked by DCED or that fails to maintain its DCED certification shall be removed immediately from the Commission MBE/WBE Directory.** [(g) A provisionally certified MBE or WBE shall be required to complete and submit to the Commission or the DCED an application for DCED certification in accordance with the provisions of N.J.A.C. 12A:11 within 60 days from the date of notice of its provisional certification.] The Commission shall provide assistance to MBEs and WBEs in applying for certification by the DCED. [In the event that a completed application for DCED certification is not filed within 60 days, the MBE or WBE shall lose its provisional certification and shall be removed from the Commission MBE/WBE Directory.

(h) Any provisional certification of an enterprise granted by the Commission pursuant to this section shall automatically terminate upon a final decision by the DCED on the certification application of the enterprise pursuant to N.J.A.C. 12A:11. The revised status of the enterprise shall be reflected in the Commission MBE/WBE Directory.]

[(i)](b) If it is determined by the Commission or the DCED, upon the denial of certification by the DCED, or at any time before or after such decision, that an enterprise has intentionally misrepresented material facts [on the affidavit required pursuant to (e) above or] in its application for DCED certification, the Commission, after an appropriate hearing pursuant to N.J.A.C. 19:42, shall remove the enterprise from the Commission MBE/WBE directory. In addition, the Commission may prohibit any such enterprise from trans-

acting further business with any casino licensee or applicant for a period of five years. Such prohibition may be applied to all owners, principals, officers and employees of the enterprise.

[(j)](c) Certification [or provisional certification] of an enterprise as an MBE or WBE does not in any way relieve that enterprise or any casino licensee of its obligation to comply with any requirement of the Act or the Commission's rules concerning registration or licensure of enterprises doing business with casino licensees.

### 19:53-5.5 Determination of casino licensee net disbursements for goods and services and disbursements to MBEs and WBEs

(a) In determining the net disbursements for goods and services made by a casino licensee during any period and the percentage thereof made with certified [and provisionally certified] MBEs and WBEs, a casino licensee shall first record the amount of its gross disbursements during the period, including bus business, and then determine its adjusted gross disbursements by deducting its allowable administrative costs and allowable direct labor costs for the period.

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

(e) A casino licensee may fulfill up to 70 percent of the MBE and WBE participation goals established by N.J.A.C. 19:53-5.3, or any part thereof, by requiring contractors to award portions of their contracts to certified [and provisionally certified] MBEs and WBEs, to the extent that dollars are actually spent with certified [and provisionally certified] MBEs and WBEs. In determining the good faith efforts of a casino licensee to meet its MBE and WBE participation goals, no consideration shall be given to dollars spent by casino contractors with certified [and provisionally certified] MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking credit for subcontracts awarded to certified [or provisionally certified] MBEs or WBEs by a casino contractor shall provide proof of the amount of the disbursements to the Commission. Such proof shall include:

1. (No change.)

2. Copies of any payment orders and checks made payable to the certified [or provisionally certified] MBE or WBE subcontractor or copies of computer generated records which indicate that such payments were made; and

3. (No change.)

(f) The percentage of disbursements awarded to certified [and provisionally certified] MBEs and WBEs by a casino licensee during any period shall be determined by dividing the total amount of such disbursements made during the period by the casino licensee and by any contractor pursuant to an agreement authorized under (e) above, by the net disbursements of the casino licensee for the period as determined in (a) and (d) above.

(g) When recording or reporting the dollar value of its disbursements for goods or services with MBEs and WBEs, a casino licensee shall record or report a disbursement with an enterprise that has been certified as both an MBE and WBE only once. If a casino licensee has an agreement with a contractor in which the contractor agrees to award a portion of its contract to certified [or provisionally certified] MBEs or WBEs pursuant to (e) above and the contractor itself is a certified [or provisionally certified] MBE or WBE, a casino licensee shall not claim credit for any disbursement to the certified [or provisionally certified] MBE or WBE subcontractor if a corresponding credit is claimed for the casino contract.

### 19:53-5.7 Quarterly casino licensee disbursement reports

(a) Each casino licensee shall submit to the Commission and the Division, in a format prescribed by the Commission, a quarterly report on its purchases of goods and services, including bus business, which shall consist of the following information recorded in accordance with the requirements of N.J.A.C. 19:53-5.5:

1.-5. (No change.)

6. The name and vendor identification number of each certified [and provisionally certified] MBE or WBE with whom the casino licensee did business during the quarter, as well as:

i.-ii. (No change.)

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iii. The total amount of dollars, if any, which were disbursed to the certified [or provisionally certified] MBE or WBE by a contractor pursuant to an agreement as described in N.J.A.C. 19:53-5.5(e);

7. The total dollar amount of disbursements made to certified [and provisionally-certified] MBEs and WBEs during the quarter by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the net disbursements reported pursuant to (a)5 above that each listed amount represents; and

8. The total dollar amount of disbursements made during the quarter to certified [and provisionally-certified] MBEs and WBEs by contractors pursuant to agreements as described in N.J.A.C. 19:53-5.5(e).

(b) (No change.)

19:53-5.9 Required reporting adjustments for enterprises removed from the Commission MBE/WBE Directory

(a) A casino licensee shall be required to report separately in the MBE or WBE disbursement sections of its current quarterly disbursement report, required pursuant to N.J.A.C. 19:53-5.7, or its current annual disbursement report, required pursuant to N.J.A.C. 19:53-5.8, any disbursement made to a certified [or provisionally certified] MBE or WBE which is removed from the Commission MBE/WBE Directory prior to the submission of the report to the Commission and the Division.

(b) In determining the good faith efforts of a casino licensee to implement and comply with the provisions of its approved EEBOP pursuant to N.J.A.C. 19:53-6.8, a casino licensee may receive credit for any disbursement made to an MBE or WBE which was certified [or provisionally certified] at the time of the disbursement even if such enterprise is subsequently removed from the Commission MBE/WBE Directory unless the casino licensee knew or should have known at the time of the disbursement that the MBE or WBE did not qualify for certification.

(c) Any disbursement to an MBE or WBE which is removed from the Commission MBE/WBE Directory during the current reporting period shall not be included in any report prepared by the Commission or any casino licensee concerning actual disbursements made to certified [or provisionally certified] MBEs and WBEs.

19:53-6.3 Construction section of an EEBOP

(a) (No change.)

(b) If a casino licensee or applicant has failed to achieve the contractor and subcontractor employment goals for women and minorities established pursuant to N.J.A.C. 19:53-2.3, topics appropriate for inclusion in the construction section of an EEBOP may also include, without limitation, the following:

1. Innovative strategies for increasing the participation of women and minorities in the construction work force and the utilization of certified [and provisionally certified] MBEs and WBEs as contractors and subcontractors, assuming that forecasted capital expenditures remain level; and

2. (No change.)

19:53-6.5 Business section of an EEBOP

(a) (No change.)

(b) If a casino licensee has failed to achieve the participation goals for goods and services to be purchased from certified [or provisionally certified] minority and women businesses established pursuant to N.J.A.C. 19:53-5.3, topics appropriate for inclusion in the business section of an EEBOP may also include, without limitation, the following:

1. An analysis of the goods and services which are anticipated to be purchased by the casino licensee and the types of goods and services which might be purchased from certified [and provisionally certified] MBEs and WBEs based on availability.

2. Strategies and initiatives to be undertaken by the casino licensee to assist certified [and provisionally certified] MBEs and WBEs to compete, survive and grow in casino contracting and purchasing, which may include, without limitation, any efforts by the casino licensee to:

i.-iv. (No change.)

3. (No change.)

4. The means by which the casino licensee will provide notice to certified [and provisionally certified] MBEs and WBEs of its intent to purchase goods or services;

5. Procedures which the casino licensee will use to document its good faith efforts to utilize the services of certified [and provisionally certified] MBEs and WBEs, such as documentation of affirmative efforts by the licensee to:

i. Increase financial assistance to certified [and provisionally certified] MBEs and WBEs through the use of low-cost loans;

ii. Develop special payment terms for certified [and provisionally certified] MBEs and WBEs;

iii. (No change.)

iv. Encourage joint ventures between certified [and provisionally certified] MBEs and WBEs and majority-owned businesses or joint ventures with other certified [and provisionally certified] MBEs and WBEs;

v. (No change.)

vi. Develop incentives for majority contractors to subcontract to certified [and provisionally certified] MBEs and WBEs, and to retain and sustain certified [and provisionally certified] MBEs and WBEs vendors through encouragement and development activities; and

6. Programs, consistent with N.J.A.C. 19:53-5.5, which require contractors to subcontract a portion of their contracts to certified [or provisionally certified] MBEs and WBEs.

19:53-6.6 Atlantic City small businesses

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

(c) Any enterprise which meets the requirements in (a) above may be certified by the Commission as an Atlantic City small business if it files an application and affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide Atlantic City small business. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith if the enterprise makes any material misrepresentation of fact in its affidavit or application for certification. Any enterprise which misrepresents its status as an Atlantic City small business shall be subject to the same penalties set forth in N.J.A.C. 19:53-5.4[(i)](b).

(d) The Commission shall maintain a section in its directory of certified [and provisionally certified] MBEs and WBEs which lists all certified Atlantic City small businesses. An enterprise may be certified as both an MBE or WBE and an Atlantic City small business.

19:53-6.12 Waiver of reporting requirements for casino licensees

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

(c) If a casino licensee meets the applicable goals specified in N.J.A.C. 19:53-5.3 for goods and services purchased from certified [and provisionally certified] MBEs and WBEs for four consecutive quarters, the quarterly disbursement report required by N.J.A.C. 19:53-5.7 shall be waived.

(d) (No change.)

(a)

## **EXECUTIVE COMMISSION ON ETHICAL STANDARDS**

### **Executive Commission on Ethical Standards Rules Attendance at an Event Sponsored by an Interested Party**

#### **Proposed Amendment: N.J.A.C. 19:61-6.4**

Authorized By: Executive Commission on Ethical Standards,  
Rita L. Strmensky, Executive Director.

Authority: N.J.S.A. 52:13D-12 et seq.

Proposal Number: PRN 1995-218.

## PROPOSALS

Interested Persons see Inside Front Cover

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Submit written comments by May 3, 1995 to:  
Rita L. Strmensky, Executive Director  
Executive Commission on Ethical Standards  
28 West State Street, Rm. 1407  
CN 082  
Trenton, New Jersey 08625-0082

The agency proposal follows:

### Summary

The proposed amendment to N.J.A.C. 19:61-6.4 is a result of the Commission's consideration of comments on the rule originally proposed on December 5, 1994 at 26 N.J.R. 4757(a) and subsequently adopted on February 21, 1995 at 27 N.J.R. 763(a). This proposed amendment permits a State official who participates in an event that is designed to provide training, dissemination of information or the exchange of ideas, under limited and controlled conditions, to attend such events at the expense of an interested party. The amendment articulates standards under which a State official may accept a direct or indirect benefit from an interested party and provides for review by the Executive Commission.

The proposed amendment replaces the first example under N.J.A.C. 19:61-6.4 with an example that illustrates the application of the exception allowed in N.J.A.C. 19:61-6.4(c).

There is a minor change to the second example that was submitted with the adopted rule but was not published on February 21, 1995 at 27 N.J.R. 763(a). This change was made to make the language of the example consistent with the terminology defined in the rule.

### Social Impact

The effect of the proposed amendment is to provide a limited and controlled exception to the general standard that prohibits a State official from accepting direct or indirect benefits in connection with attending an event sponsored by an interested party.

All officers and employees of the Executive branch of State government will be affected by this amendment. The proposed amendment will have a beneficial social impact in that the participation of State officials in the exchange and dissemination of information and ideas with the private sector will be facilitated under limited conditions while reducing the cost to the taxpayer.

### Economic Impact

The proposed amendment may have a small economic impact on State agencies because approvals must be forwarded to the Executive Commission for review. Those same agencies will save some costs previously paid by the State for attendance of officials at the covered events.

### Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the proposed amendment implements the Executive Commission's interpretation of N.J.S.A. 52:13D-12 et seq., particularly N.J.S.A. 52:13D-24, and is not subject to any Federal requirements or standards.

### Regulatory Flexibility Statement

The proposed amendment imposes no 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, a regulatory flexibility analysis is not necessary. The amendment permits a State official who participates in an event designed to provide training, dissemination of information or the exchange of ideas, under limited and controlled circumstances, to attend such an event at the expense of the interested party.

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

19:61-6.4 Attendance at an event sponsored by an interested party

(a) The State official shall secure the prior approval of the department head to attend such an event.

(b) **Except as provided in (c) below:**

1. The State shall pay the reasonable expenses of the State official associated with attending the event.

2. Neither the State official nor the State shall receive any direct or indirect benefit from any other source.

(c) **The requirement and prohibition in (b) above need not apply if the event is designed to provide training, dissemination of information, or the exchange of ideas and the State official is making a speech, is participating in a panel at the event or is an accompanying resource person for the speaker and/or participant subject to**

**the reasonable approval of the department head. The direct or indirect benefit provided to the State official by the sponsor of the event must be identical to the benefits provided to other speakers or panel participants. If an actual conflict or the appearance of conflict could arise under the application of this subsection, (b) above shall govern. Approvals granted under this exception must be forwarded to the Commission for review.**

(d) The State official may pay his or her own expenses with his or her personal funds.

[(c)](e) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

### Examples

[The Commissioner of Banking is asked, by the New Jersey Bankers Association, to attend their annual meeting in Hilton Head to address members on the subject of the effects of proposed banking regulations in New Jersey. The Association has offered to pay all travel and hotel expenses for the Commissioner. With proper approval, the Commissioner may attend the meeting; however, because the Department of Banking regulates the Association's members, the State or the Commissioner must pay the reasonable expenses of the trip and neither the State nor the Commissioner may accept any reimbursement or direct benefit from any other source. The Commissioner may not accept an honorarium or fee for his speech.]

**An employee of the Department of Environmental Protection has been invited to attend a conference of the Association of Environmental Authorities and has been asked to present a short program to explain a new series of forms being proposed by the Department. The Association has offered to waive the \$200.00 conference fee; the conference program includes morning and afternoon refreshments and lunch. If the Department head approves the employee's attendance and participation in the conference, the employee may accept the waiver of the fee and the refreshments and meal included in the program. A copy of the Department head's approval must be forwarded to the Commission.**

The Division of Motor Vehicles is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several Division employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore [a vendor] **an interested party with respect** to the Division, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

## EDUCATION

(a)

### STATE BOARD OF EDUCATION

#### Equivalency and Waiver Process

#### Proposed New Rules: N.J.A.C. 6:3A

Authorized By: State Board of Education, Leo Klagholz,

Secretary, State Board of Education and Commissioner,  
Department of Education.

Authority: N.J.A.C. 6:3A-1 et seq., and N.J.S.A. 52:14B-4.

Proposal Number: PRN 1995-216.

Submit written comments by May 3, 1995 to:

Sharon A. McAtee, Director  
State Board Office  
New Jersey Department of Education  
225 East State Street, CN 500  
Trenton, New Jersey 08625-0500

The agency proposal follows:

### Summary

The proposed new rules provide for an equivalency or a waiver process that would allow district boards of education and schools operated and

regulated by the New Jersey Department of Education to obtain approval to: 1) achieve the intent of a specific regulation through an alternate means that is different from, but judged equivalent to, those prescribed within the regulation; or 2) avoid complying with the procedures or the intent of a specific rule for reasons that are judged to be educationally, organizationally and fiscally sound.

Administrative rules are necessary to ensure educational opportunity, guarantee health and safety, and require accountability. Administrative rules must also appropriately protect the interests of children and taxpayers. However, it is important that the regulatory process achieve those important purposes in ways that provide appropriate flexibility for the exercise of responsible judgment.

The intent of the new rules is to: provide relief from overly prescriptive regulations, focus compliance with the regulations on results rather than process and remove obstacles so that school districts may develop creative, cost-effective solutions to complex problems and needs. The following describes five substantive reasons for providing either an equivalency to or a waiver from an existing rule:

- **Initiative:** It is recognized that the problems and challenges of educating students are complex and often difficult. No one solution fits every circumstance, and sometimes creativity, innovation and initiative are as important as passive compliance with top-down rules. The proposed new rules are intended to encourage local district boards of education to exercise judgment and initiative in searching for the best ways to operate schools and educate children by permitting them to meet the spirit of the regulations without limiting them to inflexible procedures.

- **Accountability:** By encouraging districts to exercise judgment, the proposed new rules will make them more accountable for the decisions they make and the results they achieve. It is difficult to hold educators accountable for decisions which they merely implement in response to prescriptive rules.

- **Unanticipated Effects:** Regulations that achieve their intended effects sometimes produce unintended, anomalous consequences in specific situations. The proposed rules would provide two different means by which a district could avoid anomalous effects of specific rules.

- **Economies:** The proposed rules are also aimed at allowing districts to develop more economical alternatives to procedures prescribed in specific rules.

- **Evaluation and Review of Rules:** Regulatory equivalency and waiver processes will identify and provide information concerning problems and difficulties as perceived by school districts, as well as their views concerning improved alternatives. This information will be helpful in accomplishing the broader task of reviewing, evaluating and improving educational regulations.

The proposed new rules are part of a larger effort to improve the regulatory process. In 1992 and again in 1994, the State Board adopted regulations within two chapters of its rules to provide regulatory flexibility:

- N.J.A.C. 6:8-9.7 specified conditions under which the State Board of Education may approve waivers to its rules for special needs districts, on a case-by-case basis, when the rules interfere with the ability of the district to implement programs to improve student achievement results; and

- N.J.A.C. 6:28-12.1 provides a pilot project in the Office of Special Education which allows districts, selected through a proposal process, to pursue desired educational results for students with educational disabilities through the implementation of innovative programs and practices that are equivalent to the requirements prescribed in the Administrative Code.

In 1993, the State Board pursued the concept of regulatory flexibility by approving the creation of an advisory Code Review Committee to examine all chapters of Title 6 and to identify regulations which are unnecessary or counterproductive to the effective and efficient operation of school districts. The Committee's report made three major recommendations:

- A comprehensive review of all existing regulations should be conducted to refocus code requirements from "process" to "results" and to identify rules that are overly prescriptive or counterproductive to the effective and efficient operation of school districts;

- A moratorium should be imposed on all rulemaking actions to allow the department to complete a comprehensive review of all its rules; and

- A "waiver process" should be created which would allow local school districts to obtain approval to pursue desired educational results through approaches that are equivalent to those prescribed in rule.

On August 25, 1994, Governor Whitman acknowledged the State Board's leadership role in initiating the concept of regulatory review and issued Executive Order No. 22 which directs the Department to conduct a comprehensive review of its rules and make recommendations for change to the State Board no later than December 31, 1995. The executive order suspends the "sunset" requirement of existing rules in order to facilitate the Department's review. The executive order does not place a moratorium on all rulemaking action. It extends the expiration date of existing rules and allows the Department to direct resources to a comprehensive review of the content of the existing rules as well as the Department's process of developing rules for the State Board's consideration.

On November 2, 1994, Governor Whitman issued a second executive order related to administrative rules. Executive Order No. 27 requires State agencies to justify any decision to adopt an administrative rule for a program established under Federal law or State statute that exceeds an existing Federal standard. The intent of the executive order supports the Governor's initiative for a government examination of administrative regulations to identify those that generate unnecessary costs without producing desired results.

The goal of these efforts is to obtain the proper balance in the rulemaking process in order to provide legitimate protections for children and taxpayers while encouraging innovative, individualized and cost effective solutions to educational problems.

A summary of the new rules follows:

#### N.J.A.C. 6:3A-1.1 Purpose

This section is a statement of the chapter's purpose to provide regulatory flexibility for school districts to meet the requirements of N.J.A.C. Title 6.

#### N.J.A.C. 6:3A-1.2 Definitions

This section defines the two options: a local school district may apply for an equivalency or a waiver to a specific rule in order to provide efficient and effective educational programs.

#### N.J.A.C. 6:3A-1.3 Criteria for an equivalency or waiver

The equivalency or waiver process has two tiers: first, each request for an equivalency or waiver must meet three criteria and, second, each request must meet the specific requirements of an application.

This section specifies the criteria that a request for an equivalency or waiver must meet in order to be considered for approval. The criteria limits the scope of the requests to those that do not: negate the spirit or intent of a Federal or State statute or regulation, interfere with a thorough and efficient education, or present a risk to student health, safety or civil rights.

#### N.J.A.C. 6:3A-1.4 Equivalency process

This section describes the process that a school district must complete to apply for approval of an equivalency to an administrative rule and gives an overview of the information and documentation that must be included in the application. The purpose of the application is to determine that:

- The rule is in fact preventing the school district from taking the requested action;
- The district's proposal is likely to produce at least an equivalent result;
- The local education community has been informed about the proposal; and
- The chief school administrator and local board of education have approved the proposed equivalency.

#### N.J.A.C. 6:3A-1.5 Waiver process

This section describes the process that a school district must complete to apply for approval of a waiver to an administrative rule and gives an overview of the information and documentation that must be included in the application. The purpose of the application is to determine that:

- The rule is in fact preventing the school district from taking the requested action;
- The district's proposal demonstrates that the waiver is educationally, organizationally and fiscally sound;
- The local education community has been informed about the proposal; and
- The chief school administrator and local board of education have approved the proposed waiver.

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### N.J.A.C. 6:3A-1.6 Review and duration of the equivalency or waiver

This section gives an overview of the requirements for evaluation, continued participation and the length of operation of an approved equivalency or waiver. It also establishes a reporting requirement by the Commissioner to the State Board of Education.

#### Social Impact

The proposed new rules provide options for all school districts. Educators have contended that some administrative rules are costly to implement but do not enhance or may actually inhibit quality or the effectiveness of school operation. For those rules that are overly prescriptive, school districts may design an equivalent which is creative, innovative or a more cost effective means of achieving a comparable or enhanced result. School districts may also seek approval for a waiver to a specific rule for reasons that are judged educationally, organizationally or fiscally sound.

The equivalency or waiver process also encourages parent involvement and participation by the local education community by including them in the development level of the equivalency or waiver proposal. Administrators and teachers will also be affected by the potential for increased participation in the development of creative programs and practices which are designed to meet the specific needs of their students. It also has the potential of creating fiscal economies which could benefit local taxpayers and increase support for local school district's efforts on behalf of the schools.

#### Economic Impact

The equivalency or waiver process is optional and, therefore, will not present a financial burden. School districts that choose to submit an application will design the equivalency or waiver to meet the needs of an individual school or schools. It is the school district's responsibility to create options which are cost effective.

The general impact to the public will be positive because it may produce fiscal economies or higher quality programs and services at a comparable or lower cost.

#### Executive Order No. 27 Statement

The proposed new rules also comply with Executive Order No. 27 because they create options for reduced regulatory requirements and do not impose a greater standard of compliance than existing Federal regulations.

#### Regulatory Flexibility Analysis

The proposed new rules may impose compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., only in that private schools for the handicapped would seek and/or obtain equivalencies or waivers from applicable Department regulations. Private schools for the handicapped would incur the administrative expense of application for an equivalency or waiver, including the necessary descriptions and demonstrations required under N.J.A.C. 6:3A-1.4 and 1.5. In addition, such private schools granted an equivalency or waiver would be required to provide reports and documentation of measurable results as may be required by the Commissioner. It is not anticipated that professional services would need to be employed to comply with these rules. As these requirements are necessary to permit a complete and fair evaluation of an application, and to monitor results of an equivalency or waiver granted, no lesser requirements can be provided for private schools for the handicapped.

Full text of the proposed new rules follows:

### CHAPTER 3A

### REGULATORY EQUIVALENCY AND WAIVER

#### SUBCHAPTER 1. EQUIVALENCY AND WAIVER PROCESS

##### 6:3A-1.1 Purpose

The purpose of this chapter is to provide regulatory flexibility for school districts to meet the requirements of the rules contained in the New Jersey Administrative Code Title 6; this includes: educational services commissions, jointure commissions, regional day schools, county special services, Marie Katzenbach School for the Deaf, private schools for the handicapped, college operated programs and programs operated by the Departments of Human Services and Corrections as well as school districts; agencies and clinics are excluded. Regulatory flexibility may be granted as a waiver to a specific rule or as an equivalency to a specific rule so that school districts can provide effective and efficient educational programs.

The Commissioner, with authority delegated by the State Board, may on a case-by-case basis, approve a waiver or an equivalency to a specific rule.

##### 6:3A-1.2 Definitions

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

"Equivalency" means the granting of approval to achieve the intent of a specific rule through an alternate means that is different from, yet judged to be comparable to or as effective as, those prescribed within the rule.

"Waiver" means the granting of approval to avoid compliance either with the specific procedures or the intent of a specific rule for reasons that are judged educationally, organizationally and fiscally sound.

##### 6:3A-1.3 Criteria for an equivalency or waiver

(a) An equivalency or waiver to a specific rule must meet the following criteria:

1. The spirit and intent of New Jersey Statutes Title 18A, applicable Federal laws and regulations, and the New Jersey Administrative Code Title 6 are served by granting the equivalency or waiver;
2. The provision of a thorough and efficient education to the students in the district is not compromised as a result of the equivalency or waiver; and
3. There will be no risk to student health, safety or civil rights by granting the equivalency or waiver.

##### 6:3A-1.4 Equivalency process

(a) The Commissioner, with authority delegated by the State Board for the purpose of this rule, may act to approve an equivalency to a specific rule based on an application submitted by a school district. The completed application must be signed by the chief school administrator and approved by the district board of education. The application developed by the Department and completed by the district shall at a minimum:

1. Describe what the district intends to accomplish that is currently prevented or disallowed by an existing rule;
2. Describe the conditions or reasons for the proposed equivalency including the reference of the specific rule which necessitates the proposal;
3. Describe the projected measurable results which will provide programs or services that are at least equal to the required current rule; and
4. Demonstrate that the school district's educational community, including the district board of education, parents, administration and staff, have been informed of the proposed equivalency to the specific rule through public comment and input.

##### 6:3A-1.5 Waiver process

(a) The Commissioner, with authority delegated by the State Board for the purpose of this rule, may act to approve a waiver to a specific rule based on an application submitted by a school district. The completed application must be signed by the chief school administrator and approved by the district board of education. The application developed by the department and completed by the school district shall at a minimum:

1. Describe what the school district intends to accomplish that is currently prevented or disallowed by an existing rule;
2. Describe the conditions or reasons for the proposed waiver including the reference of the specific rule which necessitates the proposal;
3. Describe the projected measurable results which will demonstrate that the waiver is educationally, organizationally and fiscally sound; and
4. Demonstrate that the school district's educational community, including the district board of education, parents, administration and staff, have been informed of the proposed waiver to the specific rule through public comment and input.

##### 6:3A-1.6 Review and duration of the equivalency or waiver

(a) The school district shall submit reports and documentation of the measurable results for periodic review from time to time as required by the Commissioner.

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(b) The Commissioner will present quarterly reports and an annual evaluation to the State Board of the equivalencies and waivers that have been granted.

(c) The Commissioner may rescind the equivalency or waiver to the rule if the district is not complying with the intent of the specific rule. The Commissioner shall provide the district with a reasonable period of time to comply with all applicable rules after the equivalency or waiver approval is rescinded.

(d) An equivalency or waiver shall not be granted for a period of more than three years.

## (a)

## STATE BOARD OF EDUCATION

## Certification Fees

## Proposed Amendment: N.J.A.C. 6:11-3.2

Authorized By: State Board of Education, Leo Klagholz,  
Secretary, State Board of Education and Commissioner,  
Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34,  
18A:6-38 and 18A:26-10.

Proposal Number: PRN 1995-217.

Submit written comments by May 3, 1995 to:  
Sharon A. McAtee, Director  
State Board Office  
New Jersey Department of Education  
225 East State Street, CN 500  
Trenton, New Jersey 08625-0500

The agency proposal follows:

## Summary

Operations of the Office of Professional Development and Licensing in the Division of Academic Programs and Standards are funded exclusively by the revenue earned in the form of collected fees. N.J.S.A. 18A:26-7 requires the payment of such fees and authorizes the State Board of Education to establish fee rates.

As a matter of practice, rates have been increased approximately every five years to fund inflated costs and/or increased workload. In 1983, the basic fee rate was increased by 50 percent from \$20.00 to \$30.00. In 1988, the basic rate was raised by 33 percent from \$30.00 to \$40.00. In 1993, the basic rate was increased by 25 percent from \$40.00 to \$50.00. The current fee structure does not produce sufficient revenue to provide the efficiencies and enhancements needed to continue to even marginally satisfy the mandated functions. These mandated functions require skills which include painstaking attention to detail, accuracy, integrity and a customer service orientation. The loss of staff through attrition and layoffs, the paucity of technology and the dramatic increase in workload have combined to create a reactive mode of operation. The demand for public accessibility and faster quality service delivery must be countered with an unswerving commitment to consistency of standards, accountability for issuance decisions and liability in these litigious times. Consequently, this year the Department is proposing an amendment after two years based on:

The rapid growth of the Provisional Teacher (PTP) and the Administrator Training (ATP) Programs since 1993 has increased the costs of processing candidate materials, demands on staff time, need for policy determinations to address anomalies, etc.

	1993	1995
PTP	300	3,000 (+2,700)
ATP	138	494 (+356)

The County Offices report a steady increase in the number of substitute certificates, as well as a need to be better linked to the central offices.

In addition, after a three-year moratorium on site visitations as part of the accreditation process for approved-college teacher preparation programs, the Department needs staff and resources to fully implement the accreditation process and ensure our NASDTEC/reciprocity status. Moreover, as the Department expands to address professional development in a comprehensive and systemic way, new demands are placed on OPD/L staff and resources.

The need for enhanced technology to deal with the high volume, need for accuracy and public credibility (capacity to improve turn-around-time, respond to inquiries, track information, etc.).

The proposed amendment would provide inclusion of a \$50.00 fee for the issuance of the certificate of eligibility/certificate of eligibility with advanced standing. These certificates are the initial step in the three-step sequential certificate issuance now required for most instructional and administrative endorsements. The fee for the second step in the sequence, issuance of the provisional certificate when the candidate is employed, is set at \$10.00 as a function of the reduced expense associated with processing this one-year certificate. The fee for the final step, issuance of standard certification, would be raised to \$50.00.

The additional fees generated from the proposed increases would contribute toward offsetting some of the costs of improved technology to allow on-screen evaluations, tracking of applications, linkages with other related/support computer programs and more timely response to applicants and school districts. A proposed telephone system upgrade will accommodate the current volume of inquiries and allow applicants/districts to determine the status of applications without direct staff contact.

The proposed amendment would allow the Office of Professional Development and Licensing to fill current vacancies and to add additional staff to efficiently and effectively address the increased workloads which have resulted from certification reform initiatives over the past several years.

## Proposed Fees

The increases are not across the board; rather they are in three areas which generate the most dramatic increase in workload. The proposed amendments to N.J.A.C. 6:11-3.2 increase the fees for the sequential certificate issuance and the county substitute certificate, and clarifies the three-tiered steps in the sequential certification process.

The following is a list of the proposed fee increases:

## Sequential Certificate Issuance:

Certificate of Eligibility or	
Certificate of Eligibility with	
Advanced Standing	\$50.00
Provisional Certificate	\$10.00
Standard Certificate	\$50.00
County Substitute Certificate	\$50.00

The proposed fees are fair in relation to the amount and complexity of work associated with the issuance and monitoring of the various processes, particularly the sequential certificate issuance. In addition, the new fees would place New Jersey in the mid-range of fee amounts charged by other states in this region.

## Academic Qualifying Certificates

The Office of Licensing and Academic Credentials also processes academic qualifying certificates for certified public accountants, morticians, physicians and chiropractors. The current fee for these individuals is \$30.00. The proposed increase for this fee is \$75.00. This fee has not been raised for over 10 years. The process of evaluating and issuing these qualifying certificates is labor-intensive. The current level of technology in the Office of Professional Development and Licensing affords no computer assistance in the process.

The fee for academic qualifying certificates is established by State law and each increase requires legislative adoption. Therefore, the proposed fee increases for academic qualifying certificates is not included in the proposed rule change.

## Social Impact

The proposed amendment will have a minor social impact in that users of the licensing office services will be required to pay increased fees to acquire professional licenses. The proposed fee increases are nominal, compared with other costs associated with professional preparation, such as college tuition, and are comparable to or less than similar fees charged by other states. The fees do not represent a significant or unfair obstacle to gaining entry to public education careers and are more than offset by increases in teacher salaries in New Jersey. In addition, the proposed amendment will enable the Division of Professional Development and Licensing to enhance licensing processes and related services.

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### Economic Impact

The proposed amendment will assure that licensing applicants, rather than the public at large, bear the cost of State services which benefit them personally. In effect, those applicants who seek licenses of their own accord to qualify them for employment in publicly funded professional careers would pay all fees associated with the source. Costs associated with the processing of personal licenses and maintaining the preparation process should continue to be borne by candidates.

### Executive Order No. 27 Statement

This proposed amendment does not implement Federal regulation and its requirements do not exceed any Federal regulations.

### Regulatory Flexibility Statement

The proposed amendment will have no reporting, recording or compliance requirements for small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All requirements of the amendment impact upon applicants for professional licenses to qualify them for employment.

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

#### 6:11-3.2 Fees

(a) (No change.)

(b) Rules for certification fees include the following:

1. For each [standard, provisional] **certificate of eligibility or certificate of eligibility with advanced standing**, or emergency certificate, a fee of \$50.00 shall be charged.

2. For each county substitute certificate, a fee of [\$38.00] **\$50.00** shall be charged.

3.-5. (No change.)

6. In cases where a single application results in the sequential issuance of [both] **a certificate of eligibility or certificate of eligibility with advanced standing, and** a provisional [and standard] certificate in the same endorsement field, a fee of [\$25.00] **\$10.00** shall be charged for the [standard] **provisional certificate**.

7. **A fee of \$50.00 shall be charged for each standard certificate.**

[7.]8. (No change in text.)

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

(a)

## STATE BOARD OF EDUCATION

### Notice of Public Testimony Session

April 19, 1995

**Take notice** that the following agenda items will be scheduled for future consideration by the New Jersey State Board of Education. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, April 19, 1995 beginning at 3:00 P.M. in the eighth floor training room, Department of Education, 225 East State Street, Trenton, New Jersey.

To reserve time to speak, call the State Board Office at (609) 292-0739 by 3:00 P.M. Friday, April 14, 1995.

Rule Proposals: N.J.A.C. 6:3A Equivalency and Waiver Process; N.J.A.C. 6:11-3.2 Certification Fees.

## HIGHER EDUCATION

(b)

### COMMISSION ON HIGHER EDUCATION

#### Licensing Standards

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

Authorized By: Commission on Higher Education,

Joseph D. Williams, Chair.

Authority: N.J.S.A. 18A:3B-14(d).

Proposal Number: PRN 1995-206.

Submit comments by May 3, 1995 to:

Dr. Jeanne Oswald

Administrative Practice Officer

Commission on Higher Education

20 West State Street

CN 542

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Higher Education Restructuring Act of 1994 abolished the Board and Department of Higher Education, preserving certain existing regulations only until July 1, 1995, when all that have not been readopted, amended, or repealed by the newly created Commission on Higher Education will expire. The restructuring legislation transferred from the Board to the Commission licensure authority over institutions offering or seeking to offer college-level coursework in New Jersey. The Commission is formulating proposed new licensure regulations, but that proposal will not be ready in time for the revision and adoption process to be complete by July 1. Licensure is a critical function, and any lapse in the regulations would be detrimental to the system. To ensure coverage until new licensure regulations are in place, the Commission proposes readopting for one year the current rules with technical amendments to reflect the higher education restructuring.

N.J.A.C. 9:1 sets forth standards that all institutions must meet to qualify for a license to offer degree programs or college-level courses in New Jersey. Consistent with the 1994 statute, which places program review authority with the New Jersey Presidents' Council, the Commission's proposal deletes the words "and Degree Approval" from the chapter and subchapter titles and removes references to program approval throughout, including N.J.A.C. 9:1-2.3 and 2.4, in their entirety. Proposed technical amendments throughout the chapter replace "Board of" and "Department of" with "Commission on" Higher Education; "Chancellor" (and two instances of "Department") are replaced with "Executive Director" (of the Commission on Higher Education) except where the responsibility under the restructuring act would shift more appropriately to the Commission, in which cases the latter change is proposed. In addition, the agency proposal deletes throughout the chapter references to the former Board of Higher Education's degree/program approval authority. The term "approval" has been changed to "registration" at N.J.A.C. 9:1-1.6(f) and 1.7(c). The particular licensure requirements are organized in seven subchapters, as outlined below, where proposed changes in addition to the above are noted.

Subchapter 1 contains general requirements in such areas as organization and administration, finance, educational programs, off-campus offerings, faculty, libraries, student services, physical facilities, and official publications; the subchapter also governs unique course offerings, such as those to high school students for college credit.

Subchapter 2 sets forth licensure rules for regionally accredited institutions of higher education at N.J.A.C. 9:1-2.1, and describes the membership and functions of the Licensure and Approval Advisory Board, at N.J.A.C. 9:1-2.2. The rules at N.J.A.C. 9:1-2.3 and 2.4 no longer apply because the Higher Education Restructuring Act significantly revises the former Board of Higher Education's degree and program approval authority.

Subchapter 3 delineates the standards that a higher education institution must meet to use the term "university" in its name. The proposal clarifies the shift in licensure authority from the Board to the Commission as of July 1, 1994; it also amends the reference to the regional accrediting body for New Jersey, to better differentiate it from the state coordinating agency bearing a similar name.

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Subchapter 4 prescribes licensure requirements, in addition to those set forth in N.J.A.C. 9:1-1, for institutions offering graduate programs. Under the proposal, the Commission would consider an institution's conformance with the guidelines (which cover the various types of graduate degree programs, as well as such matters as faculty, budget, facilities) when conducting licensure and relicensure reviews.

Subchapter 5 contains standards, in addition to those set forth in N.J.A.C. 9:1-1, that proprietary institutions must meet to award collegiate degrees. N.J.A.C. 9:1-5.10 is amended to reflect the abolition of the statewide basic skills testing program.

Subchapter 6 details rules for out-of-State institutions seeking approval to offer credit-bearing collegiate coursework within the State of New Jersey.

The language of subchapter 7, which implements N.J.S.A. 18A:3-15.1 et seq., concerning fraudulent academic degrees, is such that no amendments are necessary.

**Social Impact**

The former Board of Higher Education was statutorily responsible both for licensing higher education institutions and for approving the academic degree programs they offered. Under the Higher Education Restructuring Act of 1994, the newly created Commission on Higher Education retains licensure authority. Lawmakers held that institutions should exercise more autonomy and responsibility, and program approval is now the province of individual institutional boards of trustees. The legislation charges the New Jersey Presidents' Council with reviewing and commenting on new programs and submitting to the Commission for approval only new programs that are unduly duplicative or expensive.

The licensure criteria set forth in these rules proposed for interim readoption ensure that any institution (public, private, or proprietary) offering college-level coursework in New Jersey will continue to meet standards of quality while the Commission on Higher Education, in consultation with the New Jersey Presidents' Council, formulates new licensure rules. Application of these standards protects the citizens of New Jersey and others attending a licensed college, university, or degree-granted proprietary institution in New Jersey by attesting that the institution possesses the wherewithal to provide a collegiate education of quality.

**Economic Impact**

The rules proposed for readoption and the amendments do not have a direct economic impact upon the State's higher education institutions. Of course, an indirect impact flows from the fact that to meet the requirements set forth herein, institutions must allocate resources (employees, materials, equipment, etc.) to ensure compliance with the standards. The cost of such compliance obviously varies both institution to institution, and within a particular institution depending on the program or area involved.

**Executive Order No. 27 Statement**

The proposed readoption with technical amendments of N.J.A.C. 9:1 are not subject to the Federal exceedance standards because the licensure function of the Commission on Higher Education is not subject to any Federal requirements or standards.

**Regulatory Flexibility Analysis**

The proposed readoption with technical amendments affects proprietary schools, which are considered to be small businesses as defined under N.J.S.A. 52:14B-16 et seq., known as the Regulatory Flexibility Act. However, they affect only those proprietaries that desire to offer collegiate degrees; only three such schools currently exist.

As stated above, the rules require such schools to meet certain criteria to ensure the quality of the college-level education offered by those institutions. In order to meet these requirements, the schools must allocate resources (employees, materials, equipment, etc.) to ensure compliance with the standards; the cost of such compliance obviously varies but may not always represent additional cost. For example, N.J.A.C. 9:1-1.5(d) requires an annual financial audit by an independent certified public accountant. This would not be an additional expense because Federal regulations governing Title IV student aid programs require such audits. The rules do not contain burdensome reporting requirements.

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

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

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

**CHAPTER 1****LICENSING [AND DEGREE APPROVAL] STANDARDS****SUBCHAPTER 1. RULES FOR NEW JERSEY INSTITUTIONS OF HIGHER EDUCATION****9:1-1.1 Authority, purpose and scope**

(a) New Jersey statutes provide that corporations furnishing instruction or learning leading to a diploma or degree shall obtain from the [Board of] **New Jersey Commission on Higher Education** "a license to carry on the business under such rules as the [Board of Higher Education] **Commission** may prescribe" (see N.J.S.A. 18A:68-3). [The statutes further require that corporations submit and obtain approval of the basis and conditions of "any course or courses of study" leading to "the grade of a degree" prior to the conferring of such a degree (see N.J.S.A. 18A:68-6). Independent institutions whose charters antedate 1887 are exempt from approval of the basis or conditions for awarding the degree as stipulated in N.J.S.A. 18A:68-6.]

(b) To assist institutions seeking to fulfill the necessary requirements outlined in N.J.S.A. 18A:68-3 and 18A:68-6 and to aid the [Department of Higher Education and the Board of] **New Jersey Commission on Higher Education** in making judgments concerning institutions, the [Board] **Commission** has from time to time set forth rules pertaining to licensure and approval. These newly revised rules have been drafted to serve the above mentioned purpose. These rules were reviewed [by the Licensure and Approval Advisory Board and] by the presidents of the New Jersey institutions of higher education prior to their adoption by the [Board of] **Commission on Higher Education**. In developing and administering the rules for licensure, the [Board and Department are] **Commission** is mindful of the responsibilities vested in the trustees of individual institutions and of the institutional autonomy that is characteristic of American higher education. These rules delineate the [Board's] **Commission's** expectations for degree granting institutions of higher education; in the case of institutions already licensed and accredited, they do not contemplate that, in the absence of compelling reason, the [Board] **Commission** will substitute its review processes (N.J.A.C. 9:1-2.1) for those of the institutions themselves or for those of the established accrediting agencies.

(c) The following assumptions governed the drafting of these [regulations] **rules** and serve to define their scope and intention:

1. The rules in this chapter shall apply to all colleges in New Jersey generally except where other statutes and [Board of] **Commission on Higher Education** rules exist that supplement these rules or more specifically govern the situation [other rules are defined as written rules, standards, or policy statements duly approved by the Board of Higher Education,] such as "Regulations Governing County Community Colleges;" "State College Administrative Code," and so forth).

2.-3. (No change.)

4. The rules are intended to make the applications of the law specific and have the effect of law (for example, "Copies of all statements of purpose shall be filed with the [Chancellor . . .] **Commission**").

5. (No change.)

6. While the ultimate responsibility for the enforcement of the rules must by law rest with the [Chancellor and the Board of] **New Jersey Commission on Higher Education**, the [Chancellor and the Board] **Commission** may choose to look to the educational community for the sources of good practice in academic and financial management that have already won peer group approval.

7. (No change.)

8. Specific interpretations of such words as "adequate," and so forth, are to be determined by the [Chancellor and ultimately the

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Board of] **New Jersey Commission on Higher Education** in accord with existing standards of good peer group practice; and

9. (No change.)

(d) In addition to those provisions of Title 18 developed in these rules and the standards therein, the [Board of] **New Jersey Commission on Higher Education** is further charged by statute with special responsibilities for the public institutions. Other documents, such as the county community college regulations and standards and policy statements concerning the State colleges and The State university should be consulted.

### 9:1-1.2 Definitions

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

...

"Adequate, appropriate, equivalent, significant, suitable, and sufficient" mean adequate, appropriate, equivalent, significant, suitable, and sufficient, respectively, in the judgment of the [Chancellor or his representative and ultimately the Board of] **New Jersey Commission on Higher Education**.

...

"Branch campus" is a physical facility located at a place other than the institution's principal campus offering one or more complete programs leading to a credit bearing certificate, degree or diploma, without regard to the number of courses and course enrollments per academic year. A branch campus requires approval by the [Board of] **New Jersey Commission on Higher Education**.

...

"Extension center" means a physical facility located at a place other than the institution's principal campus with no complete credit bearing certificate, diploma or degree programs but more than 15 courses for credit or more than 350 course enrollments for credit in any academic year. The establishment of an extension center requires approval by the [Chancellor of] **Executive Director of the New Jersey Commission on Higher Education**.

...

### 9:1-1.3 Mission Statement

(a) (No change.)

(b) Copies of all Mission Statements shall be filed with the [Chancellor] **New Jersey Commission on Higher Education**.

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

### 9:1-1.4 Organization and administration

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

(e) Under the governing board, the duties of the chief executive should include, but not be limited to, the following:

Recodify existing i.-iii. as 1.-3. (No change in text.)

[iv.]4. To prepare and submit an annual report and any other reports as may be requested by the governing board[, the Chancellor of Higher Education, or the State Board of Higher Education] or by the **New Jersey Commission on Higher Education**.

[v.]5. (No change in text.)

(f)-(h) (No change.)

### 9:1-1.5 Finances

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

(e) Each independent institution shall furnish to the [Chancellor] **New Jersey Commission on Higher Education** a copy of the institution's audited financial statement. With the exception of those independent institutions receiving funding under the Independent College and University Assistance Act (ICUAA), N.J.S.A. 18A:72B-15 et seq., all other independent institutions, including special purpose and theological institutions, shall submit these statements to the [Chancellor] **Commission** on or before December 31 of each year. The ICUAA institutions shall furnish the audited financial statements to the [Chancellor] **Commission** on or before November 1 of each year in accordance with N.J.A.C. 9:14-1.2(d).

(f) (No change.)

### 9:1-1.6 Educational programs

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

(f) Institutions planning an educational program [that requires approval of the Board of Higher Education] shall not offer or advertise the program or recruit or enroll students in the program until [receipt of Board of Higher Education approval] **the program has been registered with the New Jersey Commission on Higher Education**.

(g)-(j) (No change.)

### 9:1-1.7 Off-campus offerings

(a) (No change.)

(b) The establishment of extension centers shall have prior approval of the [Chancellor of] **Executive Director of the Commission on Higher Education**. The establishment of branch campuses shall have prior approval of the [Board of] **New Jersey Commission on Higher Education**. In requesting approval for Extension Centers and Branch Campuses, a formal request shall be submitted to the [Department of] **New Jersey Commission on Higher Education** which shall include a statement justifying the need for the site and a description of proposed courses/programs. It shall also include evidence that the proposed courses/programs at the off-campus site are at least equivalent in quality to the comparable courses/programs on the main campus and that the institution has provided for effective monitoring and control for the maintenance of quality. Specifically, it shall include:

1.-3. (No change.)

(c) Upon receipt of a request for approval of an Extension Center or a Branch Campus, [the Department of Higher Education] **Commission staff** shall provide to all New Jersey institutions of higher education a summary of the request to enable the institutions to inform the [Department] **Commission** as to how they would be affected by the proposed Extension Center or Branch Campus. Extension Centers and Branch Campuses will be approved for a period of up to five years for those institutions which are not Middle States accredited; reapproval at the end of this period will be considered following the submission by the institution of a new request for approval. Reapproval of branch campuses and extension centers for Middle States accredited institutions is contingent upon a positive evaluation of these sites at scheduled accreditation visits conducted by the Middle States team and the [Department of] **Commission on Higher Education** representatives. In every instance when a [Board of Higher Education approved] **New Jersey Commission on Higher Education-registered** degree program, not previously offered at a particular Branch Campus, is contemplated as an addition to branch campus offerings, the procedures identified in (b) above and this subsection shall apply and [Board of] **Commission on Higher Education** approval is required. An institution proposing to offer at a Branch Campus a degree program which has not been previously offered at the main campus shall submit [the program for full Departmental review and Board of Higher Education approval required for any new program] **appropriate information to the Presidents' Council for review**.

(d) Off-campus sites at which credit courses are offered by a college in conjunction with or under contract with a non-collegiate organization must be approved by the [Chancellor] **Executive Director of the Commission on Higher Education** regardless of the size or scope of the effort. If a complete degree, certificate, or diploma program is offered under such an arrangement, it must be [approved by the Board of Higher Education] **handled** under the same procedure as holds for any Branch Campus. The approval process will include a review of the college's adherence to the following standards:

1.-8. (No change.)

(e) All institutions shall submit reports at the [Chancellor's] **Executive Director's** request on each off-campus site.

(f) (No change.)

(g) The [Chancellor] **Executive Director of the Commission on Higher Education** should be notified at the time an institution formally determines that there is no longer a need for approved off-campus sites and discontinues offerings at that site. Discontinuance of a branch campus requires [Board of] **Commission on Higher Education** approval.

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

(d) An institution shall maintain transcripts for all students and shall provide transcripts to all students who request them showing dates of attendance and academic performance. Should an institution terminate its activity, adequate provisions shall be made through the [Department of] **New Jersey Commission on Higher Education** for the permanent deposit of and access to student transcripts.

**9:1-1.13 College credit courses offered in New Jersey secondary schools by colleges and universities**

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

(j) Before enrolling, each student shall be given a written statement making clear that there is no obligation to attend the college offering the course, and making clear the credits may not be acceptable at other institutions. That statement and an up-to-date list of those institutions that have given recognition to the credits earned by previous participants shall be included in the application of the college to the [Department of Higher Education] **New Jersey Commission on Higher Education** to offer college level courses at a high school.

(k) Each college shall report annually to the [Department of] **Commission on Higher Education** the number and title of courses offered in New Jersey, the names of the New Jersey high schools in which the courses were offered, the number of students in each course in each New Jersey high school, the credits gained, the colleges at which the New Jersey students enrolled, the numbers and percentage of credits accepted by the enrolling colleges, the value of the program in the students' view and such other appropriate information as shall be specified from time to time.

(l) (No change.)

**SUBCHAPTER 2. LICENSURE [AND APPROVAL OF DEGREES] WITH RESPECT TO CERTAIN INSTITUTIONS OF HIGHER EDUCATION IN NEW JERSEY****9:1-2.1 Licensure of New Jersey institutions regionally accredited**

(a) With respect to institutions accredited by the Middle States Association the [Board of] **New Jersey Commission on Higher Education** will ordinarily accept such accreditation as sufficient for the continuance of licensure and approval, provided that the institution shall submit to the [Chancellor] **Executive Director of the Commission on Higher Education** within 30 days of its receipt of the letter of the Middle States Association informing the institution of its accreditation status and provided that the representatives of the [Chancellor] **Executive Director** working with the Middle States team participate fully in accreditation visits, excluding voting privileges with respect to recommendations related to accreditation status.

(b) The [Chancellor] **Executive Director** may proceed separately with respect to an institution and recommend to the [Board] **Commission on Higher Education** with respect to the continuation of institutional license.

(c) The [Board of] **Commission on Higher Education** may direct the [Chancellor] **Executive Director** at any time to proceed with respect to any particular institution as though that institution were not accredited by the Middle States Association.

**9:1-2.2 Licensure and Approval Advisory Board**

(a) The Licensure and Approval Advisory Board shall consist of a representative of Rutgers, The State University, designated by the President of the University; a representative of the New Jersey Institute of Technology designated by the NJIT President; a representative of the University of Medicine and Dentistry of New Jersey designated by the President of the University; two representatives of the State Colleges designated by the New Jersey State College Governing Boards Association; two representatives of the County Colleges designated by the Council of County Colleges; three representatives of the Association of Independent Colleges and Universities in New Jersey designated by the Association; three persons representative of the independent colleges not members of the aforesaid Association selected as hereinafter provided; and one

representative of the [Department of] **Commission on Higher Education** staff designated by the [Chancellor] **Executive Director of the Commission** serving as an ex officio non-voting member.

(b) The representatives of the independent colleges not members of the Association of Independent Colleges and Universities in New Jersey shall be chosen by the ballot at a meeting of the presidents of these institutions to be convened by the [Chancellor] **Executive Director of the Commission on Higher Education** when appropriate for this purpose. The persons having the highest number of votes, provided it is a majority of the total number of votes cast, shall be declared elected. In the case of a tie, the [Chancellor] **Executive Director** shall break the tie; in the case of an inability to elect, the [Chancellor] **Executive Director** shall designate the person to serve.

(c) The term of membership on the Advisory Board shall be three years except in the case of the [Department of] **Commission on Higher Education** representative. Members may be reappointed. Vacancies shall be filled for any expired term.

(d) The Advisory board shall elect its own officers and determine its own rules of procedure. The [Department of] **Commission on Higher Education** shall provide the Advisory Board with staff and secretarial assistance.

(e) The responsibilities of the Licensure and Approval Advisory Board will be as follows:

1. To advise the [Chancellor] **Commission on Higher Education** with respect to policies for licensure and degree approval designed to promote the maintenance of educational quality and the optimal use of educational resources in the State;

2. To recommend to the [Chancellor and to the Board of] **Commission on Higher Education** action on petitions for licensure by independent New Jersey institutions not regionally accredited;

3. To recommend to the [Chancellor and to the Board of] **Commission on Higher Education** action on petitions for licensure by any out-of-state institutions;

4. To advise the [Chancellor] **Executive Director**, when requested, with respect to reports filed with the [Department of] **Commission on Higher Education** by any New Jersey institution, public or independent, or by committees that may from time to time be appointed to visit institutions of higher education operating in the State;

5. To advise the [Chancellor] **Commission on Higher Education**, when requested, as to the action to be taken with respect to any college or university, public or independent, whose educational quality may be called in question;

6. To review any proposed action by the [Chancellor] **Commission on Higher Education** with respect to any institution which could result in the revocation of licensure or the withdrawal of approval to confer degrees. The [Chancellor] **Executive Director** will request and the Advisory Board will provide an advisory opinion before the statutory procedures are invoked by the [Board of] **Commission on Higher Education**; and

7. To advise the [Chancellor] **Executive Director** when requested, with respect to any matters the [Chancellor] **Commission** may deem appropriate.

**9:1-2.3 [Specification of degrees] (Reserved)**

[In implementing its responsibilities for approving the basis or conditions of conferring degrees, the Board of Higher Education will specify the nomenclature, location and term of the degree program that an institution is authorized to offer.]

[The current status of New Jersey independent institution of higher education varies with respect to degree approvals. The pre-1887 institutions are not required to secure the approval of the Board of Higher Education. These institutions include Drew University, Seton Hall University, St. Peter's College, St. Michael's, Stevens Institute of Technology, Princeton Theological Seminary, Princeton University, and Centenary College. Institutions founded more recently are subject to the policy set forth in this subchapter. It should be noted, however, that Upsala College and the College of Saint Elizabeth were granted broad powers by the State Board of Education following passage of the law of 1912 and 1916. It is clear that to make the policy with respect to degree approval outlined in this subchapter truly effective, there must exist for each institution

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established since April 1, 1887, a sharply defined, agreed upon statement of the precise nature of the approvals that currently exist so that both the institution and the Department of Higher Education may have a base or reference point with respect to which future applications and actions can be judged.]

**9:1-2.4 [New Degree Programs] (Reserved)**

[The basis or conditions for the conferring of degrees not previously approved by the Board of Higher Education with respect to a particular institution, shall be submitted for prior approval in accordance with law. The Board will examine the quality of the proposed program, the institution's ability to offer the program and the extent to which the program unnecessarily duplicates or supplements existing programs offered by other institutions.]

**SUBCHAPTER 3. CHARACTERISTICS OF A UNIVERSITY****9:1-3.1 Programs**

(a) (No change.)

(b) The traditional university provides a wide range of undergraduate studies and graduate studies in two or more professional fields, such as medicine, law, public administration, engineering, or education, and operative programs of instruction leading to the doctorate or comparable terminal degrees in two or more areas. A university should offer a range of graduate studies related to those fields in which it offers advanced degrees to provide students elective opportunities and a selection of support studies which may be useful but not prescribed by a graduate degree program. Additionally, a university should explore the possibilities of public service.

(c) A university whose major focus is on teaching provides a wide range of undergraduate programs and provides graduate programs in at least three academic disciplines. A teaching university has a minimum of 2,500 full-time equivalent (FTE) students. A least 20 percent of the university's total student body (headcount) are enrolled in graduate degree programs. Institutions failing to meet the minimum enrollment of 2,500 FTE students and/or the 20 percent or more graduate degree enrollment figure may still be eligible for university designation [consideration] if a [Department of] **Commission on Higher Education** out-of-State consultant(s) so recommends upon review of the institution's petition.

**9:1-3.2 Organization**

(a) (No change.)

(b) A university recruits [faculties] **faculty** for graduate or professional programs whose competence is known beyond the institution. A significant number of faculty in each graduate program are associated with the institution full time, have attained the doctorate or have terminal degrees appropriate to their disciplines or records of substantial and superior professional achievements, and remain abreast of their respective fields. The faculty, including representation from the departments offering graduate programs, participates in the initiation, development, and approval of curricula as the institution determines.

(c) (No change.)

**9:1-3.4 Accreditation**

[(a)] A university is accredited by the [Commission on Higher Education,] Middle States Association of Colleges and Schools, **Commission on Higher Education**.

**9:1-3.5 Eligibility for university status and use of "university" as part of an institution's name**

(a) Non[-]profit educational institutions incorporated and located in New Jersey and licensed by the **former** New Jersey Board of Higher Education **before June 30, 1994 or by the New Jersey Commission on Higher Education thereafter** which believe they meet all the requirements stipulated in this subchapter are eligible to apply, with the concurrence of their governing boards, to the New Jersey [Board of] **Commission on Higher Education** for university status. Educational institutions dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion are not eligible to apply for university status.

(b) When an institution's governing body determines that the institution shall seek university status, it shall file with the New Jersey

[Board of] **Commission on Higher Education** an application which shall demonstrate the institution's eligibility for designation as a university.

(c) University status and the actual title of the institution require the approval of the New Jersey [Board of] **Commission on Higher Education**.

**SUBCHAPTER 4. RULES FOR GRADUATE PROGRAMS WHEN CONDUCTING LICENSURE AND RELICENSURE REVIEWS****9:1-4.1 [Application] (Reserved)**

[Colleges and universities required to secure approval to offer graduate instruction and confer advanced degrees in New Jersey shall apply to the Department of Higher Education, following a format and procedure prescribed by the Department.]

**9:1-4.2 [Authorization and review] Review**

[(a) Authorization to confer advanced degrees shall be specific with respect to nomenclature, location of the program and to the term for which approval is granted.]

[(b)] Graduate programs [in institutions already authorized by the Board of Higher Education to confer advanced degrees] shall be reviewed periodically. Such reviews shall be conducted by the institutions themselves and cooperatively, insofar as possible, with regional and professional accrediting agencies.

**9:1-4.3 Objectives and nature of graduate work**

The objectives of every graduate or graduate professional program [required to seek approval] shall be clearly defined and stated. The work in such programs shall be beyond the baccalaureate level in intellectual demand; and a substantial proportion of the work shall be taken in courses designed explicitly for graduate students, although occasionally exceptionally well qualified undergraduates may be admitted.

**9:1-4.6 Post-master's programs**

(a) Institutions may organize programs of graduate work at the post-master's level that are not intended to lead to doctorates but to specialist's degrees or to comparable certificates. [Within the discipline of education, no new Ed.S. degree programs will be approved. New specialist's certificate programs in this discipline will be limited to the fields of educational administration and education services, when a definitive need can be demonstrated. Approval of these certificates programs by the State Board of Higher Education will be required.]

(b)-(e) (No change.)

**9:1-4.7 Doctoral degree programs**

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

(e) In [seeking approval of] **developing** doctoral programs, an institution shall demonstrate that:

1.-3. (No change.)

4. Above all, its faculty is recognized beyond the bounds of the institution as possessing professional qualifications and research achievements sufficient to support [the] doctoral programs [for which approval is sought];

5. (No change.)

6. Its [proposed] programs [is] **are** supported by related studies and research in ancillary fields; and

7. (No change.)

**SUBCHAPTER 5. RULES FOR PROPRIETARY INSTITUTIONS OF HIGHER EDUCATION IN NEW JERSEY****9:1-5.1 General provisions**

(a) Proprietary institutions of higher education in New Jersey may be licensed [to operate and approved] to award academic degrees subject to conformance with the regulations and standards for such licensure [and approval] as contained in N.J.A.C. 9:1-1.

(b) The [regulations] **rules** in this subchapter are designed to recognize the distinctive character of proprietary institutions and for

these institutions take precedence over any regulations and standards with which they may be in conflict.

#### 9:1-5.2 [Degree standards] (Reserved)

[(a) Proprietary institutions may petition to award the Associate in Arts, the Associate in Science, and the Associate in Applied Science degrees pursuant to the standards set forth in Standards Governing Community Colleges, specifically N.J.A.C. 9:4-1.6.

(b) Certificate and diploma programs at proprietary institutions shall be eligible for Board of Higher Education approval only in those instances where all of the courses comprising the certificate or diploma program are currently being offered by the institution in a Board approved degree program.

(c) Pre-associate degree certificate and diploma programs shall be designed in accordance with N.J.A.C. 9:4-1.6.

(d) Proprietary institutions may petition to award baccalaureate degrees pursuant to the standards set forth in the State College regulations regarding Baccalaureate Degree Standards, specifically N.J.A.C. 9:6-2.

(e) Proprietary institutions may petition to award graduate degrees pursuant to the standards set forth in N.J.A.C. 9:1-4.1.]

#### 9:1-5.4 Duration of license

(a) Any license to operate and grant a degree shall be for a specific period, not to exceed five years, as determined by the [Board of] **New Jersey Commission on Higher Education**.

(b) At the expiration of this period, license must be reviewed, renewed or revoked at the discretion of the [Board of] **Commission on Higher Education**.

#### 9:1-5.10 Basic skills testing and enrollment in remedial courses

[(a)] Proprietary institutions shall be subject to [all of the Board of Higher Education's] **any** policies regarding basic skills testing and remedial instruction [as implemented by the New Jersey College Basic Skills Council] as may be adopted by the **New Jersey Commission on Higher Education**.

[(b) Proprietary institutions shall administer the New Jersey College Basic Skills Placement Test (NJCBSP) to all full and part-time freshmen seeking a degree, to any student who does not initially seek a degree but who registers for a program that would result in the accumulation of 12 or more credits, and to any transfer student who has not transferred to the institution college credits in English composition and mathematics.

(c) Appropriate remedial instruction shall be provided by proprietary institutions in the basic skills of reading, writing, computation and elementary algebra to all of the skills deficient students they have admitted.

(d) Proprietary institutions shall not enroll a student in any college-level course without first being certain that the student is proficient in the basic skills required for that course.

(e) No graduation credit shall be awarded for any remedial course.

(f) Proprietary institutions shall comply with the reporting guidelines of the Basic Skills Council regarding the submission of student outcomes data and the retesting of students who exit the institution's remedial programs(s).]

### SUBCHAPTER 6. RULES REGARDING PETITIONS FROM OUT-OF-STATE INSTITUTIONS DESIRING TO OFFER CREDIT-BEARING COURSES OR DEGREE PROGRAMS IN NEW JERSEY

#### 9:1-6.1 Review of petitions

(a) The [Board of] **New Jersey Commission on Higher Education** in its coordinating capacity will review all petitions from out-of-state institutions to offer credit-bearing courses or degree programs in New Jersey from a statewide perspective. The [Board] **Commission** will approve only those offerings that in the opinion of the [Board] **Commission** meet state standards for program quality, are fiscally viable, serve a demonstrable need, and are in accordance with the Statewide Plan. Whenever a course or program is approved by the [Board] **Commission** for presentation within the State by an out-

of-state institution, said offering shall not preclude the right of an institution within the State to develop a similar program or course offering.

(b) (No change.)

(c) Institutions which have been providing credit-bearing courses in New Jersey with the approval of the **former** Board of Higher Education or the **New Jersey Commission on Higher Education** for at least five consecutive years, may have courses approved by the [Board of] **Commission on Higher Education** for a period of up to five years, if the institution during this five-year period annually provides to the [Department of] **Executive Director of the Commission on Higher Education**, six months prior to desired implementation, an update of the information required pursuant to N.J.A.C. 9:1-6.2(c). If during the five-year approval period the [Department] **Commission** determines, in conjunction with the Licensure and Approval Advisory Board (LAAB), from a review of the annual materials submitted by the institution, that there is a significant change in the offerings and/or additional or different resources are needed to provide educational services of quality or if there is a change in the status of the institution, the [Department] **Executive Director** shall have the option of submitting the matter to the [Board of] **New Jersey Commission on Higher Education** for its review. The [Board of] **New Jersey Commission on Higher Education's** denial of such a modification shall serve to revoke approval for the period of time remaining in the existing five-year period.

#### 9:1-6.2 Petitions from institutions

(a) Out-of-state institutions wishing to offer credit-bearing courses or degree programs in New Jersey shall petition the [Board of] **New Jersey Commission on Higher Education** for authorization.

(b) (No change.)

(c) The petition shall contain:

1.-6. (No change.)

7. Other information which the [Department] **Commission** specifically requests.

#### 9:1-6.3 [Department of] **New Jersey Commission on Higher Education** review procedures

(a) Petitions from out-of-state institutions invited by in-state parties to offer educational services to a specific and delimited constituency in New Jersey:

1. Upon receipt of petition, the [Department of Higher Education] **Commission** shall provide to all New Jersey institutions of higher education a summary of the petition's content and will invite the institutions to submit their comments and to indicate whether or not they wish and are prepared to offer comparable services. Those in-state institutions that wish to offer comparable services may submit proposals to the [Department] **Commission** within 60 days after the [Department's] **Commission's** notification regarding the out-of-state request. Proposals from in-state institutions received within this time period will be forwarded immediately by the [Department] **Commission** to the party requesting instructional services (as well as to the out-of-state institutions).

2. Specifically with respect to a New Jersey high school seeking educational services, the high school shall inform the [Department of] **Commission on Higher Education** of its intent to seek an educational program prior to entering into negotiations for college credit bearing courses with an out-of-state institution. The notice shall contain a detailed itemization of the services desired by the high school. After receipt of the notification, the [Department] **Commission** shall provide copies of the notice to all New Jersey institutions of higher education and shall invite these institutions to submit their comments and to indicate both to the [Department] **Commission** and to the high school, within 60 days, whether they wish to try to meet the needs of the high school.

3. The high school shall enter into negotiations with an out-of-state institution only after the high school has notified the [Department of] **Commission on Higher Education** which in-state institution, if any, the high school will be dealing with in addition to the proposed out-of-state party.

4. The [Department] **Commission** shall review all full proposals, usually with the assistance of a consultant who is mutually acceptable

to the [Department] **Commission** and the institutions. A "needs survey" is not required when an educational institution is invited by an in-state party to provide credit-bearing educational offerings to a specified and delimited constituency. The invitation itself demonstrates that a need exists.

5. (No change.)

6. If the [Department] **Commission** determines, in consultation with LAAB, that an in-state proposal is comparable or superior to the out-of-state proposal, the [Department] **Commission** shall strongly encourage the in-state party requesting instructional services to accept an in-state proposal.

7. The in-state party requesting instructional services shall inform the [Department] **Commission** as to its choice of institution and specify the reasons for the selection.

8. The [Chancellor] **Executive Director** shall make a recommendation concerning the program or course(s) to the [Board of] **New Jersey Commission on Higher Education**.

(b) Petitions from out-of-state institutions seeking to offer educational services independently (without invitation) in New Jersey:

1. Upon receipt of petition, the [Department of] **New Jersey Commission on Higher Education** shall provide all New Jersey institutions of higher education with a summary of the petition's content and invite the institutions to submit their comments within 60 days.

2. The [Department] **New Jersey Commission on Higher Education** shall review the petition, usually with the assistance of a consultant which is mutually acceptable to the [Department] **Commission** and the institution.

3. The petition and all pertinent materials shall be provided to LAAB for its review.

4. The [Chancellor] **Executive Director** shall make a recommendation concerning the program or course(s) to the [Board of] **Commission on Higher Education**.

## (a)

### COMMISSION ON HIGHER EDUCATION

#### Policies and Procedures Pertaining Strictly to County Community Colleges

#### Proposed Readoption with Amendments: N.J.A.C. 9:4-1.9 and 9:4-5, 6, and 7

Authorized By: Commission on Higher Education,  
Joseph D. Williams, Chair.

Authority: N.J.S.A. 18A:38-15 (Chapter 48, P.L. 1994, Section 15).

Proposal Number: PRN 1995-207.

Submit comments by May 3, 1995 to:  
Dr. Jeanne Oswald  
Administrative Practice Officer  
Commission on Higher Education  
20 West State Street  
CN 542  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Higher Education Restructuring Act of 1994, which abolished the Board and Department of Higher Education, preserves until July 1, 1995 county community college personnel rules for review and possible re-adoption by the newly created Commission on Higher Education. Language regulating such matters appears throughout N.J.A.C. 9:4, which deals with numerous other county college topics in addition to personnel.

The restructuring act eliminated those parts of Chapter 4 which do not deal with personnel, including the sections in subchapter 1, Regulations for New Jersey Community Colleges, that regulate general policy, governance, and administration of the county colleges. The Restructuring Act also eliminated subchapter 2, Code of Ethics for County Community Colleges and Commission Boards of Trustees, subchapter 3, Auditing and Accountability Standards for County Colleges, and subchapter 8,

Rules Governing the County College Contracts Law; subchapter 4 was reserved. The preserved, personnel sections are: In subchapter 1, N.J.A.C. 9:4-1.9, Personnel; subchapter 5, County College Reduction in Force Policies; subchapter 6, Tenure Policies; and subchapter 7, Professional Employee Policies.

The Commission on Higher Education proposes herein readopting for one year the preserved portions with technical amendments that reflect the Higher Education Restructuring Act's changes in the State coordinating agency for higher education. The Commission is noticing simultaneously a separate proposal that reflects a recodification of and substantive changes to the preserved rules. (See Proposal Number 208, in this issue of the New Jersey Register.) However, if as a result of public comment the Commission wishes to further amend its proposal, it would not be possible to adopt new rules before the July 1 expiration. Therefore, the proposed technical amendments are also being noticed to ensure that the county college personnel rules do not expire while substantive changes (and recodification to N.J.A.C. 9A:7) are being deliberated. The rules proposed for interim readoption are summarized below.

Several technical amendments are proposed for N.J.A.C. 9:4-1.9, which contains rules dealing with personnel-related topics such as faculty qualifications, teaching load, maintenance and content of personnel records, job descriptions, support staffing, etc. No amendments are necessary in subchapter 5, which governs county colleges procedures if the colleges must reduce the number of tenured faculty or multi-year contract employees. Three technical amendments are proposed for subchapter 6, which establishes tenure policies for county colleges. One technical amendment is proposed for subchapter 7, which regulates policies for professional employees of the county community colleges with respect to academic rank for nonteaching professional staff, contracts for such employees, and career development.

The above-mentioned technical changes involve, exclusively, replacing the words "Chancellor of" and "Board of" Higher Education with more appropriate terminology that refers to the Commission on Higher Education. (Some "Chancellor" references become "Executive Director of the Commission on Higher Education," and some, "Commission on Higher Education"; all "Board" references become the latter.)

The technically amended Chapter 4 will be readopted by the Commission only in the event that the readoption and recodification with substantive changes will not be completed before July 1. If the interim readoption occurs, the Commission will repeal that version of the rules (N.J.A.C. 9:4) upon the eventual adoption of N.J.A.C. 9A:7.

#### Social Impact

The former Board of Higher Education exercised significant regulation and oversight of county community colleges in New Jersey; the Board's rules in N.J.A.C. 9:4 regulate specific procedures and policies for all county community colleges. The Higher Education Restructuring Act of 1994 removes State-level oversight to a large extent and gives trustee boards greater responsibility and authority for managing their respective institutions. The act preserves, however, rules concerning personnel matters at the county colleges for one year for review by the Commission on Higher Education.

In the spirit of restructuring, the Commission proposes elsewhere in this issue of the New Jersey Register readoption of the personnel rules with substantive changes that reduce State regulation and promote institutional autonomy, keeping intact only those portions where it believes State involvement is appropriate. However, the public notice/readoption process for these substantive changes may not be finished before the July 1 expiration date for the county college personnel rules. In that case, the readoption with technical amendments proposed herein will continue regulatory coverage and maintain the status quo of county college personnel matters on an interim basis until substantive changes are adopted.

#### Economic Impact

The rules proposed for readoption largely set qualitative standards that do not result in costs to the county colleges or to the public. Some sections include recordkeeping and reporting requirements in connection with which colleges would incur administrative costs, but these are not new mandates. In addition, the interim nature of the proposed readoption is such that those requirements are likely to be repealed before the colleges would have to comply with them.

**Executive Order No. 27 Statement**

The proposed interim readoption of N.J.A.C. 9:4 with technical amendments is not subject to the Federal exceedance standards because review and adoption of personnel rules by the Commission on Higher Education are not subject to any Federal requirements or standards.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined under N.J.S.A. 52:14B-16 et seq., known as the Regulatory Flexibility Act. The rules deal strictly with personnel policies and procedures for county community colleges in New Jersey.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:4-1.9 and 9:4-5, 6 and 7.

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

**9:4-1.9 Personnel**

(a) (No change.)

(b) Each community college shall maintain personnel records for both administrative and faculty positions in such form as may be required by the [Chancellor of] **New Jersey Commission on Higher Education**. Such records shall include transcripts testifying to academic preparation, and shall be available upon request of the [Chancellor of] **Executive Director of the New Jersey Commission on Higher Education**. The county college shall demonstrate upon such request that each member of the faculty has met the necessary requirements as established by the community college for the position held.

(c) (No change.)

(d) Each community college shall file with the [Chancellor of Higher Education] **Executive Director of the Commission** a policy statement regarding academic freedom and shall make such statement available for faculty.

(e)-(h) (No change.)

(i) A compensation policy should establish salary ranges which should not exceed those established by the [Board of] **Commission on Higher Education** for the State colleges.

(j)-(n) (No change.)

**9:4-6.1 Preparation of a 10-year plan**

(a) (No change.)

(b) The college trustee shall report their plan to the [Chancellor of] **New Jersey Commission on Higher Education** and shall inform the [Chancellor] **Commission** each year of the progress being made in achieving their goals.

[Note:]1. The [Board of] **Commission on Higher Education** believes that by limiting the proportion of tenured faculty, the institution maintains the flexibility to respond to changing educational needs of future generations of students.

**9:4-7.2 Academic rank for nonteaching personnel**

(a) "Faculty member" means any full-time member of the teaching staff appointed with academic rank. Pursuant to rules promulgated by the [State Board of] **New Jersey Commission on Higher Education**, other full-time professional persons shall be considered faculty members if they concurrently hold academic rank.

(b)-(i) (No change.)

(a)

**COMMISSION ON HIGHER EDUCATION****Policies and Procedures Pertaining Strictly to County Community Colleges****Proposed Readoption and Recodification with Amendments: N.J.A.C. 9:4-1.9 to 9A:7-1.1 and N.J.A.C. 9:4-5 through 7 to 9A:7-2 through 4**

Authorized By: Commission on Higher Education,  
Joseph D. Williams, Chair.

Authority: N.J.S.A. 18A:3B-15 (Chapter 48, P.L. 1994, Section 15).

Proposal Number: PRN 1995-208.

Submit comments by May 3, 1995 to:

Dr. Jeanne Oswald  
Administrative Practice Officer  
Commission on Higher Education  
20 West State Street  
CN 542  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Higher Education Restructuring Act of 1994, which abolished the Board and Department of Higher Education, preserved until July 1, 1995 county community college personnel rules for review and possible re-adoption by the newly created Commission on Higher Education. The proposed readoption of and changes to these rules are in keeping with the spirit of the Higher Education Restructuring Act of 1994, which seeks to reduce regulation and to promote institutional autonomy.

Language regulating county college personnel matters appears throughout N.J.A.C. 9:4, which deals with numerous other topics in addition to personnel. The restructuring act eliminated those parts of N.J.A.C. 9:4 which do not deal with personnel, including the sections in subchapter 1, Regulations for New Jersey Community Colleges, that regulate general policy, governance, and administration of the county colleges. The restructuring act also eliminated subchapter 2, Code of Ethics for County Community Colleges and Commission Boards of Trustees, subchapter 3, Auditing and Accountability Standards for County Colleges, and subchapter 8, Rules Governing the County College Contracts Law; subchapter 4 was reserved.

The preserved and recodified personnel sections are: In subchapter 1, N.J.A.C. 9:4-1.9, Personnel; subchapter 5, County College Reduction in Force Policies, subchapter 6; Tenure Policies; and subchapter 7, Professional Employee Policies. These requirements will appear in the New Jersey Administrative Code in N.J.A.C. 9A:7. The Commission on Higher Education's proposed amendments to each are detailed below, along with a brief summary of each.

The agency proposes most of N.J.A.C. 9:4-1.9 for deletion, specifically, paragraphs (a) through (i) and (k) through (m), rules dealing with topics such as faculty qualifications, maintenance and content of personnel records, job descriptions, support staffing, etc. Germane to all colleges and universities, these rules are within the realm of institutional licensure. They will be addressed in more general and less prescriptive manner in to-be-proposed revisions to licensure rules, which will apply to all New Jersey institutions of higher education. Proposed changes at N.J.A.C. 9:4-1.9(j) redefine the normal teaching load to conform with the generally accepted standard for community colleges in New Jersey and authorize counting summer courses as part of the normal load in exceptional cases; the latter change provides additional scheduling flexibility for the colleges. N.J.A.C. 9:4-1.9(n), which calls for written recommendations by the president and approval by the trustee board of all personnel appointments, is proposed for readoption without change.

Subchapter 5 governs procedures for county colleges to use if they must reduce the number of tenured faculty or multi-year contract employees. The proposed change at N.J.A.C. 9:4-5.7 reduces the notice period for layoffs due to program reduction or enrollment decline from 210 days to 120, in line with the existing period for layoffs due to fiscal exigency. The change allows community college management to respond more rapidly to a natural diminution of students or a reduction in

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programs. However, the change does not prohibit an institution from providing a longer notification period. Other proposed changes in subchapter 5 are strictly editorial in nature.

In subchapter 6, Tenure Policies, proposed amendments at N.J.A.C. 9:4-6.1 would replace the requirement to submit 10-year plans to the State with a less restrictive call for boards of trustees to establish and monitor progress toward goals for percentages of tenured faculty; changes at N.J.A.C. 9:4-6.2 further emphasize the role of the trustee boards in this regard. N.J.A.C. 9:4-6.3 is proposed for deletion because to-be-proposed revisions to licensure rules will speak more generally to faculty reappointment criteria in a manner that applies to all licensed colleges and universities. N.J.A.C. 9:4-6.4 and 6.5, which suggest guidelines for awarding tenure, are proposed for readoption without change; only editorial corrections are proposed for N.J.A.C. 9:4-6.6, which suggests guidelines for faculty evaluation procedures.

In subchapter 7, Professional Employee Policies, most of the changes proposed for N.J.A.C. 9:4-7.1 and 7.2 are primarily technical and editorial in nature. However, proposed changes at 9:4-7.2(c), which addresses concurrent academic rank for nonteaching personnel, clarify the need for specific action by a county college's trustees to grant such rank. The proposed deletion of N.J.A.C. 9:4-7.3 recognizes that county colleges already have the authority to award multi-year contracts; elimination of this section also lifts the existing required deadlines for notifying professional staff of reappointment or nonreappointment. Also proposed for deletion is N.J.A.C. 9:4-7.4, which deals specifically with the professional development of faculty. The concepts in the existing rules will be addressed in to-be-proposed revisions to the general licensure rules that apply to all New Jersey institutions of higher education.

In addition, the preserved parts of N.J.A.C. 9:4 are being recodified to N.J.A.C. 9A:7.

**Social Impact**

The former Board of Higher Education exercised significant regulation and oversight of county community colleges in New Jersey; the Board's rules in N.J.A.C. 9:4 regulate specific procedures and policies for all county community colleges. The Higher Education Restructuring Act of 1994 removes State-level oversight to a large extent and gives trustee boards greater responsibility and authority for managing their respective institutions. The Act preserves, however, rules concerning personnel matters at the county colleges for one year for review by the Commission on Higher Education.

In the spirit of restructuring, the Commission proposes readoption of the personnel rules with substantive changes that reduce State regulation and promote institutional autonomy, keeping intact only those portions where it believes State involvement is appropriate. In some cases, items proposed for deletion will become campus managerial prerogative; in other instances, they may become subject to negotiation by each college and its employees and their unions. In addition, some rules proposed for deletion will be addressed in to-be-proposed licensure rules that will apply to all New Jersey institutions of higher education, not just county community colleges.

**Economic Impact**

The rules proposed for readoption largely set qualitative standards that do not result in costs to the county colleges or to the public. In addition, proposed amendments may result in cost savings to the county colleges because they eliminate some recordkeeping and reporting requirements. For example, N.J.A.C. 9:4-1.9(b), (c), and (h) and N.J.A.C. 9:4-6.1(b), all proposed for deletion, impose such requirements.

**Executive Order No. 27 Statement**

The proposed readoption with amendments and recodification of N.J.A.C. 9:4 are not subject to the Federal exceedance standards because review and adoption of personnel rules by the Commission on Higher Education are not subject to any Federal requirements or standards.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined under N.J.S.A. 52:14B-16 et seq., known as the Regulatory Flexibility Act. The proposal deals strictly with personnel policies and procedures for county community colleges in New Jersey.

**Full text** of the proposed readoption may be found in the New Jersey Administration Code at N.J.A.C. 9:4-1.9 and 9:4-5, 6 and 7.

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

CHAPTER [4]7  
[POLICIES AND PROCEDURES PERTAINING STRICTLY TO  
COUNTY COMMUNITY COLLEGES] COMMUNITY COLLEGE  
PERSONNEL REGULATIONS

SUBCHAPTER 1. [REGULATIONS FOR NEW JERSEY]  
COMMUNITY COLLEGE[S] PERSONNEL  
RULES

[9:4-1.9]9A:7-1.1 Personnel

(a) Each community college shall establish written personnel policies governing professional and non-professional personnel.

(b) Each community college shall maintain personnel records for both administrative and faculty positions in such form as may be required by the Chancellor of Higher Education. Such records shall include transcripts testifying to academic preparation, and shall be available upon request of the Chancellor of Higher Education. The county college shall demonstrate upon such request that each member of the faculty has met the necessary requirements as establishment by the community college for the position held.

(c) Each community college shall maintain a program for orientation of new faculty and a continuing program of in-service training.

(d) Each community college shall file with the Chancellor of Higher Education a policy statement regarding academic freedom and shall make such statement available for faculty.

(e) Each community college shall establish a policy statement regarding performance evaluations for all employees, and shall make such statement available to all employees.

(f) Employment of faculty should include the following considerations:

1. Faculty members shall have earned Master's degrees or the equivalent in the subject or the fields to be taught. Relevant training and experience may be substituted for earned degrees.

2. So far as practicable, instruction should be given by faculty members who are employed full-time. The full-time faculty may be supplemented by equally competent part-time teachers serving under the supervision of full-time professional staff.

3. Professional personnel responsible for supervision should be employed on a full-time basis.

(g) Adequate secretarial and clerical staff should be available for faculty as well as sufficient laboratory and technical assistants to make laboratory and large-group instruction meaningful and efficient.

(h) Each college should publish its policies and criteria for promotion and dismissal.

(i) A compensation policy should establish salary ranges which should not exceed those established by the Board of Higher Education for the State colleges.]

[(j)](a) The normal teaching load [should] **shall** not be less than [the load in effect at the State colleges.] **30 student instructional contact hours or the equivalent per academic year. In exceptional cases, the college president may authorize the teaching of summer semester courses as part of the normal teaching load where course scheduling requires that the courses be offered during the summer semester.**

[(k)] The total institutional student-teaching faculty ratio should normally not exceed 25 students to one instructor on a full-time basis, excepting cases where self-instructional or differentiated staffing approaches are used, nor should it be below 15 to one. In computing the ratio of students to teachers for the institution, the total number of full-time equated students should be divided by the total number of full-time equated teaching faculty members.

(l) The community college should devise means to evaluate the effectiveness of the instructional processes utilized in terms of student learning outcomes.

(m) The community college should establish specific standards and job designations for such chairmen and define their relationship to the faculty and administration, if such positions are provided for in the community college's pattern of organization.]

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[(n)](b) All personnel appointments in a county community college shall be made upon the written recommendation of the president to the board of trustees with the exceptions of the presidency itself, the board attorney, and an external auditor or auditing firm. All personnel appointments must be approved by the board of trustees.

## SUBCHAPTER [5].2. COUNTY COLLEGE REDUCTION IN FORCE POLICIES

Recodify existing 9:4-5.1 through 9:4-5.3 as **9A:7-2.1 through 9A:7-2.3** (No change in text.)

[9:4-5.4]**9A:7-2.4** Consultation with college community

The president shall consult with the college community in developing the plan and recommendations to presented to the board of trustees. Representatives of the college community shall, upon request, be provided with class enrollment data, and financial data in a timely manner pursuant to the Right to Know Law (N.J.S.A. 47:1A-1). Nothing herein shall require a college to prepare such information in a format not routinely [utilized] **used** by the college. Representatives of the college community may present alternative plans to modify or avoid the reduction in force to the college president, provided that such plans are submitted within the time permitted the president to submit a plan to the trustees. The president shall forward any suggested alternative plans to the [Board of Trustees] **board of trustees** along with his **or her** own recommendations.

Recodify existing 9:4-5.5 as **9A:7-2.5** (No change in text.)

[9:4-5.6]**9A:7-2.6** Review of recommendations

(a) (No change.)

(b) If such recommendations as noted in (a) above include the layoff of employees, the board shall be guided by the following principles:

1.-5. (No change.)

6. Where a reduction in force is caused by a natural diminution in enrollment and a partial academic teaching load is available for which a laid off faculty member is qualified, then such a faculty member shall be given the first opportunity to teach such a partial load, at a salary proportionate to his or her full-time compensation.

7. The use of adjuncts [of] **or** full-time faculty on overload to assume the equivalent of the full-time academic load in the discipline of faculty who are to be laid off shall not be permitted. Nothing herein shall prevent a college from [utilizing] **using** adjunct or overload faculty if no laid off faculty are qualified to teach the scheduled courses, in the academic judgement of the president.

8. The qualifications of laid off faculty members shall be reviewed by the president of the college. If in the academic judgement of the president the faculty member is qualified to teach in another discipline, and a vacancy exists, or courses are being taught by an adjunct faculty member[,], or by another full-time faculty member on an overload assignment, then the laid off faculty member shall be employed to fill the vacancy or to assume the courses taught by **the adjunct or by the full-time faculty member** on an overload basis.

[9:4-5.7]**9A:7-2.7** Notice requirements; time period

Upon the board's determining the areas that may be affected by the layoff, it shall give notice to all individuals subject to the proposed layoff two weeks [prior to] **before** the formal board action on said layoffs. After formal board action on said layoff, the board of trustees shall notify each employee who is to be laid off of such fact 120 days [prior to] **before** the date of layoffs [for layoffs due to fiscal crisis and 210 days prior to the date of layoff for layoffs due to a natural diminution in the number of students in a program or reduction of programs]. Appeals of layoffs [due to fiscal exigency] **under this section** shall be given [emergent] **prompt** consideration[s] if requested.

[9:4-5.8]**9A:7-2.8** Reemployment lists; generally

(a) (No change.)

(b) The [College] **college** shall not fill a vacancy in any faculty position in any layoff unit in which a layoff has occurred without first making a written offer of reemployment to those persons on the academic reemployment list whom the president believes, as a result of his academic judgement confirmed by the [Board of Trustees] **board of trustees**, are qualified to fill the position.

(c) The college president shall not fill a vacancy in an administrative position in any layoff unit in which a layoff has occurred without first making a written offer of reemployment to the person on the administrative reemployment list whom the president in his administrative judgement confirmed by the [Board of Trustees] **board of trustees**, believes is most qualified for the position.

(d)-(f) (No change.)

[9:4-5.9]**9A:7-2.9** Reemployment lists; time period

(a) Faculty who are tenured on the date of layoff shall remain on the reemployment lists for a period of five years from the [day] **date** of layoff.

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

Recodify existing 9:4-5.10 and 9:4-5.11 as **9A:7-2.10 and 9A:7-2.11**. (No change in text.)

## SUBCHAPTER [6].3. TENURE POLICIES

[9:4-6.1]**9A:7-3.1** [Preparation of a 10-year plan] **monitoring proportion of tenured faculty**

(a) [Each] **In order to maintain the flexibility of the institution to respond to the changing educational needs of future generations of students, each college** [Board of Trustees] **board of trustees** shall [prepare an academic plan for its institution indicating the steps it plans to] take **appropriate steps** to achieve a future balance of **the proportion of faculty** [in which no more than a reasonable proportion are] ultimately tenured. **The board of trustees shall annually monitor the projected proportion of tenured faculty and the progress being made to achieve the institutional goal of limiting the proportion of tenured faculty.**

[1. The academic plan established by each institutional trustee board shall include the proportion of tenured faculty projected each year during the plan's life.

(b) The college trustees shall report their plan to the Chancellor of Higher Education and shall inform the Chancellor each year of the progress being made in achieving their goals.

Note: The Board of Higher Education believes that by limiting the proportion of tenured faculty, the institution maintains the flexibility to respond to changing educational needs of future generations of students.]

[9:4-6.2]**9A:7-3.2** Establishment of internal policies

(a) Each community college [Board of Trustees] **board of trustees** shall establish internal policies which indicate either that it will impose specific restrictions or more intensive and rigorous review procedures for any reappointment conferring tenure which brings the proportion of individuals in a department (or other major academic sub-unit) or in the college as a whole above [its present level] **the level deemed necessary by the board of trustees to maintain an appropriate balance between tenured and non-tenured faculty.**

(b) Reappointments conferring tenure which raise [the tenure rate] **the proportion of tenured faculty** above [that level] **the level deemed appropriate by the board of trustees** shall be made only when judged by the college [Board of Trustees] **board of trustees** as being in the best interests of the college.

## [9:4-6.3] Reappointment

A reappointment conferring tenure may be offered only to faculty members who possess an appropriate degree or its equivalent, except under unusual circumstances when the granting of tenure to an individual not having the best interest of the institution.]

Recodify existing 9:4-6.4 and 9:4-6.5 as **9A:7-3.3 and 9A:7-3.4** (No change in text.)

[9:4-6.6]**9A:7-3.5** Evaluation procedures

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

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(c) These evaluations, which should include student input, should comprehend such factors as continued teaching competence, professional preparation, and attainments [which] **that** are directly related to teaching or administrative assignments; contributions to campus life beyond formal, assigned instructional activity; and significant research, scholarly, or community activity.

### SUBCHAPTER [7]4. PROFESSIONAL EMPLOYEES POLICIES

#### [9:4-7.1]9A:7-4.1 Definitions

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

....  
 "Professional [person] **personnel**" ["or professional staff member"] means individuals serving in positions which at minimum require the individual to hold a bachelors degree or its equivalent.  
 ...

#### [9:4-7.2]9A:7-4.2 Academic rank for nonteaching personnel

(a) "Faculty member" means any full-time member of the teaching staff appointed with academic rank. Pursuant to rules promulgated by the [State Board of Higher Education] **New Jersey Commission on Higher Education**, other full-time professional [persons] **personnel** shall be considered faculty members if they concurrently hold academic rank.

(b) Eligibility for concurrent academic rank for nonteaching professional[s] [persons] **personnel** in the county colleges shall be limited to professional librarians who meet qualifications for rank[. Professional] **professional** staff members engaged in student counseling related to an academic program who meet all qualifications for rank, and to other professional [persons] **personnel** as set forth in (h) below. Any nonteaching professional [person] **personnel** granted concurrent academic rank [prior to the effective date of this section] **before July 31, 1974** shall retain such academic rank while employed by the college.

(c) [Eligibility for concurrent] **Concurrent** academic rank for nonteaching professional [persons] **personnel** in the community colleges may [be determined] **only be granted** by [each] **affirmative action of the college board of trustees**, [but may include only] **and shall be limited to** those categories of [persons] **personnel** identified in (b) [above] **and (h) above**.

(d) (No change.)

(e) If tenure is awarded in a concurrent academic rank to an individual, appointments on an annual basis to his or her professional position may continue to be made by the board of trustees as indicated in [subsection] (f) [of this section] **above**.

(f) A college board of trustees shall have the authority to reassign any nonteaching professional employee with tenure in a concurrent academic rank to any professional position in the department or unit in which tenure is held. For example, a head librarian tenured as professor of library services may be reassigned to any professional library position[, or a dean tenured as professor of English may be reassigned to responsibilities in the English department.

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

#### [9:4-7.3] Contracts for professional staff (non faculty)

(a) Professional staff employees not holding faculty rank may be appointed by a board of trustees for one year terms for five consecutive academic years. For the purposes of this section, the academic year shall be defined as July 1 to June 30. Eligible professional staff employees whose initial agreement is after July 1, but prior to October 1, shall be given a term from the date of appointment to June 30 of the following year, and this appointment shall be considered as one full academic year of service for the purpose of this regulation. Eligible professional staff employees whose initial appointment is after October 1 shall be given an appointment until June 30 of the following year, but this appointment shall not be considered as a full academic year of service for the purpose of this section. Professional staff serving under such

initial one year contracts shall be notified of reappointment or non-reappointment to a succeeding one year contract by March 15 of each academic year.

(b) A professional staff employee shall be eligible for, but not entitled to, reappointment to a multi-year term of two to five years, as well as reappointment to a one year term, after such employee's fifth consecutive full academic year of service. The college shall notify the professional staff employee by December 15 of the fifth consecutive contract year of the determination to reappoint or non-reappoint and in the instance of reappointment of the duration of said reappointment. During the period of any multi-term contract after five consecutive years of service, employees shall be subjected to dismissal only in the manner prescribed by N.J.S.A. 18A:6-18.

(c) Subsequent to the fifth consecutive contract year professional staff employees who are appointed to one year contracts after five consecutive years of service shall be notified of reappointment or non-reappointment to a succeeding contract by December 15 of each academic year.

(d) Professional staff employees who are appointed to multi-year contracts shall be notified of appointment or non-reappointment to a succeeding contract one year prior to the expiration of such contracts. Failure to so notify an employee shall entitle such employee to reappointment for a one-year term.

(e) Any professional staff employee, whether serving under an annual contract or a multi-year contract, who is not notified of reappointment in accordance with the applicable provisions set forth above in this section, shall be entitled to reappointment for an additional one-year term.

(f) A professional staff employee who has served longer than five consecutive academic years and whose contract, whether for a one-year term or a multi-year term, is due to expire at the end of the academic year may in accordance with the provisions of this section be reappointed to a one-year term, a multi-year term, or not reappointed, regardless of the duration of his or her current contract.

(g) Professional staff members serving under a multi-year contract may be assigned by the president to any professional position within their competence during the term of the contract, but their salary may not be reduced during the duration of the contract below that which they would have received had they continued in their original position, and they may be dismissed from the college during the term of the contract only for cause consistent with appropriate statutory provisions.

(h) The board of each college which offers multi-year contracts shall establish a formal procedure for considering and approving the offering of multi-year contracts and for determining whether the length of such contracts shall be two, four or five years. This procedure should encompass a thorough review of all personnel records including the reports of regular, systematic and formal evaluations conducted during the employment of the individual, as suggested in N.J.A.C. 9:4-7.3(e).

#### 9:4-7.4 Career development

(a) The board of trustees and the president of each State and community college, in conjunction with their faculty, shall establish a formal procedure for the career development of all members of the professional staff including, but not limited to, a systematic and regular evaluation for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction.

(b) Members of the teaching staff and other professional employees serving for one-year appointments should be formally evaluated at least once each academic year. Professional employees with multi-year contracts should be formally evaluated at least once each five years.

(c) Formal procedures established for the evaluation of members of the teaching staff should include at minimum following:

1. Peer evaluation accomplished through classroom visitation, review of teaching materials and procedures or other appropriate means;
2. Student evaluation accomplished through systematic collection and analysis of student ratings or other appropriate means;
3. Administration evaluation accomplished through written reports by department chairmen, deans or other academic officers;

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4. Written self-evaluation by the individual which may, for example, include a listing of specific activities undertaken during the period immediately preceding the evaluation.

(d) The formal evaluations suggested in subsection (c) of this Section should encompass, as appropriate to the source of the evaluation, teaching effectiveness, departmental or institutional service, administrative effectiveness, scholarly achievement, professional growth and relevant community service.

(e) Formal procedures established for the evaluation of professional persons other than members of the teaching staff should include the following:

1. Administrative evaluation as determined through written reports by deans, vice presidents or other administrative officers;

2. Written self-evaluation by the individual, including a listing of specific activities undertaken during the period immediately preceding the evaluation;

3. The use of peer evaluation, faculty evaluation or student evaluation programs may be included if considered as appropriate to the responsibilities of the position.

(f) Since the specific career development needs of each college may differ, no listing of programs and activities is thus meant to be indicative, but not prescriptive or inclusive, of the elements which may appropriately be included in such a program:

1. Assignment of probationary faculty or new professional staff to one or more senior faculty or professional staff as advisors and consultants;

2. Establishment of the principle of opening all classrooms to faculty colleagues at all times to permit sharing of exemplary teaching and constructive criticism of teaching techniques and materials;

3. Support of team teaching by junior and senior faculty with full collegial exchange and sharing of responsibilities;

4. Support of seminars and colloquia on teaching, scholarly and professional problems;

5. Use of released time to support faculty interest in scholarly or institutional research and program development;

6. Exchange of faculty and professional staff among institutions on a regular basis;

7. Inservice seminars on teaching techniques and methodology such as the use of new media, simulation techniques and so forth;

8. Use of sabbatical leaves (where permitted by law) to strengthen teaching scholarly and professional abilities;

9. Support of paid travel for participation in professional and scholarly meetings;

10. Availability of audio-visual and other resources to support teaching and instruction in their use;

11. Establishing formal procedures to inform new staff members of local resources for acquiring skill as a teacher or professional;

12. Encouraging interdisciplinary courses and programs;

13. Initiating an institutional center for teaching to provide assistance to faculty members, wishing to improve their effectiveness;

14. Review of courses, programs and professional services by inside and outside peer teams;

15. Establishing calendar reforms permitting new teaching schedules which challenge routine and restlessness.]

(a)

**COMMISSION ON HIGHER EDUCATION****State Colleges; State College Personnel****Proposed Readoption with Amendments: N.J.A.C.****9:6-3, 4, 5, and 6 and N.J.A.C. 9:6A****Proposed Repeal: N.J.A.C. 9:6-1, 2 and 7**

Authorized By: Commission on Higher Education,

Joseph D. Williams, Chair.

Authority: N.J.A.C. 18A:3B-15 (P.L. 1994, c.48, Section 15).

Proposal Number: PRN 1995-209.

Submit comments by May 3, 1995 to:

Dr. Jeanne Oswald

Administrative Practice Officer

Commission on Higher Education

20 West State Street

CN 542

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Higher Education Restructuring Act of 1994, which abolished the Board and Department of Higher Education, preserves until July 1, 1995, for review by the Commission on Higher Education, certain rules affecting the State colleges. The preserved rules regulate academic personnel and student trustee policies at the State colleges (four subchapters in N.J.A.C. 9:6) and the State college personnel system (N.J.A.C. 9:6A). The Commission is simultaneously proposing a repeal of N.J.A.C. 9:6; the agency also proposes repealing some of the personnel system rules and readopting others for one year with amendments. This proposal for substantive changes, which appears elsewhere in this issue of the New Jersey Register (see Proposal Number 1995-210), is in keeping with the spirit of the Higher Education Restructuring Act of 1994, which seeks to reduce State regulation and to promote institutional autonomy.

Nevertheless, the Commission wants to consider the full effect of these proposed changes on all involved parties. Should the Commission wish to amend its proposal in response to public comment, a second noticing would be required, and the existing rules would expire before final adoption of new ones. To avoid a lapse if the substantively changed rules are not adopted before July 1, 1995, the agency proposes herein simultaneously noticing, for one-year readoption, the existing preserved rules in Chapters 6 and 6A with strictly technical amendments to conform to the Higher Education Restructuring Act. If it is necessary to adopt these technically amended rules on an interim basis to avoid a lapse, they will be repealed upon adoption of the substantively amended rules.

Regarding N.J.A.C. 9:6, the Restructuring Act eliminated authority to regulate State college topics other than personnel and student trustee policies, including subchapter 1, Admissions Policies; subchapter 2, Baccalaureate Degree Policies; and subchapter 7, Institutional Plans.

The preserved rules are found in four subchapters: subchapter 3, Academic Personnel Policies; subchapter 4, Tenure and Multiyear Contract Rules; subchapter 5, Reduction in Force Policies; and subchapter 6, Student Trustee Policies. The administrative code chapter regulating the State college personnel system (Chapter 6A) covers seven subchapters: subchapter 1, General Provisions; subchapter 2, Definitions; subchapter 3, State College Classification Plan; subchapter 4, Compensation; subchapter 5, Leaves; subchapter 6, Standards of Conduct; and subchapter 7, Equal Employment Opportunity and Affirmative Action.

This proposal calls for numerous technical amendments to N.J.A.C. 9:6 and 9:6A to replace the words "Chancellor of Higher Education" and "Board of Higher Education" with more appropriate terminology that refers to the Commission on Higher Education. (Some "Chancellor" references become "Executive Director of the Commission on Higher Education," and some, "Commission on Higher Education"; all "Board" references become the latter.) Other technical amendments, also for conformance with the restructuring act, are detailed in the following summary of the rules proposed for interim readoption.

In N.J.A.C. 9:6, the agency proposes readopting, with several technical amendments, subchapter 3, which addresses topics such as academic freedom, faculty qualifications and appointments, criteria for and institutional policies on promotion, limitations on professorial classifications (and exemptions therefrom), and other related subjects affecting State college faculty. The agency proposal deletes at N.J.A.C. 9:6-3.7(a) references to a five-year plan and to a budget submission process that the Higher Education Restructuring Act does not preserve, and a reporting requirement that had been linked to the extinct planning and budget processes; at 9:6-3.9(a), the proposal deletes references to that reporting requirement.

Readoption with one technical amendment is proposed for subchapter 4, which covers various aspects of tenure (such as academic plans, internal policies, terminal degree requirements, and evaluation) and the eligibility of nonteaching professional staff for academic rank and multiyear contracts.

Proposed for readoption without change is subchapter 5, which governs procedures for State colleges to use if they must lay off employees due

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## HIGHER EDUCATION

to fiscal exigency; the rules address aspects of the situation such as affirmative action, notice requirements, and reemployment lists.

Also proposed for readoption without change is subchapter 6, which establishes policies for student representation on college boards of trustees, including eligibility and participation at meetings.

In Chapter 6A, the Commission proposes readopting without change subchapter 1, which defines the purpose, compliance, and severability of the chapter's rules. Proposed technical changes to the definitions, found in subchapter 2, add the Commission on Higher Education and its Executive Director.

Subchapter 3 covers the State College Classification Plan, including such areas as job titles, plan administration, requests for changes, classification and reclassification of positions, title reevaluation, appeals procedures, staff for trustee boards, and student employees. The subchapter is proposed for readoption with several technical amendments, including the proposed deletion at N.J.A.C. 9:6A-3.5(f)-(g) of language regarding procedures for appeals to the Chancellor, reflecting the revised appeals process under the restructuring act.

Subchapter 4, which governs the State College Compensation Plan, including plan administration and compensation matters specific to managerial employees, is proposed for readoption with several technical amendments.

The agency proposes readopting with one change subchapter 5, which regulates various types of leaves (sick, vacation, child care, jury duty, etc.) for State college employees. Proposed for deletion is N.J.A.C. 9:6A-5.17(e), which cites procedures for appeals to the Chancellor of a college's denial of a managerial employee's sick leave injury benefits, reflecting the revised appeals process under the restructuring act.

The Commission's proposal would readopt without change subchapter 6, which prohibits political activity and imposes sanctions for submitting falsified documents. The proposal would readopt with four technical amendments subchapter 7, which details requirements for affirmative action programs at the State colleges.

### Social Impact

The former Board of Higher Education exercised significant regulation and oversight of the New Jersey State colleges. The Higher Education Restructuring Act of 1994 removes State-level oversight to a large extent and gives trustee boards greater responsibility and authority for managing their respective institutions. The act preserves, however, rules concerning personnel matters and student trustee policies at the State colleges for one year for review by the Commission on Higher Education.

In the spirit of restructuring, the Commission has proposed elsewhere in this issue of the New Jersey Register repealing the preserved subchapters in N.J.A.C. 9:6, which deal with personnel and student trustee policies, and parts of N.J.A.C. 9:6A, which regulates the personnel system at the State colleges. The Commission also has proposed elsewhere in this issue of the New Jersey Register readopting for one year with substantive amendments the parts of N.J.A.C. 9:6A that deal with the State college personnel classification system. However, recognizing that the public notice/readoption process may not be finished before the July 1 expiration date for the preserved State college rules if the Commission amends its proposal in response to public comment, the Commission is simultaneously proposing herein the existing preserved rules for readoption with technical amendments only. If the Commission does not adopt the substantive amendments by July 1, the readoption with technical amendments proposed herein will continue regulatory coverage and maintain the status quo on an interim basis until the Commission adopts substantive changes.

### Economic Impact

Since this is a proposal for readoption, not new rules, continued compliance is not expected to result in either increased or decreased costs to the State colleges. In general, the rules in N.J.A.C. 9:6 do not have a direct economic impact on the colleges in that they mainly govern various academic standards and procedures. However, N.J.A.C. 9:6-3 and 4 affect individual employees at the State colleges, since such rules (on qualifications, merit awards, promotions, tenure, and annual contracts) may affect such employees' salary levels. N.J.A.C. 9:6-5, which defines the process for staff reductions due to fiscal crisis, would affect both the colleges reducing their payrolls in accordance with the procedures set forth and the employees laid off under these provisions.

Regarding N.J.A.C. 9:6A, which governs the State college personnel system, the costs involved are generally associated with the salaries of unclassified employees. The chapter establishes the framework of the State college compensation plan, which sets forth procedures for salaries

and pay adjustments for unclassified staff and managerial employees. The chapter also sets forth title classification and leave procedures for employees, both of which have economic components. To the extent that these are not new rules, continued compliance is not expected to result in either increased or decreased costs to the State colleges.

### Executive Order No. 27 Statement

The proposed interim readoption with technical amendments is not subject to the Federal exceedance standards because review and adoption of personnel and student trustee policy rules and of the State college personnel system rules by the Commission on Higher Education are not subject to any Federal requirements or standards.

### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposal does not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined under N.J.S.A. 52:14B-16 et seq., known as the Regulatory Flexibility Act. The proposal deals strictly with academic personnel and student trustee policies at New Jersey State colleges.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 9:6-1, 2 and 3, 4, 5 and 6 and N.J.A.C. 9:6A.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:6.

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

#### 9:6-3.5 Qualifications for rank

(a) (No change.)

(b) The [Board of] **Commission on Higher Education** recognizes that on rare occasions individuals may present qualification as to education and experience that their peers will recommend to the board of trustees to be the equivalent of the above qualifications although not corresponding to them to the letter. The requirement of an earned doctorate or other appropriate terminal degree or its equivalent for promotion to the rank of Assistant Professor shall not apply to faculty members employed in the colleges prior to February 22, 1974.

(c) (No change.)

#### 9:6-3.7 Institutional promotion policies

(a) Each board of trustees shall maintain a promotion policy which clearly supports the mission of the college and which considers the impact on current and future students of the college. The promotion policy [shall constitute a companion to the comprehensive five year institutional plan (see N.J.A.C. 9:6-7) and] shall be submitted to the [Board of] **Commission on Higher Education** [Budget Committee along with the institutional plan and budget request]. The policy shall include the following elements:

1.-2. (No change.)

3. A description of the impact of implementing the promotion policy with specific reference to the mission of the college and the impact on its students. Such description shall include the projected distribution by rank and tenure of teaching faculty for each year over a 10 year period[. It should also include an analysis of such distribution for each year following the effective date of this regulation and prior to the annual promotion policy submission to the Board of Higher Education];

4.-9. (No change.)

(b) The [Chancellor] **Commission on Higher Education** shall review the implementation of the promotion policy of the college annually and shall also complete a comprehensive review at five year intervals.

#### 9:6-3.9 Exemption from limitations for professorial classifications

(a) A State college board of trustees may seek exemption from the limitation on senior rank set forth in N.J.A.C. 9:6-3.8(a), based upon the criteria set forth in N.J.A.C. 9:6-3.7, by including a specific exemption request [along with the submission of its institutional promotion policy to the Chancellor] **to the Executive Director of the Commission on Higher Education.**

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(b) An exemption, if granted, shall be effective upon approval of the institutional promotion policy by the [Board of] **Commission on Higher Education**.

(c) Upon review of the progress of the college in implementing its plan at the time of five-year comprehensive review, the [Chancellor] **Executive Director of the Commission** shall make a recommendation to the [Board of] **Commission on Higher Education** whether to transfer authority on such decisions to the board of trustees, to renew the exemption for another five years or to reimpose the limitation on the ranks of associate professor and above set forth in N.J.A.C. 9:6-3.8.

### 9:6-3.10 General provisions: Salary schedule

(a) (No change.)

(b) All salary schedules of New Jersey State colleges may be amended or revised by the [Board of] **Commission on Higher Education**.

### 9:6-4.1 Preparation of an academic plan

Each college board of trustees shall prepare an academic plan for its institution indicating the steps it plans to take to achieve a future balance of faculty in which no more than a reasonable proportion are ultimately tenured. The [Board of] **Commission on Higher Education** believes that by limiting the proportion of tenured faculty, the institution maintains the flexibility to respond to changing educational needs of future generations of students. Accordingly, the academic plan established by each institutional trustee board shall include the proportion of tenured faculty projected each year during the plan's life.

### 9:6A-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings and are defined solely for the purposes of this chapter, unless the context clearly indicates otherwise:

...  
**"Commission"** means the New Jersey Commission on Higher Education, created by the Higher Education Restructuring Act of 1994.

...  
**"Executive Director"** means the Executive Director of the Commission on Higher Education.

...  
**"Regular title"** means a title within the State College Classification Plan which has a corresponding salary range established by the [Board of] **Commission on Higher Education** and carries eligibility for holiday and other leave benefits.

**"Special title"** means a title included in the State College Classification Plan which does not have a salary range established by the [Board of] **Commission on Higher Education**, does not carry eligibility for holidays and other leave benefits, and is of a temporary nature in that it may not be more than six months in duration on a full-time basis nor half-time or more on a continuing basis.

...

### 9:6A-3.1 Classification of titles

(a) The [Board of] **Commission on Higher Education** shall establish and maintain a State College Classification Plan for all employees, as defined in N.J.A.C. 9:6A-2.1, at the state colleges which shall consist of:

1.-2. (No change.)

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

### 9:6A-3.2 Administration of State College Classification Plan

(a) The [Chancellor] **Executive Director** shall enforce and administer the State College Classification Plan approved by the [Board of] **Commission on Higher Education** and shall:

1. (No change.)

2. With the consent of the [Board of] **Commission on Higher Education** approve:

i.-v. (No change.)

3. (No change.)

4. Recommended to the [Board of] **Commission on Higher Education** any other changes deemed necessary to accurately reflect current conditions.

(b) (No change.)

### 9:6A-3.3 Requests for changes within the State College Classification Plan

(a) State colleges proposing changes within the State College Classification Plan shall initiate requests by letter from the president of the college, or his or her designee, addressed to the [Chancellor of Higher Education] **Executive Director**, setting forth the nature of the requested change and appropriate justification.

(b) (No change.)

(c) Upon receipt of a letter requesting a substantive change within the State College Classification Plan, the [Chancellor] **Executive Director** shall submit all pertinent information to the State College Classification Advisory Board.

(d) The State College Classification Advisory Board shall, within 60 calendar days, make a written recommendation to the [Chancellor] **Executive Director**.

(e) At either of the succeeding two meeting of the [Board of] **Commission on Higher Education** after receipt of the recommendation from the State College Classification Advisory Board, the [Chancellor] **Executive Director** shall present a recommendation to the [Board of] **Commission on Higher Education**.

(f) Nothing in this section shall preclude the [Chancellor] **Executive Director** from utilizing the services of an outside consultant(s) to assist in evaluating such requests.

1. If a consultant is utilized the [Chancellor] **Executive Director** shall refer any such matters to the consultant(s) within 30 days of the recommendation from the State College Classification Advisory Board.

2. The time limit set forth in (e) above shall run from the time the [Chancellor] **Executive Director** receives the report from the consultant.

### 9:6A-3.4 Classification and reclassification of positions

(a) (No change.)

(b) When the college, an affected employee, or the recognized negotiations agent claims, in writing, that the assigned duties and responsibilities of a position have changed to the extent that they are no longer similar to the duties and responsibilities of other positions in the same title, and that the title is no longer appropriate, the college shall after review of the claim:

1. (No change.)

2. Recommend to the [Chancellor of] **Commission on Higher Education** that a new title be established to which the position shall be reclassified; or

3.-4. (No change.)

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

### 9:6A-3.5 Reclassification appeal procedures

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

[(f) The final decision of the college may be appealed to the Chancellor of Higher Education pursuant to N.J.S.A. 18A:6-27.

(g) No decision by the Chancellor in a reclassification appeal shall preclude the college from removing the appellant's out-of-title duties as an alternative resolution to implementing the reclassification of the appellant's position.]

### 9:6A-3.6 Title reevaluation requests

(a) (No change.)

(b) The college, an affected employee, or the recognized negotiations agent may request a reevaluation, which shall be submitted in writing to the [Chancellor] **Executive Director**.

1. At least two weeks prior to the submission of such a request to the [Chancellor] **Executive Director**, notice of the request shall be provided to the president of the college.

(c) The [Chancellor] **Executive Director** shall refer a request to the State College Classification Advisory Board for a recommendation. The recommendation shall be issued to the [Chancellor] **Executive Director** within 60 calendar days of receipt of the request by the State College Classification Advisory Board.

(d) The [Chancellor] **Commission** may render a decision based on the written record or appoint an independent compensation consultant which appointment shall be made within 30 days.

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1. If the [Chancellor] **Executive Director** appoints a consultant to conduct a review of the request, all parties shall be advised of the review date and shall present their arguments before the consultant. An employee requesting a reevaluation may be heard personally or be represented by counsel or the employee's recognized negotiations agent.

2. The consultant shall submit a report and recommendation to the [Chancellor] **Executive Director** within 30 calendar days after the review.

3. The report and recommendation shall be sent to all parties. Exceptions may be filed with the [Chancellor] **Executive Director** within 15 calendar days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within five days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(f) If the [Chancellor] **Executive Director** determines that the title should be reevaluated, he or she shall bring a recommendation to the [Board of] **Commission on Higher Education** at one of its next two succeeding meetings following the receipt of the recommendation from the State College Classification Advisory Board or any consultant(s) if utilized.

(g) The effective date of any reevaluation for a managerial employee shall be the first pay period following the [board of] **Commission on Higher Education** decision.

### 9:6A-4.1 State College Compensation Plan

(a) The [Board of] **Commission on Higher Education** shall establish with the concurrence of the Governor and publish the State College Compensation Plan which shall be the official plan for compensating all employees in regular titles at the state colleges.

(b) (No change.)

### 9:6A-4.2 Administration of the State College Compensation Plan

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

(c) No employee shall be paid below the minimum or above the maximum of the range for his or her class, except with the approval of the [Chancellor] **Commission** for any employee who is demoted during the term of a contract or while under tenure or unless permitted under a negotiated agreement.

(d)-(g) (No change.)

### 9:6A-4.3 Annual salary increases for managerial employees

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

(d) Each year, the [Board of] **Commission on Higher Education** shall establish the percentage increase applicable to managerial employees' salaries and notify the colleges of that amount.

(e) By June 30 of each fiscal year, each college shall report to the [Chancellor] **Executive Director** the total salary figure for all managerial employees at the college.

### 9:6A-5.17 Sick leave injury (SLI) for managerial employees:

Appeal procedures

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

[(e) The final decision of the college may be appealed to the Chancellor of Higher Education pursuant to N.J.S.A. 18A:6-27.]

### 9:6A-7.1 Equal Employment Opportunity and Affirmative Action Program

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

(e) Each state college shall appoint an affirmative action officer who shall be directly responsible to the president of the college. Affirmative action officers shall serve in a full-time capacity except under exceptional circumstances as determined by the [Chancellor] **Commission**.

(f) (No change.)

(g) Each college shall submit to the [Chancellor] **Executive Director**, by a date established by the [Chancellor] **Executive Director**, an annual written affirmative action plan complete with:

1.-6. (No change.)

### 9:6A-7.2 (No change.)

### 9:6A-7.3 Policies regarding prohibition of sexual harassment

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

(e) The policy on sexual harassment and any future changes thereto, shall, subsequent to adoption by the board of trustees of the college, be forwarded to the [Chancellor] **Executive Director**.

9:6A-7.4 (No change.)

(a)

## COMMISSION ON HIGHER EDUCATION

### State Colleges

### State College Personnel

**Proposed Repeal: N.J.A.C. 9:6 and N.J.A.C. 9:6A-5, 6 and 7**

**Proposed Readoption and Recodification with Amendments: N.J.A.C. 9:6A to 9A:6**

Authorized By: Commission on Higher Education,  
Joseph D. Williams, Chair.

Authority: N.J.S.A. 18A:38-15 (Chapter 48, P.L. 1994, Section 15).

Proposal Number: PRN 1995-210.

Submit comments by May 3, 1995 to:

Dr. Jeanne Oswald  
Administrative Practice Officer  
Commission on Higher Education  
20 West State Street  
CN 542  
Trenton, New Jersey 08625

The agency proposal follows:

### Summary

The Higher Education Restructuring Act of 1994, which abolished the Board and Department of Higher Education, preserves until July 1, 1995 for review by the Commission on Higher Education certain rules affecting the State colleges. The preserved rules regulate academic personnel and student trustee policies at the State colleges (four subchapters in N.J.A.C. 9:6) and the State college personnel system (N.J.A.C. 9:6A). The Commission has proposed repealing the former chapter; the agency also has proposed repealing some of the personnel system rules and readopting others for one year with amendments. The Commission believes the latter must be maintained until institutional trustee boards adopt appropriate alternatives; therefore, these rules are proposed for readoption for one year only. This proposal is in keeping with the spirit of the Higher Education Restructuring Act of 1994, which seeks to reduce State regulation and to promote institutional autonomy.

Regarding N.J.A.C. 9:6, the Restructuring Act eliminated authority for all rules dealing with State college topics other than personnel and student trustee policies, including subchapter 1, Admissions Policies; subchapter 2, Baccalaureate Degree Policies; and subchapter 7, Institutional Plans. These subchapters are proposed for repeal herein.

The preserved N.J.A.C. 9:6 is found in four subchapters: subchapter 3, Academic Personnel Policies; subchapter 4, Tenure and Multiyear Contract Rules; subchapter 5, Reduction in Force Policies; and subchapter 6, Student Trustee Policies. The Commission on Higher Education proposes their repeal for several reasons. Collective bargaining agreements incorporate some of the provisions, and statute covers others. Also, to-be-proposed licensing rules, applying to all institutions, not just State colleges, will address portions of the existing rules. In addition, some of the rules can be considered "managerial prerogative" which, consistent with restructuring and with practice at other public senior institutions, should not be regulated by the State.

The chapter regarding the State college personnel system, N.J.A.C. 9:6A, covers seven subchapters: subchapter 1, General Provisions; subchapter 2, Definitions; subchapter 3, State College Classification Plan; subchapter 4, Compensation; subchapter 5, Leaves; subchapter 6, Standards of Conduct; and subchapter 7, Equal Employment Opportunity and Affirmative Action. This agency proposal repeals the last three subchapters. It also readopts, with amendments, the first three subchapters, which constitute the core of the job classification plan for the State colleges, and one section (State College Compensation Plan) in the fourth subchapter.

The agency proposal also calls for numerous technical amendments to N.J.A.C. 9:6A to replace "Board of Higher Education" with "Com-

mission on Higher Education" and "Chancellor" with "Executive Director of the Commission on Higher Education" (or, in one instance, "Commission"). Typographical errors are corrected throughout. Other proposed changes are detailed in the following summary of the rules proposed for interim readoption.

In subchapter 1, which defines the purpose, compliance, and severability of the rules, amendments are proposed for N.J.A.C. 9:6A-1.1 and 1.2 that limit the applicability of the rules by removing managerial and student employees and by specifying their restriction to employees in the State colleges unit.

Proposed changes to the definitions, found in subchapter 2, add the Commission on Higher Education and its Executive Director and delete "special title"; other changes parallel those in N.J.A.C. 9:6A-1, by deleting definitions of the now-excluded employees and adding references to the "State colleges unit."

Subchapter 3 covers the State College Classification Plan, including such areas as titles, plan administration, requests for changes, classification and reclassification of positions, title reevaluation, appeals procedures, staff for trustee boards, and student employees. At N.J.A.C. 9:6A-3.1, a proposed change reflects the restricted applicability to the State colleges unit. The proposal to delete 9:6A-3.5(f) and (g), regarding procedures for personnel reclassification appeals to the Chancellor, reflects the Higher Education Restructuring Act's revision of the appeal process. Deletion of N.J.A.C. 9:6A-3.6(g) and N.J.A.C. 9:6A-3.8 reflects the proposed removal of managers and students from the categories of employees affected by the rules. In keeping with institutional autonomy, the proposal also deletes 9:6A-3.7, which speaks to the assignment of confidential positions to State college trustee boards.

In subchapter 4, which deals with the State College Compensation Plan, the Commission proposes retaining only N.J.A.C. 9:6A-4.1, amended to delete the requirement for the Governor's concurrence in the plan and to specify the rule's applicability solely to the State colleges unit. Proposed for deletion are the remaining sections in subchapter 4, which cover plan administration and compensation matters specific to managerial employees, who are proposed for removal from these rules.

The agency proposes to repeal the remaining three subchapters: subchapter 5, which regulates various types of leaves (sick, vacation, child care, jury duty, etc.) for State college employees; subchapter 6, which prohibits political activity and imposes sanctions for submitting falsified documents; and subchapter 7, which details requirements for affirmative action programs at the State colleges. These proposed repeals reflect several considerations noted above regarding the proposed repeal of Chapter 6.

In addition, the preserved parts of N.J.A.C. 9:6A are being recodified to N.J.A.C. 9:6A.

#### Social Impact

The former Board of Higher Education exercised significant regulation and oversight of the New Jersey State colleges. The Higher Education Restructuring Act of 1994 placed greater responsibility for campus and governance matters with institutional trustee boards and removed State oversight where decisions are more appropriately made at the institutional level. Consistent with the restructuring act and institutional autonomy, therefore, the Commission proposes repealing the subchapters in N.J.A.C. 9:6 that deal with academic personnel matters and student trustee policies, and parts of N.J.A.C. 9:6A, which regulates the personnel system at the State colleges. In some cases, items proposed for deletion will become campus managerial prerogatives; in other instances, they may become subject to negotiation between labor and management; and in others, the essentials are already covered by statute.

The N.J.A.C. 9:6A rules proposed for readoption with amendments represent the core of the State college personnel classification system. These rules should not be repealed until appropriate alternatives are established as a result of ongoing collective bargaining discussions and/or development of policies by institutional boards of trustees. They are proposed for readoption for only one year.

#### Economic Impact

The rules in N.J.A.C. 9:6 do not have a direct economic impact on the colleges in that they mainly govern various academic standards and procedures. However, N.J.A.C. 9:6-3 and 4 affect individual employees at the State colleges since such rules (on qualifications, merit awards, promotions, tenure, and annual contracts) may affect such employees' salary levels. N.J.A.C. 9:6-5, which defines the process for staff reductions due to fiscal crisis, would affect both the colleges reducing their payrolls in accordance with the procedures set forth and the employees laid off under these provisions. Repeal of these rules would place authority in

such matters in the colleges' trustee boards. Such local exercise of managerial prerogative should be more cost-effective for the colleges than the current approach involving State regulation of personnel practices and procedures without recognition of the colleges' differing missions.

Regarding N.J.A.C. 9:6A, which governs the state college personnel system, the costs involved are generally associated with the salaries of unclassified employees. The portions proposed for readoption govern the State College Classification Plan and the establishment of the State College Compensation Plan, both of which have economic components. To the extent that these are not new rules, continued compliance is not expected to result in either increased or decreased costs to the State colleges.

The portions of N.J.A.C. 9:6A proposed for deletion, including leave procedures and procedures for salaries and pay adjustments or unclassified staff and managerial employees, also have economic components. Their proposed repeal, by eliminating some reporting and recordkeeping requirements, could result in cost savings for the State colleges; the repeals will not create any new costs. More important, as indicated above, their repeal would permit greater institutional control of human resource expenditures.

#### Executive Order No. 27 Statement

The proposed repeals and amendments are not subject to the Federal excessance standards because review and adoption of personnel and student trustee policy rules and of the State college personnel system rules by the Commission on Higher Education are not subject to any Federal requirements or standards.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposal does not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined under N.J.S.A. 52:14B-16 et seq., known as the Regulatory Flexibility Act. The proposal deals strictly with academic personnel and student trustee policies at New Jersey State colleges.

**Full text** of the rules proposed for repeal can be found at N.J.A.C. 9:6 and N.J.A.C. 9:6A-5 through 7.

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

#### [9:6A-1.1] 9A:6-1.1 Purpose

The purpose of this chapter is to prescribe rules and procedures to provide an effective and efficient personnel system **for employees in the State colleges unit** and to ensure that employees are treated fairly and impartially.

#### [9:6A-1.2] 9A:6-1.2 Compliance

All [state] **State colleges** and their [full] **full-** or part-time employees **in the State colleges unit**, including but not limited to all faculty, librarians, [non-teaching] **and nonteaching** professional staff[, managerial employees, and student employees] shall comply with these rules[;] provided, however, that career service employees covered by the provisions of Title 11A, Civil Service, New Jersey Statutes, **and all employees not included in the State colleges unit** shall not be subject to these rules.

#### [9:6A-1.3] 9A:6-1.3 (No change in text.)

#### [9:6A-2.1] 9A:6-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings and are defined solely for the purposes of this chapter, unless the context clearly indicates otherwise:

...

**"Commission"** means the New Jersey Commission on Higher Education, created by the Higher Education Restructuring Act of 1994, N.J.S.A. 18A:38 et seq.

**"Employee"** means all employees at a state college **included in the State colleges unit** [not covered by the provisions of Title 11A, Civil Service, New Jersey Statutes, except for student employees].

**"Executive Director"** means the Executive Director of the Commission on Higher Education.

...

**"Managerial employees"** means all employees who are entitled to representation by a negotiations agent under the provisions of

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the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1 et seq. including confidential employees, as set forth in N.J.A.C. 9:6A-3.7.]

"Part-time employee" means an employee in the State colleges unit who is employed on less than a full-time basis[, excluding adjunct faculty].

"Regular title" means a title within the State College Classification Plan which has a corresponding salary range established by the [Board of] Commission on Higher Education and carries eligibility for holiday and other leave benefits.

"Special title" means a title included in the State College Classification Plan which does not have a salary range established by the Board of Higher Education, does not carry eligibility for holidays and other leave benefits, and is of a temporary nature in that it may not be more than six months in duration on a full-time basis nor half-time or more on a continuing basis.]

"State College Classification Plan" means the comprehensive system of titles, title series, and specifications for positions in the State colleges unit at the state colleges [not covered by the provisions of Title 11A, Civil Service, New Jersey Statutes].

"Student employee" means an employee in a special title whose employment at the college is primarily for the purpose of financing his or her collegiate education and/or to further his or her education objectives at the college.]

[9:6A-3.1] **9A:6-3.1** Classification of titles

(a) The [Board of] Commission on Higher Education shall establish and maintain a State College Classification Plan for all employees[, as defined in N.J.A.C. 9:6A-2.1,] in the State colleges unit at the [state] State colleges, as defined in N.J.A.C. 9A:6-2.1, which shall consist of:

1. (No change.)
2. Specifications for each title which shall include:
  - i.-iv. (No change.)
  - [v. Assignment to a bargaining unit;]
  - [vi.]v. Assignment to a salary range;
  - [vii.]vi. Such other information as may be necessary.

(b) The college shall assign each position to an appropriate title based on an analysis of the work to be performed and consistent with the specification for that title.

1. No [person] employee shall be appointed or employed under a title not appropriate to the duties to be performed nor be required to routinely perform duties unrelated to the assigned title.

2. Should the employee disagree with the classification of a position, an appeal may be made in accordance with N.J.A.C. [9:6A-3.5] **9A:6-3.5.**

- (c) (No change.)

[9:6A-3.2] **9A:6-3.2** Administration of State College Classification Plan

(a) The [Chancellor] Executive Director shall enforce and administer the State College Classification Plan approved by the [Board of] Commission on Higher Education and shall:

1. (No change.)
2. With the consent of the [Board of] Commission on Higher Education approve:
  - i.-v. (No change.)
  3. (No change.)
4. Recommend to the [Board of] Commission on Higher Education any other changes deemed necessary to accurately reflect current conditions.

- (b) (No change.)

[9:6A-3.3] **9A:6-3.3** Requests for changes within the State College Classification Plan

(a) State colleges proposing changes within the State College Classification Plan shall initiate requests by letter from the president of the college, or his or her designee, addressed to the [Chancellor of Higher Education] Executive Director, setting forth the nature of the requested change and appropriate justification.

- (b) (No change.)

(c) Upon receipt of a letter requesting a substantive change within the State College Classification Plan, the [Chancellor] Executive Director shall submit all pertinent information to the State College Classification Advisory Board.

(d) The State College Classification Advisory Board shall, within 60 calendar days, make a written recommendation to the [Chancellor] Executive Director.

(e) At either of the succeeding two meetings of the [Board of] Commission on Higher Education after receipt of the recommendation from the State College Classification Advisory Board, the [Chancellor] Executive Director shall present a recommendation to the [Board of] Commission on Higher Education.

(f) Nothing in this section shall preclude the [Chancellor] Executive Director from utilizing the services of an outside consultant(s) to assist in evaluating such requests.

1. If a consultant is utilized the [Chancellor] Executive Director shall refer any such matters to the consultant(s) within 30 days of the recommendation from the State College Classification Advisory Board.

2. The time limit set forth in (c) above shall run from the time the [Chancellor] Executive Director receives the report from the consultant.

[9:6A-3.4] **9A:6-3.4** Classification and reclassification of positions

- (a) (No change in text.)

(b) When the college, an affected employee, or the recognized negotiations agent claims, in writing, that the assigned duties and responsibilities of a position have changed to the extent that they are no longer similar to the duties and responsibilities of other positions in the same title, and that the title is no longer appropriate, the college shall after review of the claim:

1. (No change.)

2. Recommend to the [Chancellor of] Commission on Higher Education that a new title be established to which the position shall be reclassified; or

- 3.-4. (No change.)

- (c) (No change.)

- (d) (No change in text.)

[9:6A-3.5] **9A:6-3.5** Reclassification appeal procedures

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

[(f) The final decision of the college may be appealed to the Chancellor of Higher Education pursuant to N.J.S.A. 18A:6-27.

(g) No decision by the Chancellor in a reclassification appeal shall preclude the college from removing the appellant's out-of-title duties as an alternative resolution to implementing the reclassification of the appellant's position.]

[9:6A-3.6] **9A:6-3.6** Title reevaluation requests

- (a) (No change.)

(b) The college, an affected employee, or the recognized negotiations agent may request a reevaluation, which shall be submitted in writing to the [Chancellor] Executive Director.

1. At least two weeks prior to the submission of such a request to the [Chancellor] Executive Director, notice of the request shall be provided to the president of the college.

(c) The [Chancellor] Executive Director shall refer a request to the State College Classification Advisory Board for a recommendation. The recommendation shall be issued to the [Chancellor] Executive Director within 60 calendar days of receipt of the request by the State College Classification Advisory Board.

(d) The [Chancellor] Commission may render a decision based on the written record or appoint an independent compensation consultant which appointment shall be made within 30 days.

1. If the [Chancellor] Executive Director appoints a consultant to conduct a review of the request, all parties shall be advised of the review date and shall present their arguments before the consultant. An employee requesting a reevaluation may be heard personally or be represented by counsel or the employee's recognized negotiations agent.

2. The consultant shall submit a report and recommendation to the [Chancellor] Executive Director within 30 calendar days after the review.

3. The report and recommendation shall be sent to all parties. Exceptions may be filed with the [Chancellor] **Executive Director** within 15 calendar days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within five days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(f) If the [Chancellor] **Executive Director** determines that the title should be reevaluated, he or she shall bring a recommendation to the [Board of] **Commission on Higher Education** at one of its next two succeeding meetings following the receipt of the recommendation from the State College Classification Advisory Board or any consultant(s) if utilized.

[(g) The effective date of any reevaluation for a managerial employee shall be the first pay period following the board of Higher Education decision.]

**9:6A-3.7 Assignment of confidential positions to a board of trustees**

(a) Each state college is entitled to assign no more than two employees, at any one time, to confidential board positions.

(b) The following requirements must be met for any assignment to a confidential board position:

1. The employee must serve at the pleasure of the president of the college and shall perform duties directly related to board of trustee activities;

2. The employee shall be assigned to a position not entitled to representation by any negotiations agent; and

3. The employee's job duties and responsibilities shall comply with the requirements of N.J.A.C. 9:6A-3.1(c).

(c) Confidential positions shall be a regular title but shall not be assigned to any specific salary range.

**9:6A-3.8 Student employees**

(a) Student employees' salaries shall be determined by each college.

(b) Eligibility for student employee status shall require continuous enrollment during the academic year as a student at the employing state college.

(c) Student employees shall not be entitled to sick or vacation leave, holidays, or other leaves set forth in N.J.A.C. 9:6A-5.]

**[9:6A-4.1] 9A:6-4.1 State College Compensation Plan**

(a) The [Board of] **Commission on Higher Education** shall establish [with the concurrence of the Governor] and publish the State College Compensation Plan for employees in the State colleges unit, which shall be the official plan for compensating all employees in regular titles [at] in the state colleges unit.

(b) (No change in text.)

**[9:6A-4.2 Administration of the State College Compensation Plan**

(a) Employees shall begin at the minimum rate of the pay range assigned to their title unless in the academic and institutional judgment of the president a higher rate in the range is warranted.

(b) Periodic increases to a managerial employee's salary based upon length of service and performance shall be paid by the college on the employee's anniversary date, when appropriate, in accordance with the provisions of the State College Compensation Plan. Time spent by managerial employees in non-pay status will not be included in total time of employment when calculating eligibility for such periodic salary increases.

(c) No employee shall be paid below the minimum or above the maximum of the range for his or her class, except with the approval of the Chancellor for any employee who is demoted during the term of a contract or while under tenure or unless permitted under a negotiated agreement.

(d) The salary range for all titles shall be established on the basis of a 12 month work obligation. Ten month titles shall be three ranges lower than the corresponding 12 month titles.

(e) Part-time employees in regular titles at the state colleges shall be compensated in direct proportion to the percent of full-time assignment at the assigned step of the salary range for the title held.

(f) Employees in special titles at the state colleges shall be compensated at a rate determined by the employing institution in conformance with applicable state and federal laws.

(g) Any action taken by a state college which violates the provisions of the State College Compensation Plan shall be void and of no legal effect.

**9:6A-4.3 Annual salary increases for managerial employees**

(a) The anniversary date of all managerial employees shall be July 1 of each fiscal year commencing on July 1, 1988.

(b) All managerial employees hired subsequent to the effective date of this section shall be assigned an anniversary date of July 1. The college may adjust the starting salary to reflect the difference in the period of time before the next salary increase.

(c) A managerial employee shall not be eligible for an annual salary increase unless he or she has been in active pay status in his or her current salary range for more than six months within the preceding fiscal year. Exceptions to this requirement may be made by the president of the college.

(d) Each year, the Board of Higher Education shall establish the percentage increase applicable to managerial employees' salaries and notify the colleges of that amount.

(e) By June 30 of each fiscal year, each college shall report to the Chancellor the total salary figure for all managerial employees at the college.

**9:6A-4.4 Pay adjustments for managerial employees appointed to titles with higher salary ranges**

(a) When a managerial employee is appointed to an acting position, successfully competes with internal and/or external candidates for a new appointment, or as a result of a reorganization is appointed to a position at the college with a higher salary range than his or her current position, the employee may be treated for salary purposes as a new hire.

(b) When a managerial employee is appointed to a position with a higher salary range than his or her current position other than pursuant to (a) above, the employee shall receive one increment in his or her former salary range and be moved to the closest higher step in the new range.

(c) When a managerial employee is appointed in accordance with (b) above and has been employed at the maximum of his or her salary range for one year or more, he or she may receive one additional increment in the salary range for the new position.

**9:6A-4.5 Pay adjustments for managerial employees in a title reevaluated to a new salary range**

(a) Any managerial employee who is assigned to a new salary range as a result of a title reevaluation which does not exceed one salary range shall maintain his or her current step in the new range.

(b) When any managerial employee is assigned to a new salary range as a result of a title reevaluation which exceeds one salary range, the determination of which step on the new salary range an affected employee will receive shall be at the discretion of the college.

**9:6A-4.6 Pay adjustments for managerial employees who are demoted**

(a) A managerial employee who is demoted to a position with a lower salary range than his or her current position shall receive a salary no greater than the maximum of the new range.

(b) A managerial employee serving less than six months in a new position as a result of a demotion shall not be eligible to receive an annual salary increase based upon length of service and assessment of performance.

(c) Determination of salaries for demoted managerial employees shall be in compliance with tenure rights.

(d) A managerial employee who is demoted to a position with a lower salary range than his or her position but who, because of tenure rights, is entitled to a salary greater than the maximum of the range to which he or she has been demoted, shall not receive any further salary increases until the maximum of the salary range exceeds the salary at the time of demotion.]

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

##### Special Hearing Rules

##### Department of Environmental Protection Cases

##### Adopted New Rules: 1:7A-1.1 and 8.1

Proposed: October 17, 1994 at 26 N.J.R. 4124(a) (see also 26 N.J.R. 4863(a)).

Adopted: March 6, 1995, by Jeff S. Masin, Acting Director, Office of Administrative Law.

Filed: March 6, 1995 as R.1995 d.184, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: April 3, 1995.

Expiration Date: April 3, 2000.

##### Summary of Public Comments and Agency Responses:

At the request of the Assembly Regulatory Oversight Committee, the Office of Administrative Law held a public hearing on January 10, 1995 to elicit comments on this rule proposal. Randy Bloom, Assistant Director of the Office of Administrative Law served as hearing officer. Those presenting statements at the hearing were Patricia Prunty, Assistant Director of the Office of Administrative Law, who presented a summary of the factual basis for the proposal and responded to questions; Richard McManus, Director of the Office of Legal Affairs of the Department of Environmental Protection, who appeared to answer questions on behalf of that agency; and A. Welles Sumner, Esq., a member of the public who challenged the rule proposal. Written comments were also received from Wayne D. DeFeo on behalf of Browning-Ferris Industries; William B. McGuire, Esq. on behalf of the New Jersey State Bar Association and Peter J. Herzberg on behalf of the Environmental Law Section of the New Jersey State Bar Association.

The hearing officer issued a report recommending adoption of the proposed rule. The Director accepts the recommendation. Persons wishing to review the record of the hearing may contact Patricia Prunty, Assistant Director, Office of Administrative Law, CN 049, Trenton, New Jersey 08625.

COMMENT: Mr. Sumner argued that the rule is unnecessary as duplicative of N.J.A.C. 1:1-8.1; that OAL does not enforce the existing regulation; and that DEP is negligent in complying with the current rule.

RESPONSE: While N.J.A.C. 1:1-8.1 provides that an agency may hold a case for more than 30 days to continue settlement efforts, this proposal limits any extension of that time to 30 days and requires DEP to provide written notice to the parties. Regarding the issue of whether the rule is enforced, the parties have the option seeking enforcement of the rule against an agency, if necessary. OAL does not have the statutory authority to refuse to accept a case, and simply refusing to accept a case would be detrimental to the parties and thwart the legislative purpose for the OAL. DEP's asserted failure to comply with the 30-day transmittal rule raises more general questions than those to which the proposal is addressed; however, the notice requirements in the proposed rule should assure that non-consensual delays in transmittal will not occur.

COMMENT: Browning-Ferris Industries supports the adoption of the rule and commends the agency for providing the business community with an opportunity to work out differences without the need for litigation.

RESPONSE: The agency appreciates the commenter's support.

COMMENT: The New Jersey State Bar Association supported the concept of dispute resolution through mediation, but was concerned that the specifics of the mediation process were not disclosed. The NJSBA also expressed continuing concern with undue delays in the current procedures used to refer cases to the OAL. Subsequently, the Environmental Law Section of the State Bar Association indicated that after opportunity to speak with NJDEP and to better understand the mediation program, it now supported adoption of the proposed rule.

RESPONSE: The agency appreciates the commenter's support.

##### Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the hearing procedures are not subject to any Federal requirements or standards.

Full text of N.J.A.C. 1:7A follows:

#### CHAPTER 7A

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### SUBCHAPTER 1. APPLICABILITY

##### 1:7A-1.1 Applicability

The rules in this chapter shall apply to contested case hearings arising in the Department of Environmental Protection. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the UAPR, these rules shall apply.

#### SUBCHAPTERS 2 THROUGH 7. (RESERVED)

#### SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

##### 1:7A-8.1 Agency filing with the Office of Administrative Law; settlement efforts

Contested cases filed with the Department of Environmental Protection shall comply with the filing and transmission requirements of N.J.A.C. 1:1-8.1, provided however, upon written notice from the Department of Environmental Protection to all parties stating that the agency is attempting to resolve the matter through mediation and that all parties agree to continue the mediation efforts, the 30-day period provided by N.J.A.C. 1:1-8.1(b) shall be extended for an additional 30 days. At the conclusion of that 30-day extension, unless all parties agree to continue settlement efforts, the matter shall either be filed with the Office of Administrative Law or retained by the agency under the provisions of N.J.S.A. 52:14F-8.

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### (b)

#### DIVISION OF ANIMAL HEALTH

##### Disease Control Program

##### Quarantines and Embargoes on Animals

##### Adopted New Rules: N.J.A.C. 2:5

Proposed: May 16, 1994 at 26 N.J.R. 1908(b).

Adopted: March 10, 1995 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: March 13, 1995 as R.1995 d.199, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:5-1 through 3 and 4:5-94 through 106.

Effective Date: April 3, 1995.

Expiration Date: April 3, 2000.

N.J.A.C. 2:5 expired on August 21, 1994, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted herein as new rules.

##### Summary of Public Comments and Agency Responses:

COMMENT: The Division of Animal Health received comments from four major equine industry groups supporting the amendments as proposed and one private equine breeder and trainer, Vernon J. Dancer. The groups included New Jersey Equine Advisory Board, Thorobred

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Breeders Association of New Jersey, Standardbred Breeders and Owners Association of New Jersey and New Jersey Association of Equine Practitioners.

**RESPONSE:** The Department supports the proposed readoption with amendments.

There were 14 letters opposed to the amendments as proposed. Those respondents were S. Dattner, David Foster, VMD, Monica and Frank Carper, Jim Whited, Sam Coleman, Billy Sims, Jerry Drake, Mary Parchey, Norma Berntsen, Pat Hilton, Elizabeth Thompson, Kristy Matarazzo, Mr. & Mrs. James Stillwaugh, and Joe Irgenito. All were from either equine dealers or individuals closely associated with the business of trading in non-racing horses in New Jersey. The comments and responses are detailed below.

**COMMENT:** Five similar letters stated the present rule should be readopted without the amendments and that the incidence of equine infectious anemia in New Jersey is so low that it is insignificant.

**RESPONSE:** The Department does not agree. Through very prudent use of the present regulations the incidence of equine infectious anemia in New Jersey is .002 percent. The fact remains that in the past five years 70 percent of all positive cases found in New Jersey entered through the horse dealer markets. Thus regulations that prevent entry without negative tests will help eradicate the disease from our equine population and prevent reintroduction if compliance is forced.

**COMMENT:** Several commenters stated that compliance with the proposed rule would put the horse dealers and auctions out of business and there would not be a source of pleasure horses for New Jersey residents.

**RESPONSE:** The Department does not agree. The amendments to the rule will force dealers to have horses tested before coming into the State or buy from those states that also require tests for sale or trade. Forty-two states require negative tests for transport through their highways. Adoption of this rule will cause some dealers to alter their modus-operandi to accommodate this new rule and rules of the states through which they pass.

**COMMENT:** Three persons commented that passage of this rule would prevent small dealers and hack stables from getting needed horses because the auction sources would no longer be there.

**RESPONSE:** In addition to the comments already made above, the Department points out that many horses sold at the auctions in New Jersey come from New Jersey and this source of animals will not be impacted by this rule.

#### Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Division of Animal Health, New Jersey Department of Agriculture, are dictated by the Contagious and Infectious Diseases Act, N.J.S.A. 4:5-1 through 3 and 4:5-94-106, et. seq., and are not subject to any Federal requirements or standards.

**Full text** of the expired rules adopted herein as new can be found in the New Jersey Administrative Code at N.J.A.C. 2:5.

**Full text** of the adopted amendments follows [deletion from proposal indicated in brackets with asterisks \*[thus]\*]:

2:5-2.3 (No change in text.)

2:5-2.4 Test requirements for transport

(a) No horse or other equidae six months or more of age, unless exempted by the provisions of N.J.A.C. 2:5-2.5 or 2.6 shall be transported on any public highway with the state unless the custodian of such animal has in his or her possession during the period of such movement a report of a negative agar gel immunodiffusion test for equine infectious anemia for such animal taken within the past 24 months\*[ , except that horses without such test(s) may be transported directly from a farm of origin to an auction for immediate sale. Said horse may proceed to a second farm after if official blood sample has been taken for testing]\*.

1.-4. (No change.)

2:5-2.5 Test requirements for sale or other change of ownership

(a) No horse or other equidae six months or more of age, unless exempted by provisions of this section or N.J.A.C. 2:5-2.6 shall be sold, exchanged, bartered or given away unless such animal has been

subjected to an agar gel immunodiffusion test for equine infectious anemia and reacted negatively within 90 days prior to such transfer to ownership.

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

2:5-2.6 Other authorized movement or transfer

(a) The provisions of N.J.A.C. 2:5-2.4 and 2.5 shall not apply to any horse or other equidae which is imported, sold, exchanged, bartered, given away or transported under permit from the Director of the Division of Animal Health, New Jersey Department of Agriculture for purposes of immediate slaughter, research, return to the state, country or farm of its origin, or other authorized purpose provided written authorization for such movement or transfer is obtained in advance thereof from the Director.

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

(b) The provisions of N.J.A.C. 2:5-2.5 shall not apply to any horse claimed in any claiming race conducted by any race track licensed by the New Jersey State Racing Commission and such horse need not be retested for equine infectious anemia provided such horse and all other horses admitted to said track had been tested and found negative for the disease within 24 months prior to the date of the claim.

(a)

## DIVISION OF PLANT INDUSTRY

### Diseases of Bees

#### Readoption with Amendments: N.J.A.C. 2:24

Proposed: January 3, 1995 at 27 N.J.R. 5(a).

Adopted: March 13, 1995 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: March 13, 1995 as R.1995 d.200, with technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:6-1 et seq.

Effective Date: March 13, 1995, Readoption; April 3, 1995, Amendments.

Expiration Date: March 13, 2000.

#### Summary of Public Comments and Agency Responses:

The proposed amendment was published on January 3, 1995. During the comment period, which closed on February 2, 1995, six comments were received; four from hobbyist beekeepers (James Burgess, William E. Gettler, Thomas Thatcher, the Carmelite Nuns), one from a commercial beekeeper (Gary L. Bradshaw) and one from the New Jersey Beekeepers Association.

**COMMENT:** One commenter suggested the rule require doubling the number of fluralinate pesticide strips used in the honey bee packages and the prophylactic treatment of all newly installed packages with hive strips as added insurance against spreading *Varroa* mites.

**RESPONSE:** The type, dosage and application system of pesticides is controlled by the United States Environmental Protection Agency (EPA) and is outside of the program's area of responsibility. This would preclude the rule from requiring that the number of package strips be doubled. The immediate prophylactic treatment retreatment of the bees, without cause, could contribute to the development of resistance in the mite to fluralinate. Treatment is properly undertaken only in response to high mite levels as determined through periodic monitoring.

**COMMENT:** The rule should require a 100 percent inspection of hives of in-coming migratory beekeepers.

**RESPONSE:** The program does not have the resources or staff to annually inspect 100 percent of up to 7,500 hives of migratory beekeepers during the brief pollination period. The Department randomly samples hives brought in under the various certificates to verify or validate the certification inspections.

**COMMENT:** The present rule did not stop the spread of new disease problems into New Jersey by migratory beekeepers, and therefore, it should be repealed or greatly modified.

**RESPONSE:** The apiary program cannot refuse entry into New Jersey of any hives with a valid certificate of inspection from another state. To do otherwise would constitute a constraint of interstate trade. There

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is no documentation to prove that migratory beekeepers were the initial, only, or major, source of any disease situation in New Jersey. The same rationale could be cited against the shipment of packages into New Jersey, the natural spread of a problem from adjacent states or even as a result of other forms of bee movement in interstate commerce. Migratory beekeepers and the package industry have, given their mobility, only accelerated the inevitable spread of mites in the United States. The amended rule better addresses the current bee disease situation in the eastern United States.

COMMENT: One commenter suggested that migratory beekeepers should be deployed on State land until inspected while isolated from New Jersey beekeepers.

RESPONSE: Adding the commenter's suggestion to the rule would not be practical for the following reasons:

(1) No point in New Jersey is truly isolated and the bees would need to be shipped through the State to reach these state-owned sites;

(2) Thousands of hives can arrive in New Jersey in less than a week (often two or three days) and the logistics and staffing requirements are beyond the program's resources;

(3) Due to their mobility, migratory beekeepers are often the first affected by new disease or pest situations. As viable businesses they can not afford to remain infected or infested above a perceived economic threshold. Since the situation represents a temporary condition, it does not warrant, financially or theoretically, the establishment of such an elaborate protocol; and

(4) Approximately half of the migratory beekeepers entering the State for spring blueberry pollination are in fact New Jersey beekeepers returning from wintering their hives in the southeast.

COMMENT: The majority of beekeepers in New Jersey oppose registration and it is the major cause of the decline in membership in the New Jersey Beekeeper Association.

RESPONSE: Registration of colonies has been a controversial issue but there is no evidence that it resulted in a decrease in membership in the New Jersey Beekeepers Association or that it is opposed by a vast majority of New Jersey beekeepers. The advent of two highly injurious mites in New Jersey, Africanized honey bees in the United States and a weak economy are also equally viable reasons for this decline in membership. Declining numbers of beekeepers, with the subsequent reduced participation in industry organizations, is a well established national trend, not a state trend, based on opposition to registration.

COMMENT: One commenter said that he had great difficulty in determining why the State is using tax dollars to protect us from an "arthropod pest" which was not found in any dictionary. The commenters also pointed out a sentence that was fragmented and a paragraph that was misnumbered.

RESPONSE: "Arthropod" was misspelled by the printer and should read "Arthropod" which includes not only insect pests of bees but the mites as well. This misspelling at N.J.A.C. 2:24-2.1, fragmented sentence at N.J.A.C. 2:24-2.2(d) and misnumbered section N.J.A.C. 2:24-4.2, Certification protocol, have been changed in the adopted rules.

COMMENT: Several commenters expressed their approval and support of the proposed rules while endorsing the Department's announced goals. They commended the Department for the extensive outreach program with the beekeepers prior to the rule's publication in the Register. Additional points cited were; the Department's renewed commitment to the Apiary Inspection Program and the promotion of increased public/private cooperation, and increased education related to beekeeping practices.

RESPONSE: The Department made a determined effort to consult and solicit input from the major State beekeeping association prior to proposing the rule. In addition, an extensive mailing to all registered beekeepers, regional beekeeping associations, and other states impacted by the rule was conducted; with nearly 1,000 copies of the rule mailed. The commitment of the Department to the Apiary Inspection Program is well documented by the activity which has been evident during the past 18 months. The stated intention of the Apiary Inspection Program to take a more pro-active role in the Voluntary Inspection Program (VIP) aspect of the N.J.A.C. 2:24-6 and plans to establish a demonstration apiary and renewal of the beekeeping short course in conjunction with Cook College represent examples of the Apiary Inspection Program's interest in improved public/private interactions.

COMMENT: All registration information should be confidential and the issuance of a beekeeper registration card canceled.

RESPONSE: The legislative committee of the New Jersey Beekeepers Association voted, in committee, for the present wording. The original

wording called for complete confidentiality but was modified at the request of a majority of the beekeepers present. The registration card was also included based on input from the beekeepers.

COMMENT: Inspection of a beekeeper's hives is unconstitutional. The right-of-entry should be confined to out-of-State migratories and abandoned apiaries. Inspection can cause harm to the beekeepers hives.

RESPONSE: The right-of-entry for inspection purposes is a statute issue, having been upheld and recognized by the courts. Further, to restrict who was subject to mandatory inspection would be discriminatory. The statement regarding the risk of damaging hives during inspection is not a valid one since the Department will attempt, where possible and feasible, to contact the beekeeper prior to inspection and encourage beekeeper presence during the inspection. Also, Department inspectors have many years of professional experience in beekeeping and damage to colonies during the inspection is highly unlikely.

COMMENT: Two commenters stated that the Department supports grower pollination needs at the expense of beekeepers.

RESPONSE: The major role of beekeeping in New Jersey is pollination. Whether based on the income derived or the number of hives involved, pollination has the highest dollar value in beekeeper income. These two goals, pollination availability and beekeeping, are not mutually exclusive, the Department cannot meet the pollination needs of the state's agriculture community without also protecting and fostering the beekeeping industry in New Jersey.

COMMENT: Most beekeepers are not operating small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

RESPONSE: N.J.S.A. 52:14B-17 defines a small business as follows:

As used in this act, "small business" means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

Most hobbyists have more than one hive and can produce more honey than a single family can consume. It is difficult to see how any New Jersey beekeeper would fail to meet this definition even if they intentionally operate in a not-for-profit mode.

#### 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 N.J.S.A. 4:6-1 et seq. and are not subject to any Federal requirements or standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:24.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

#### SUBCHAPTER 1. DEFINITIONS

As used in this chapter, the following words and terms shall have the following meaning:

"Activity log" means the record of VIP inspection activities maintained by each VIP designee on a form provided by the Department.

"Advisory report" means a non-binding written report made by a VIP designee to the beekeeper following the inspection of an apiary on a form provided by the Department.

"Apiary" means one or more colonies of honey bees.

"Apiary site" means the place where an apiary is located.

"Bee" means members of the genus *Apis*.

"Colony" means a hive or swarm of bees.

"Commercial apiary" means a business classified by the United States Standard Industrial Classification (commonly referred to in the SIC Code) as 0279B—Bee farms.

"Consignee" means the receiver of any bees or equipment shipped into New Jersey.

"Department" means the New Jersey Department of Agriculture.

"Divide," "split" or "nucleus" means bees and brood on drawn frames, with or without a queen. The number of frames, and the ratio of brood to honey or pollen, may vary but never exceeds 10 frames.

"Equipment" means hive parts, bee-related tools and extracting or wax rendering appliances.

"Hive" means the manmade structure which contains a colony of honey bees.

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"Noncommercial apiary" means any apiary not classified as commercial.

"Nucleus" see "divide."

"Package" means a group of bees, with or without a queen, shipped without comb in a wire cage.

"Queen" means the female reproductive caste of the honey bee. These normally are shipped in small individual cages and are often accompanied by up to a half dozen sterile workers as attendants.

"Secretary" means the Secretary of Agriculture or an authorized designee.

"Seller" means any person or business entity which offers for sale queens, packages or divides into or within New Jersey or to New Jersey residents.

"Shipper" means any person or business entity which ships or dropships, queens, packages or divides into New Jersey or to New Jersey residents.

"VIP" means Voluntary Inspector Program.

"VIP designee" means a person who meets the Department's qualification criteria and has received Department training in the fundamentals of bee and apiary inspection; has been designated by the Department as a volunteer inspector pursuant to this subchapter; and, who does not receive compensation or reimbursement for expenses by the Department.

### SUBCHAPTER 2. SHIPMENT OF BEES INTO NEW JERSEY

#### 2:24-2.1 Regulated articles

Bees of the genus *Apis*, in any life stage, fresh or frozen bee sperm, used equipment, unprocessed comb, and any other product, article or means of conveyance of any character whatsoever, which when determined by the Department of Agriculture presents the risk of the spread of any contagious and infectious disease, \*[anthropod]\* **\*arthropod\*** pest or condition as determined by the Department of Agriculture, shall be permitted importation only if in compliance with N.J.A.C. 2:24-2.2 through 2.5.

#### 2:24-2.2 Entities with apiary inspection services

(a) No colony, nucleus of bees, used apiary equipment coming from a state or country having an apiary inspection service shall be permitted into New Jersey unless accompanied by a valid certificate of inspection from the exporting state or country stating that the bees or equipment are apparently free from the conditions listed in N.J.A.C. 2:24-2.1 and that the bees are not Africanized bees derived from the African subspecies (*Apis mellifera scutellata*) and free from the characteristics identifiable therewith in accordance with N.J.A.C. 2:22-3.1.

(b) No certificate of inspection shall be honored unless a brood nest inspection was made and a Varroa mite sample taken, no more than 60 days prior to shipment from the site the bees were immediately prior to shipment into New Jersey. Inspections shall be conducted in the manner prescribed at N.J.A.C. 2:24-4.

1. If, after inspection, the average of the Varroa mite sampling technique in an apiary exceeds two mites per sample with an ether roll, or an average of 50 mites per sticky board, all colonies must be shipped under treatment with an EPA approved miticide according to label specifications.

2. The inspection date and percentage of inspection for American foulbrood, the percentage sampled for Varroa mites, and the sampling method with the results, must be shown on the inspection certificate.

(c) (No change.)

(d) No certificate of inspection shall be honored on any colonies infected with American foulbrood or from an infected area as determined by the New Jersey Department of Agriculture. \*[Any]\* **\*If an\*** examination of the bees **\*is\*** undertaken pursuant to N.J.A.C. 2:22-2.1, the certificate of inspection will not be honored unless the findings of the examination are supplied.

(e) (No change.)

(f) The certificate of inspection must be received prior to entrance into New Jersey by the:

Director, Division of Plant Industry  
New Jersey Department of Agriculture  
CN 330  
Trenton, New Jersey 08625-0330  
Phone (609) 292-5440  
Fax (609) 633-2550

#### 2:24-2.3 Queen or package bees

(a) All apiaries shipping queen or package bees into New Jersey shall have recorded with the New Jersey Department of Agriculture, a valid certificate in accordance with N.J.A.C. 2:24-2.2.

(b) All sellers or shippers shall provide the Department, by February 1, of the following year, with a list, including consignee's name and address, of all queen or package shipments to New Jersey or to New Jersey residents during the preceding year (that is, January 1 through December 31).

(c) All queens or package bees shipped to New Jersey shall be accompanied by a Federally approved miticide treatment for the control of Varroa mite.

#### 2:24-2.4 Transporter

No colony, nucleus of bees or used apiary equipment coming from a state or country having apiary inspection service shall be accepted by any person or common carrier for transportation to a point within this state unless accompanied by a valid certificate of inspection stating that the bees or equipment are free of the conditions listed in N.J.A.C. 2:24-2.1 and 2:24-2.2. A copy of the certificates will be carried by the transporter and shown to the grower, apiary inspector or law enforcement personnel upon request.

#### 2:24-2.5 Entities without apiary inspection services

A colony, nucleus of bees or used apiary equipment coming into New Jersey from a state or country having no apiary inspection service shall be immediately reported by the consignee and by the person or carrier delivering them in this state; giving the name and address of the consignee to the Department of Agriculture, which shall cause the shipment to be inspected at such time as shall be prudent and proper. Documentation of such inspection shall be issued to the owner and consignee after examination by the Department of Agriculture as to the freedom from the conditions listed in N.J.A.C. 2:24-2.1 and 2.2.

### SUBCHAPTER 3. REGISTRATION OF APIARIES

#### 2:24-3.1 Registration requirements; confidentiality and documentation

(a) (No change.)

(b) The only information contained in the individual registration that shall be considered public shall be the beekeeper's name and mailing address; all other required information shall be considered confidential.

(c) The Department of Agriculture shall supply the registrant, with any and all appropriate orders, laws and rules.

(d) The Department shall issue to each registered beekeeper documentation which identifies them as a legally registered New Jersey beekeeper.

### SUBCHAPTER 4. INSPECTION AND CERTIFICATION OF APIARIES

#### 2:24-4.2 Inspection protocol

(a) Beekeepers will be notified in advance, where possible and feasible, of any potential inspection of their bees; where possible, that notification will be at least five days prior to inspection.

(b) All inspections will be conducted in accordance with the following procedures:

1. The minimum numbers of hives, as listed below, shall be opened and physically opened and the brood nest inspected for American foulbrood:

- 1-10 colonies in an apiary—100 percent of the colonies
- 11-20 colonies in an apiary—50 percent of the colonies
- 21-50 colonies in an apiary—33 percent of the colonies
- 51+ colonies in an apiary—20 percent of the colonies

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2. Any apiary site where American foulbrood is found shall be inspected 100 percent.

3. Varroa mite sampling shall be conducted according to the following minimum standard: either sample 20 percent of the colonies in each apiary using an ether roll technique, or five percent of the colonies in each apiary using an approved miticide and sticky board technique.

(c) All hives sold in New Jersey must be found by the Department to be apparently free of American foulbrood. All hives sold in New Jersey must be inspected and found by the Department to average less than two Varroa mites per sample by ether roll, or be under treatment with an EPA approved miticide to label specifications. The inspection by the Department shall be conducted within 10 working days of the request for inspection by the seller.

(d) The treatment procedure for Varroa in hives within New Jersey is as follows:

1. Apiaries which average two or fewer mites per sample with an ether roll, or an average of 50 mites or less per sticky board should begin treatment within 12 months of the inspection.

2. Apiaries which average more than two and less than 50 mites per sample with an ether roll, or average more than 50 and less than 1,000 mites per sticky board should be monitored and treatment should begin as soon as practical but no later than December 31 following the inspection.

3. Apiaries which average 50 or more mites per sample with an ether roll, or average 1,000 or more mites per sticky board must begin treatment within 15 days of an order by the Department or before movement whichever occurs first. If time constraints prohibit treatment before movement, the Department, upon request from the beekeeper, may approve movement to a holding yard until treatment is commenced.

#### 2:24-4.2\*\*4.3\* Certification protocol

All New Jersey queen breeders, as well as sellers of splits, nucleus hives, or divides must average less than two mites per sample to be certified. All sales of queens, splits, nucleus hives, or divides to New Jersey apiarists will include an EPA approved miticide administered according to label specifications.

### SUBCHAPTER 5. TRANSPORT OF BEES

#### 2:24-5.1 Transport requirements

(a) No bees shall be transported in or through New Jersey unless:

1. All hives are adequately secured to prevent excess movement of the hives during transport.

2. All hive openings are either blocked or covered with screening material of at least eight squares per inch mesh, or the colonies are covered with a weather-proof netting of at least eight squares per inch mesh to prevent the escape of any bees from the vehicle; or

3. (No change in text.)

(b) Vehicles transporting bees shall not stop, except for refueling or emergencies due to accident or equipment failure, unless certified for entrance into New Jersey, under N.J.A.C. 2:24-2.2 or 2.5.

(c) The vehicle operator or other responsible person shall immediately report to the New Jersey Department of Agriculture, any release of bees, whether accidental or intentional which results during transport.

### SUBCHAPTER 6. VOLUNTARY INSPECTOR PROGRAM, NONCOMMERCIAL APIARIES AND BEES

#### 2:24-6.1 General organization and purpose of the Voluntary Inspector Program

(a) The Voluntary Inspector Program (VIP) is a cooperative and voluntary program involving the Department of Agriculture, interested beekeepers, educators, and interested beekeeping organizations. The purpose of this program is to train volunteers in the fundamentals of apiary inspection so that they may assist the Department's Apiary Inspection Program with the inspection and monitoring of noncommercial intrastate apiaries in order to prevent the introduction and spread of bee disease and other pests.

(b) The organization and roles of the VIP components are as follows:

1. (No change.)

2. The VIP designees are volunteers trained by the Department and designated as VIP apiary inspectors;

3. Non-commercial New Jersey apiary owners may request a VIP inspection and advisory report of their apiary. The request shall be made by contacting the Department which will arrange for a mutually agreed upon VIP to perform an inspection. The person requesting the inspection shall be present at the time of the inspection.

#### 2:24-6.2 Provisions and standards for VIP designee activities

(a) VIP designees may inspect and make advisory reports only for noncommercial intrastate apiaries. Commercial and interstate bee inspections requiring certification shall be performed only by Department Apiary Inspectors.

(b) (No change.)

(c) VIP inspections shall be performed only at the request of the owner of an apiary.

(d) The owner of the apiary must be present at the time of a VIP inspection.

(e) An advisory report shall be provided by the VIP to beekeepers and to the Department.

(f) (No change.)

(g) VIP designees shall:

1. Maintain an up-to-date activity log of all VIP inspections and retain a record of each inspection for not less than three years from the date of the inspection;

2. Comply with VIP directives as may be issued by the Department; and

3. (No change.)

#### 2:24-6.3 Qualifications and training

(a) Volunteers shall have at least five years experience in keeping bees, or have other beekeeping experience and education acceptable to the Department.

(b) Standards and requirements for initial and recurrent VIP training shall be established by the Department. Training sessions for VIP designees and designee candidates shall be offered by the Department.

(c) Classroom training sessions may be supplemented by additional practical field training. At the discretion of the Department and the apiary owner, VIP designees or designee candidates may accompany, for practical field training purposes, a Department Apiary Inspector during actual apiary inspections.

#### 2:24-6.4 Expiration of designation

VIP designee status shall be valid for no more than two years. VIP designees shall take refresher and update training on no less than a biennial (every two years) basis.

#### 2:24-6.5 Cancellation orders by the Director

(a) The Director of the Division of Plant Industry may rescind the VIP designation of any person.

(b) Notification of rescission of any VIP designee shall be done in writing and may be delivered in person or by mail. The notice shall state the Director's reason(s) for the order and the effective date of the action.

#### 2:24-6.6 Liability

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

## COMMUNITY AFFAIRS

### (a)

#### OFFICE OF THE COMMISSIONER

##### Organizational Rules

##### Adopted New Rules: N.J.A.C. 5:2

Adopted: February 27, 1995 by Harriet Derman, Commissioner,  
Department of Community Affairs.

Filed: March 6, 1995, as R.1995, d.186.

Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.

Effective Date: March 6, 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 is effective upon filing.

The previous text of these rules expired on April 10, 1994. The revised text reflects changes to the organization of the Department resulting from the issuance of Reorganization Plan 002-1994, which was signed by Governor Whitman on November 21, 1994 and was effective as of January 20, 1995.

##### Executive Order No. 27 Statement

No Executive Order No. 27 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 adopted new rules follows:

#### CHAPTER 2 ORGANIZATIONAL RULES

#### SUBCHAPTER 1. ORGANIZATION OF THE DEPARTMENT

##### 5:2-1.1 Office of the Commissioner; Divisions

(a) The Department of Community Affairs includes the Office of the Commissioner, the Divisions of Codes and Standards, Housing and Community Resources, Fire Safety, Women, Aging and Local Government Services, the Office of Recreation and the Center for Hispanic Policy, Research and Development.

(b) The Office of the Commissioner includes the Commissioner, the Deputy Commissioner (who oversees the Division of Local Government Services), two Assistant Commissioners (one of whom oversees the Divisions of Codes and Standards, Housing and Community Resources and Fire Safety, and is responsible for liaison with the Housing and Mortgage Finance Agency and the Council on Affordable Housing, and the other of whom oversees the Division on Women, the Division on Aging, the Office of Recreation and the Center for Hispanic Policy, Research and Development), and the following subordinate offices that report either to the Commissioner or the Deputy Commissioner:

1. Reporting to the Commissioner:
  - i. Affirmative Action.
2. Reporting to the Deputy Commissioner:
  - i. Office of Auditing;
  - ii. Press Office;
  - iii. Human Resources;
  - iv. Legislative Affairs; and
  - v. Administration.

(c) The Division of Codes and Standards consists of the Director's Office, the Office of Planning and Operations, the Construction Code Element and the Inspection and Licensing Element.

1. The Construction Code Element includes the Assistant Director's Office and the following bureaus:
  - i. Homeowner Protection;
  - ii. Technical Services;
  - iii. Code Services;
  - iv. Regulatory Affairs;
  - v. Construction Project Review; and

vi. Local Code Enforcement.

2. The Inspection and Licensing Element includes the Assistant Director's Office and the following bureaus:

- i. Housing Inspection; and
- ii. Rooming and Boarding House Standards.

(d) The Division of Fire Safety consists of the Director's Office, the Bureau of Fire Code Enforcement and the Bureau of Fire Department Services.

(e) The Division of Housing and Community Resources consists of the Director's Office (including the offices of Audit Review and Fiscal Monitoring and Division Administration and Operations) and the following elements: Housing Production and Community Development; Housing Assistance Programs; and Housing Sponsor Services.

(f) The Division on Women includes the Office of the Director and the following offices:

1. Advocacy, Public Information and Legislation;
2. Displaced Homemakers;
3. Domestic Violence;
4. Hispanic Women; and
5. Child Care and Disabled Women.

(g) The Division on Aging includes the Office of the Director and the following offices:

1. Ombudsman for the Institutionalized Elderly;
2. The Public Guardian;
3. Administrative and Public Information;
4. Fiscal Operations;
5. Program Operations; and
6. Policy, Planning and Area Agency Administration.

(h) The Division of Local Government Services includes the Office of the Director, the Local Finance Board and the following elements: Local Assistance and Regulatory Services.

1. The Local Assistance Element includes the Assistant Director's Office, the Bureau of Local Management Services, and the Fiscal and Grant Unit;

2. The Regulatory Services Element includes the Assistant Director's Office, the Bureau of Authority Regulation, the Bureau of Financial Regulation, and the Audit Quality Assurance Unit.

##### 5:2-1.2 Agencies in, but not of, the Department

(a) The following agencies of State government are allocated to the Department of Community Affairs in compliance with Article V, Section 4, Paragraph 1 of the New Jersey Constitution but are not, except as noted in (b) below, under the supervision or control of the Commissioner:

1. New Jersey Housing and Mortgage Finance Agency;
2. Council on Affordable Housing;
3. Hackensack Meadowlands Development Commission; and
4. New Jersey Sports and Exposition Authority.

(b) The Commissioner is chairperson of the New Jersey Housing and Mortgage Finance Agency and of the Hackensack Meadowlands Development Commission.

##### 5:2-1.3 Public information requests

Members of the public may obtain general information concerning the Department of Community Affairs by writing to the Press Office at CN 800, Trenton, New Jersey 08625 or by calling 1-800-332-4357.

## ENVIRONMENTAL PROTECTION

### (b)

#### STATE PARK SERVICE

##### Notice of Increase of Fees for the Spring Meadow Golf Course

##### Notice of Administrative Change

##### N.J.A.C. 7:2-17.1

Take notice that, pursuant to N.J.S.A. 13:1L-19 and N.J.A.C. 7:2-17.5, the Department is increasing certain fees for services provided at the

**ADOPTIONS****ENVIRONMENTAL PROTECTION**

Spring Meadow Golf Course, effective May 1, 1995. The changes will be reflected in the State Park Service Code at N.J.A.C. 7:2-17.1(j) as indicated below.

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

7:2-17.1 Day use fees for services and facilities provided by the State Park Service

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

(j) Fees for the Spring Meadow Golf Course are as follows:

Type	Fee
1. Greens Fees:	
i. Weekdays	[\$13.00] <b>\$18.00</b>
ii. Saturdays, Sundays and State designated Holidays	[\$16.00] <b>\$21.00</b>
iii. Senior citizens (weekdays only before 10:00 A.M.)	[\$ 7.00] <b>\$ 9.00</b>
iv. Twilight, weekdays (three hours before closing)	[\$10.00] <b>\$13.00</b>
v. Twilight, weekends and holidays (three hours before closing)	[\$12.00] <b>\$17.00</b>
2. Tournament Fee	\$13.00/person
3. School team member practice	[\$4.00/student] <b>\$5.00/student</b>
4. Golf Carts:	
i. Power (daily)	[\$20.00] <b>\$23.00</b>
ii. Power (twilight—three hours before closing)	[\$16.00] <b>\$18.00</b>
iii. Hand	\$ 3.00
5. Club Rental	[\$11.00] <b>\$13.00</b>
6. Driving Ranger includes one club and one basket of balls	
i. Small Basket	\$ 3.00
ii. Large Basket	\$ 3.00

**(a)**

## **DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES**

### **Leasing of Atlantic Coast Bottom for Aquaculture**

#### **Adopted Amendments: N.J.A.C. 7:25-24.7 and 24.9**

Proposed: August 1, 1994 at 26 N.J.R. 3109(a).

Adopted: March 13, 1995 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: March 13, 1995 as R.1995 d.202, **without change**.

Authority: N.J.S.A. 50:1-18 and 50:1-23 through 50:1-31.

DEP Docket Number: 33-94-06/391.

Effective Date: April 3, 1995.

Expiration Date: February 15, 1996.

On August 1, 1994 the Department of Environmental Protection proposed amendments to the aquaculture leasing rules at N.J.A.C. 7:25. The Department is adopting the amendments without change. The comment period closed on August 31, 1994. One individual, Richard F. Smith, Jr. (New Jersey Society of Professional Land Surveyors) submitted written comments.

#### **Summary of Public Comments and Agency Responses:**

The following is a summary of the comments received on the Department's proposal and the Department's responses to the comments.

1. COMMENT: Unless performed by or properly supervised by a licensed professional land surveyor, the activities outlined in the proposal are illegal.

RESPONSE: The hydrographic survey described in the rule will be supervised by licensed land surveyors currently employed by the Department. The survey crew, of the Bureau of Shellfisheries, which collectively has 39 years' experience in performing such lease surveys, will be supervised by licensed land surveyors within the Bureau of Coastal Engineering. These licensed land surveyors, with a combined experience of over 50 years, have reviewed the survey methodology in the field and have determined all aspects of the program to be in compliance with existing standards. These surveyors, being duly licensed by the State of

New Jersey, will be involved in all aspects of the program to ensure statutory compliance. In further response to this comment, the Department has developed "General Procedures for Surveying the Leased Shellfish Cultivation Grounds Located in the Coastal Waters of New Jersey." This document is available upon request from the Bureau of Shellfisheries.

2. COMMENT: The survey costs outlined in the proposal are unrealistic.

RESPONSE: As discussed in the Economic Impact section of the proposal, the Department has calculated its average daily costs to be \$604.00 to perform the work. These costs include salaries for the licensed land surveyor and support staff, boat fuel, amortization of boat hull, engine and electronic equipment, purchase of miscellaneous items, and the drafting and photocopying of lease charts.

The Department is able to minimize costs because the Bureau of Shellfisheries staff have developed the capability to perform a variety of tasks. When staff are not performing survey work, their salary time is charged to other Department accounts. This also holds true for the Bureau of Coastal Engineering staff, and support staff. The calculated fees are designed merely to recoup program costs over the course of the fiscal year and not to make a profit as would be the case in the private sector. In short, because the Department can assign experienced, efficient staff to the surveying on an as-needed basis and charge their salaries to other sources when they are performing work other than surveying, the Department can provide the surveying services to the public at a comparatively low cost.

#### **Executive Order No. 27 Statement**

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. The proposed amendments also are not adopted under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order 27(1994) does not require a comparison with Federal law.

**Full text** of the adoption follows:

7:25-24.7 Hydrographic survey charges; annual lease fees

(a) Following approval of a lease of new ground by the Council and the Commissioner, the Bureau shall perform a hydrographic survey of the lease area described in the application to verify its locations and boundaries. Before the Department issues an executed lease to the applicant, the applicant shall reimburse the Bureau for the expense of the hydrographic survey at the rate of \$30.00 per corner. Failure to reimburse the Bureau within 30 days of the Council's approval of the lease will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

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

7:25-24.9 Lease transfers

(a) Leases may be transferred only with the approval of both the Council and the Commissioner and only under the following circumstances:

1.-3. (No change.)

4. An application for a lease transfer shall be placed on the agenda of the next regularly scheduled Council meeting for consideration. At that meeting, the Council will receive public comment on the transfer application and shall render a decision to deny the lease application or shall grant the transfer application subject to approval by the Commissioner. A hydrographic survey of the lease area will be required only if the Council or the Department request at the Council meeting that the Bureau perform such a survey to verify the lease area location and/or boundaries; and

5. Following approval of a transfer by the Council and the Commissioner for which a hydrographic survey is requested by either the Council or the Department, the Bureau shall perform a hydrographic survey of the lease area described in the transfer application to verify its location and boundaries. Before the Department issues an executed lease to the new lessee, the new lessee shall reimburse the Bureau for the expense of the hydrographic survey at a rate of \$30.00 per corner. Failure to reimburse the Bureau within 30 days of the

Council's approval of the transfer will constitute grounds for denial of the lease application, and the area applied for shall revert to public bottom.

## (a)

## OFFICE OF AIR QUALITY MANAGEMENT

## Notice of Administrative Correction

## Definition of Volatile Organic Compound

**N.J.A.C. 7:27-8.1, 16.1, 17.1, 19.1, 21.1, 22.1, 23.2, 25.1; 7:27A-3.2; and 7:27B-3.1**

**Take notice** that the Department of Environmental Protection (the Department) has established that the definition of the term "volatile organic compound" or "VOC" in the current text of N.J.A.C. 7:27-8, 16, 17, 19, 21, 22, 23, and 25; N.J.A.C. 7:27A-3; and N.J.A.C. 27B-3 needs to be updated.

The Department's definition of the term VOC incorporates by reference the list of compounds excluded in the Federal definition of VOC at 40 CFR 51.100(s)(1). The Department's definition also states that if there is any conflict between the Department's list of excluded compounds and the Federal list at 40 CFR 51.100(s)(1), the Federal list shall control.

On October 5, 1994, the United States Environmental Protection Agency (USEPA) published a final rule in the Federal Register (59 FR 50693) which revised the list of compounds at 40 CFR 51.100(s)(1). This final rule became effective on December 5, 1994. The revision added the following to the list of compounds excluded from the Federal definition of VOC: parachlorobenzotrifluoride and cyclic, branched, or linear completely methylated siloxanes.

Therefore, to avoid confusion and to aid the regulated community, the Department is correcting the definitions of the term VOC in the New Jersey Administrative Code by explicitly listing these compounds as excluded from the term. The notice is published pursuant to N.J.A.C. 1:30-2.7.

**Full text** of the corrected rules follows (additions indicated in boldface with asterisks **\*thus\***):

## SUBCHAPTER 8. PERMITS AND CERTIFICATES

## 7:27-8.1 Definitions

...  
 "Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane  
 ethane  
 methylene chloride (dichloromethane)  
 1,1,1-trichloroethane (methyl chloroform)  
 trichlorofluoromethane (CFC-11)  
 dichlorodifluoromethane (CFC-12)  
 trifluoromethane (HFC-23)  
 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)  
 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
 chloropentafluoroethane (CFC-115)  
 chlorodifluoromethane (HCFC-22)  
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)  
 1,1-dichloro-1-fluoroethane (HCFC-141b)  
 1-chloro-1,1-difluoroethane (HCFC-142b)

pentafluoroethane (HCFC-125)  
 1,1,2,2-tetrafluoroethane (HFC-134)  
 1,1,1,2-tetrafluoroethane (HFC-134a)  
 1,1,1-trifluoroethane (HFC-143a)  
 1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes  
 cyclic, branched, or linear, completely fluorinated ethers with no unsaturations  
 cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations  
 sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

## SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

## 7:27-16.1 Definitions

...  
 "Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane  
 ethane  
 methylene chloride (dichloromethane)  
 1,1,1-trichloroethane (methyl chloroform)  
 trichlorofluoromethane (CFC-11)  
 dichlorodifluoromethane (CFC-12)  
 trifluoromethane (HFC-23)  
 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)  
 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
 chloropentafluoroethane (CFC-115)  
 chlorodifluoromethane (HCFC-22)  
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)  
 1,1-dichloro-1-fluoroethane (HCFC-141b)  
 1-chloro-1,1-difluoroethane (HCFC-142b)  
 pentafluoroethane (HFC-125)  
 1,1,2,2-tetrafluoroethane (HFC-134)  
 1,1,1,2-tetrafluoroethane (HFC-134a)  
 1,1,1-trifluoroethane (HFC-143a)  
 1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes  
 cyclic, branched, or linear, completely fluorinated ethers with no unsaturations  
 cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations  
 sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

#### SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES

##### 7:27-17.1 Definitions

...

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane  
ethane  
methylene chloride (dichloromethane)  
1,1,1-trichloroethane (methyl chloroform)  
trichlorofluoromethane (CFC-11)  
dichlorodifluoromethane (CFC-12)  
trifluoromethane (HFC-23)  
1,1,2-trichloro-1,2,2,-trifluoroethane (CFC-113)  
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
chloropentafluoroethane (CFC-115)  
chlorodifluoromethane (HCFC-22)  
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)  
1,1-dichloro-1-fluoroethane (HCFC-141b)  
1-chloro-1,1-difluoroethane (HCFC-142b)  
pentafluoroethane (HFC-125)  
1,1,2,2-tetrafluoroethane (HFC-134)  
1,1,1,2-tetrafluoroethane (HFC-134a)  
1,1,1-trifluoroethane (HFC-143a)  
1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

##### Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes  
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations  
cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations  
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

#### SUBCHAPTER 19. CONTROL AND PROHIBITION OF AIR POLLUTION FROM OXIDES OF NITROGEN

##### 7:27-19.1 Definitions

...

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the compounds which EPA has excluded from its

definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

##### Compounds

methane  
ethane  
methylene chloride (dichloromethane)  
1,1,1-trichloroethane (methyl chloroform)  
trichlorofluoromethane (CFC-11)  
dichlorodifluoromethane (CFC-12)  
trifluoromethane (HFC-23)  
1,1,2-trichloro-1,2,2,-trifluoroethane (CFC-113)  
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
chloropentafluoroethane (CFC-115)  
chlorodifluoromethane (HCFC-22)  
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)  
1,1-dichloro-1-fluoroethane (HCFC-141b)  
1-chloro-1,1-difluoroethane (HCFC-142b)  
pentafluoroethane (HFC-125)  
1,1,2,2-tetrafluoroethane (HFC-134)  
1,1,1,2-tetrafluoroethane (HFC-134a)  
1,1,1-trifluoroethane (HFC-143a)  
1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

##### Classes of perfluorocarbons:

Cyclic, branched, or linear, completely fluorinated alkanes  
Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations  
Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations  
Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

#### SUBCHAPTER 21. EMISSION STATEMENTS

##### 7:27-21.1 Definitions

...

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

##### Compounds

methane  
ethane  
methylene chloride (dichloromethane)  
1,1,1-trichloroethane (methyl chloroform)  
trichlorofluoromethane (CFC-11)  
dichlorodifluoromethane (CFC-12)  
trifluoromethane (HFC-23)  
1,1,2-trichloro-1,2,2,-trifluoroethane (CFC-113)  
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
chloropentafluoroethane (CFC-115)  
chlorodifluoromethane (HCFC-22)  
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)

1,1-dichloro-1-fluoroethane (HCFC-141b)  
 1-chloro-1,1-difluoroethane (HCFC-142b)  
 pentafluoroethane (HFC-125)  
 1,1,2,2-tetrafluoroethane (HFC-134)  
 1,1,1,2-tetrafluoroethane (HFC-134a)  
 1,1,1-trifluoroethane (HFC-143a)  
 1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

#### Classes of perfluorocarbons:

- (1) Cyclic, branched, or linear, completely fluorinated alkanes
- (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

### SUBCHAPTER 22. OPERATING PERMITS

#### 7:27-22.1 Definitions

...

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods which have been approved in writing by the Department. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently excludes the compounds and the classes of perfluorocarbons set forth below from the definition of VOC:

#### Compounds:

methane  
 ethane  
 methylene chloride (dichloromethane)  
 1,1,1-trichloroethane (methyl chloroform)  
 trichlorofluoromethane (CFC-11)  
 dichlorodifluoromethane (CFC-12)  
 trifluoromethane (HFC-23)  
 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)  
 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
 chloropentafluoroethane (CFC-115)  
 chlorodifluoromethane (HCFC-22)  
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)  
 1,1-dichloro-1-fluoroethane (HCFC-141b)  
 1-chloro-1,1-difluoroethane (HCFC-142b)  
 pentafluoroethane (HFC-125)  
 1,1,2,2-tetrafluoroethane (HFC-134)  
 1,1,1,2-tetrafluoroethane (HFC-134a)  
 1,1,1-trifluoroethane (HFC-143a)  
 1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

#### Classes of perfluorocarbons:

Cyclic, branched, or linear, completely fluorinated alkanes  
 Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations  
 Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations  
 Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

### SUBCHAPTER 23. PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS AND CONSUMER PRODUCTS

#### 7:27-23.2 Definitions

...

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane  
 ethane  
 methylene chloride (dichloromethane)  
 1,1,1-trichloroethane (methyl chloroform)  
 trichlorofluoromethane (CFC-11)  
 dichlorodifluoromethane (CFC-12)  
 trifluoromethane (HFC-23)  
 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)  
 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)  
 chloropentafluoroethane (CFC-115)  
 chlorodifluoromethane (HCFC-22)  
 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)  
 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)  
 1,1-dichloro-1-fluoroethane (HCFC-141b)  
 1-chloro-1,1-difluoroethane (HCFC-142b)  
 pentafluoroethane (HFC-125)  
 1,1,2,2-tetrafluoroethane (HFC-134)  
 1,1,1,2-tetrafluoroethane (HFC-134a)  
 1,1,1-trifluoroethane (HFC-143a)  
 1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

#### Classes of perfluorocarbons:

cyclic, branched, or linear, completely fluorinated alkanes  
 cyclic, branched, or linear, completely fluorinated ethers with no unsaturations  
 cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations  
 sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

### SUBCHAPTER 25. CONTROL AND PROHIBITION OF AIR POLLUTION BY VEHICULAR FUELS

#### 7:27-25.1 Definitions

...

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in

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writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

- methane
- ethane
- methylene chloride (dichloromethane)
- 1,1,1-trichloroethane (methyl chloroform)
- trichlorofluoromethane (CFC-11)
- dichlorodifluoromethane (CFC-12)
- trifluoromethane (HFC-23)
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
- chloropentafluoroethane (CFC-115)
- chlorodifluoromethane (HCFC-22)
- 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
- 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
- 1,1-dichloro-1-fluoroethane (HCFC-141b)
- 1-chloro-1,1-difluoroethane (HCFC-142b)
- pentafluoroethane (HFC-125)
- 1,1,2,2-tetrafluoroethane (HFC-134)
- 1,1,1,2-tetrafluoroethane (HFC-134a)
- 1,1,1-trifluoroethane (HFC-143a)
- 1,1-difluoroethane (HFC-152a)

**\*parachlorobenzotrifluoride (PCBTF)**

**cyclic, branched or linear completely methylated siloxanes\***

Classes of perfluorocarbons:

- cyclic, branched, or linear, completely fluorinated alkanes
- cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

### CHAPTER 27A

#### AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

#### SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

##### 7:27A-3.2 Definitions

...  
“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

- methane
- ethane
- methylene chloride (dichloromethane)
- 1,1,1-trichloroethane (methyl chloroform)
- trichlorofluoromethane (CFC-11)
- dichlorodifluoromethane (CFC-12)
- trifluoromethane (HFC-23)
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)

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- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
- chloropentafluoroethane (CFC-115)
- chlorodifluoromethane (HCFC-22)
- 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
- 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
- 1,1-dichloro-1-fluoroethane (HCFC-141b)
- 1-chloro-1,1-difluoroethane (HCFC-142b)
- pentafluoroethane (HFC-125)
- 1,1,2,2-tetrafluoroethane (HFC-134)
- 1,1,1,2-tetrafluoroethane (HFC-134a)
- 1,1,1-trifluoroethane (HFC-143a)
- 1,1-difluoroethane (HFC-152a)
- \*parachlorobenzotrifluoride (PCBTF)**
- cyclic, branched or linear completely methylated siloxanes\***

Classes of perfluorocarbons:

- cyclic, branched, or linear, completely fluorinated alkanes
- cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

### CHAPTER 27B

#### SAMPLING AND ANALYTICAL PROCEDURES

#### SUBCHAPTER 3. AIR TEST METHOD 3: SAMPLING AND ANALYTICAL PROCESSES FOR THE DETERMINATION OF VOLATILE ORGANIC COMPOUNDS FROM SOURCE OPERATIONS

##### 7:27B-3.1 Definitions

...  
“Volatile organic compound” or “VOC” means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term does not include the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

- methane
- ethane
- methylene chloride (dichloromethane)
- 1,1,1-trichloroethane (methyl chloroform)
- trichlorofluoromethane (CFC-11)
- dichlorodifluoromethane (CFC-12)
- trifluoromethane (HFC-23)
- 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
- 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
- chloropentafluoroethane (CFC-115)
- chlorodifluoromethane (HCFC-22)
- 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
- 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
- 1,1-dichloro-1-fluoroethane (HCFC-141b)
- 1-chloro-1,1-difluoroethane (HCFC-142b)
- pentafluoroethane (HFC-125)
- 1,1,2,2-tetrafluoroethane (HFC-134)
- 1,1,1,2-tetrafluoroethane (HFC-134a)
- 1,1,1-trifluoroethane (HFC-143a)

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1,1-difluoroethane (HFC-152a)  
**\*parachlorobenzotrifluoride (PCBTF)**  
**cyclic, branched or linear completely methylated siloxanes\***

Classes of perfluorocarbons:

- cyclic, branched, or linear, completely fluorinated alkanes
- cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

### (a)

#### PINELANDS COMMISSION

##### Notice of Administrative Correction

##### Pinelands Comprehensive Management Plan Management Programs and Minimum Standards Minimum Standards for Point and Non-point Source Discharges

##### N.J.A.C. 7:50-6.84

**Take notice** that the Pinelands Commission has discovered an error in the text of recently adopted amendments to N.J.A.C. 7:50-6.84(a)5iv(2) as incorporated into the Code through the 12-19-94 update to the Administrative Code. Specifically, at Code page 50-180, inserted between the correct text of N.J.A.C. 7:50-6.84(a)5iv(1) and (2) (see 26 N.J.R. 165(a) and 4795(a)) is an erroneous duplication of the text of subparagraph (a)5iv(2) followed by the text of subparagraphs (a)5iv(1)(B)(I) and (II). 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 (deletion indicated in brackets [thus]):

7:50-6.84 Minimum standards for point and non-point source discharges

(a) The following point and non-point sources may be permitted in the Pinelands:

1.-4. (No change.)

5. Individual on-site septic waste water treatment systems which are intended to reduce the level of nitrate/nitrogen in the waste water, provided that the following standards are met:

i.-iii. (No change.)

iv. The design of the system and its discharge point, and the size of the entire contiguous parcel on which the system or systems is located, will ensure that ground water exiting from the entire contiguous parcel or entering a surface body of water will not exceed two parts per million nitrate/nitrogen calculated pursuant to the Pinelands dilution model dated December, 1993, as amended, (Appendix A) subject to the provisions of (a)5v below and based on the following assumptions and requirements. For purposes of this section, the entire contiguous parcel may include any contiguous lands to be dedicated as open space as part of the proposed development but may not include previously dedicated road rights-of-way or any contiguous lands that have been deed restricted pursuant to N.J.A.C. 7:50-5.30 or 5.47:

(1) (No change.)

[(2) For pressure dosed septic systems:

(A) For residential development, either the system will be located on a lot of at least one acre for each individual single family residential dwelling unit or the system or systems for multi-family developments will be located on a parcel with an overall density equal to or less than one residential dwelling unit per acre of land and each system shall comply with the following monitoring program either by contributing \$855.00 to the Commission monitoring pro-

gram and agreeing to have each system monitored by the Commission or by having the system monitored in accordance with the following requirements:

(I) The use is comparable to a single family residential use and it can be demonstrated that the waste water quality is similar to residential waste water; or

(II) The applicant demonstrates that the nitrate/nitrogen concentration of the waste water flow is similar to that of a residential use and the ratio of greywater to blackwater is similar to that of a residential use.]

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

v.-ix. (No change.)

6. (No change.)

## HEALTH

### (b)

#### FAMILY HEALTH SERVICES

##### Birth Defects Registry

##### Readoption: N.J.A.C. 8:20

Proposed: January 17, 1995 at 27 N.J.R. 269(a).

Adopted: February 28, 1995 by Len Fishman, Commissioner, Department of Health.

Filed: March 2, 1995 as R.1995 d.182, **without change**.

Authority: N.J.S.A. 26:8-40 et seq., specifically 26:8-40.26.

Effective Date: March 2, 1995.

Expiration Date: March 2, 2000.

##### Summary of Public Comments and Agency Responses:

The New Jersey Department of Health is readopting N.J.A.C. 8:20 without change. The comment period closed on February 17, 1995. A total of 12 individuals, representing 11 agencies, provided written comments. The following is a list of the persons, with their affiliations, who provided comments:

Dennis H. Collette, President, Newton Memorial Hospital  
 Liane J. Haynes, RN, BSN, Coordinator, Special Child Health Services Gloucester County Case Management Unit  
 Sharon A. Keeney, Assistant Vice President, MedSurg, MIH, Ran-cocas Hospital

Debra Day-Salvatore, M.D., Ph.D., Director, Reproductive & Perinatal Genetics, UMDNJ-Robert Wood Johnson Medical School and St. Peter's Medical Center

Marie Hogarty, RNC, MSN, Executive Director, Northwest New Jersey Maternal & Child Health Network

Lawrence D. Frenkel, M.D., Chairman, Public Affairs Committee, March of Dimes

Cheryl S. Reid, M.D., Member, Public Affairs Committee, March of Dimes

Judy Donlen, DNSc, RN, Executive Director, Southern New Jersey Perinatal Cooperative

A. Baker, M.D., Director of Pediatrics, Meadowlands Hospital Medical Center

Margaret Henry, R.N., Clinical Manager, Nursery, Meadowlands Hospital Medical Center

Hazeline C. Pilgrim, Vice President for Planning, Jersey City Medical Center

Cheryl S. Reid, M.D., FAAP, FACMG, Chair, Parental and Child Health Advisory Committee

Maureen P. Barnes, Director, Risk Management & Insurance, Cooper Hospital/University Medical Center

**COMMENT:** All written comments supported readoption of N.J.A.C. 8:20. A majority of the respondents strongly supported the effectiveness of the service component of the Registry in linking families with needed services. One commenter noted that the Registry offers a "system" of care rather than episodic, fragmented health care.

**RESPONSE:** The staff of the Birth Defects Registry are grateful for the support of the regulations, and recognition of the Registry's valuable public health role.

**COMMENT:** New Jersey's Birth Defects Registry is a passive system, relying on a variety of health professionals or service providers to register

children. An active system, using State personnel, would improve both the accuracy and overall number of children registered.

**RESPONSE:** Nationally, 30 birth defects surveillance systems exist: 15 passive, seven active, and eight "other" (usually extracting children with birth defects from data collected for other purposes). The passive systems cover approximately one-third of all U.S. births, while the active systems represent about 12 percent of births. The Centers for Disease Control recognize the contributions of the passive systems; New Jersey has provided data to CDC for their national surveillance activities. To improve case ascertainment in New Jersey, a number of procedures are used. Staff of the Birth Defects Registry conduct annual quality assurance audits at all maternity hospitals and birthing centers, non-maternity hospitals with pediatric beds, and the Children's Hospital of New Jersey. Hospitals also receive information on a quarterly basis to facilitate self-audits. Additionally, staff from the Registry review other appropriate databases to augment case identification. Cost considerations prevent New Jersey from becoming an active system.

**COMMENT:** The Electronic Birth Certificate system, integrated with the Registry, would facilitate data collection and follow-up.

**RESPONSE:** The Electronic Birth Certificate (EBC) system is currently being tested at four hospitals in New Jersey. By the end of 1995, it is anticipated that most of New Jersey's hospitals will be using this system. Beginning in 1996, an analysis will be made as to the feasibility of integrating the EBC system with the reporting of children with birth defects. For children identified at their birth hospital, the Department hopes to reduce significantly the amount of information that will be required on the Birth Defects Registration Form. The Department agrees with the commenters that the EBC system has the potential to facilitate data collection.

**COMMENT:** The Registry should report on all known defects, including those affecting stillborns or other fetal losses.

**RESPONSE:** The proposed regulations only cover the reporting of live born infants. For fetal deaths occurring after 20 weeks of gestation, a fetal death record is sent to the Department of Health. When needed, this data has been used by the Birth Defects Monitoring Program to provide data on affected pregnancies.

**COMMENT:** As part of the regulations, parents/guardians are notified by mail that their child has been registered. It would be beneficial to include the reason(s) for registration (the diagnosis) in the letter.

**RESPONSE:** The family letter does not contain diagnostic information for reasons of confidentiality. The letter may be viewed by someone other than the parent/guardian. Instead, the letter refers the parent/guardian to contact either the child's physician or the agency that registered the child. The name and address of the registering agency are included in the letter.

**COMMENT:** The current regulations require children diagnosed by age one to be reported to the Department. Since there are many congenital conditions which are not identified by age one, the age of reporting should be extended to age three.

**RESPONSE:** Nationally, there is no consistency regarding the age of report in birth defects surveillance systems. New Jersey followed the age requirement used by the Centers for Disease Control in its monitoring program. However, children with congenital defects diagnosed after age one are not excluded from the Registry; these children can still be reported as their conditions become known.

**COMMENT:** The availability of published data on the incidence and type of birth defects reported in New Jersey, with regional breaks, would be valuable. Clinical research and service development would be enhanced by the timely access to this type of data.

**RESPONSE:** Since 1990, two reports have been issued on the Registry. The most recent was published in July 1994, with copies sent to hospitals and case management units, and distributed at various meetings. Staff of the Registry also respond to nearly 100 data requests annually. Many of these data requests are used for service planning or grant preparation. The Department's ability to publish formal reports is dependent on staffing levels.

#### **Executive Order No. 27 Statement**

Currently, there are no Federal standards or requirements which mandate the reporting of newborns or infants with birth defects. It is a New Jersey statute, N.J.S.A. 26:8-40 et seq., which requires the Department of Health to establish and maintain a birth defects registry.

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:20.

(a)

## **DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING**

### **All Health Care Facilities**

### **Enforcement of Licensure Regulations**

### **Adopted New Rules: N.J.A.C. 8:43E**

Proposed: November 21, 1994 at 26 N.J.R. 4527(a).

Adopted: March 8, 1995 by Leonard Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: March 13, 1995 as R.1995 d.198, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: April 3, 1995.

Expiration Date: April 3, 2000.

#### **Summary of Public Comments and Agency Responses:**

The Department received six letters of comment in response to the proposal. Specifically, letters were submitted by the Family Planning Association of New Jersey, the Francis E. Parker Memorial Home, the New Jersey Association of Health Care Facilities, the South Jersey Hospital System, the Home Health Assembly of New Jersey, Inc., and the Office of Emergency Medical Services of the Department.

**COMMENT:** The Family Planning Association of New Jersey noted that the proposal "is an improvement because facilities are provided with concrete guidelines and procedures which were not spelled out previously" and "may contribute to surveys being conducted in a more equitable manner."

**RESPONSE:** The Department appreciates the comment. The rules do not substantively alter the licensure survey process but, rather, formalize existing procedures in order to assure consistency.

**COMMENT:** The Home Health Assembly of New Jersey thanked the Department for discussing a draft of the rules with industry representatives prior to publication. The commenter stated that the proposed rules were "appropriate and feasible, though perhaps more complex than necessary." It was suggested that a future revision might more closely resemble the Federal standards so as to avoid "unnecessary burdens over and above federal standards."

**RESPONSE:** In developing the rules, the Department attempted to minimize complexity without compromising clarity or precision. The relation between N.J.A.C. 8:43E and Federal regulations is discussed below under "Executive Order No. 27 Statement."

**COMMENT:** South Jersey Hospital System questioned whether or not adoption of the proposal would be followed by repeal of the various current rules which govern surveys and enforcement actions. It was stated that failure to repeal these various rules would subject providers to "conflicting survey and licensure requirements."

**RESPONSE:** The Department does intend to amend the licensure manuals for the various types of health care facilities in the future so as to reference these adopted enforcement rules at N.J.A.C. 8:43A. Current references to surveys and enforcement, however, should not lead to conflict or confusion since these current rules describe the same processes as do the new rules, though in lesser detail.

**COMMENT:** The Home Health Assembly of New Jersey recommended that the definition of "deficiency" at N.J.A.C. 8:43E-1.3 and other rules "which indicate action by the Department in response to a single event" be revised so as to shift the focus of the rules from single deficiencies to patterns of violations, unless the single deficiency "is a real and significant threat to safety of clients." It was noted that single deficiencies are often (1) paper/procedure/policy items posing no direct threat, (2) unlikely to recur, and (3) unnecessarily time-consuming to address. Violations of greater importance tend to be those which recur as a pattern of error. Moreover, the Federal Medicare survey process for home health agencies incorporates this "pattern concept."

**RESPONSE:** As stated below in response to comments received from the Francis E. Parker Memorial Home concerning N.J.A.C. 8:43E-2.2(a) and 2.4(a), the Department maintains the importance of being able to cite any violation of a licensure rule and of being able to require a plan of correction as warranted. These Departmental responses, however, also

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indicate the manner in which differences in level of seriousness of deficiencies will be reflected in the different actions taken by the Department. Hence, the rules were not revised in the manner requested.

COMMENT: South Jersey Hospital System questioned the definition of "resident" at proposed N.J.A.C. 8:43E-1.3. It was noted that not all patients admitted to long-term care facilities will remain there on a permanent basis. Some require only "extended supervised care."

RESPONSE: The Department agrees that the definition of "residents" should not imply that they remain there on a permanent basis. Accordingly, the definition of "resident" at proposed N.J.A.C. 8:43E-1.3 has been revised so as to accommodate this fact and to better capture the notion of "resident" as used in the various licensure manuals.

COMMENT: South Jersey Hospital System asked whether or not proposed N.J.A.C. 8:43E-2.1(c) implies that the Department would have a right to have photocopies of all or part of the medical records reviewed as part of the survey process.

RESPONSE: It is the case that a right to copies of medical records is implied by the rule. The Department, however, will maintain all medical record information identifying patient names as confidential.

COMMENT: The Francis E. Parker Memorial Home suggested that proposed N.J.A.C. 8:43E-2.2(a) refer to "an immediate and/or serious threat," rather than to non-compliance with a licensure regulation, in specifying the circumstances which would lead to citation of a deficiency.

RESPONSE: The Department maintains that it is appropriate that any violation of a licensure rule be able to result in citation of a licensure deficiency. The rule, therefore, was not revised. The Department, however, acknowledges that some violations are more serious than others. Consequently, some, but not all, citations of deficiency are followed by enforcement action intended to result in immediate corrective action.

COMMENT: South Jersey Hospital System indicated that proposed N.J.A.C. 8:43E-2.2(b), 2.3(b) through (d), and 2.4(b) impose more stringent time limitations on facility actions following the finding of a deficiency than on Departmental actions. It was recommended that the time intervals be equivalent.

RESPONSE: As different actions tend to require different amounts of time to perform, the rules specify a variety of time intervals. In consideration of the commenter's recommendation, however, the Department has reviewed the longer, 30-day time frames allowed for Departmental actions at proposed N.J.A.C. 8:43E-2.2(b) and 2.3(c). In both cases it has been determined that the Department does, in fact, perform the specified functions within 10 business days. Moreover, adherence to the shorter time limits facilitates the execution of Departmental activities related to the Federal Medicare certification process. N.J.A.C. 8:43E-2.2(b) and 2.3(c) were revised accordingly.

COMMENT: The New Jersey Association of Health Care Facilities requested that references to "scope and severity" of deficiencies, which had appeared in earlier drafts of the rules, be restored in a form similar to that found in the enforcement regulations recently adopted by the Health Care Financing Administration.

RESPONSE: The Department, upon proposal, eliminated a section of the rules which had been under consideration and which would have required an analysis of all deficiencies cited through the survey process under "scope and severity." This process involves a quantitative rating of the degree to which a deficiency harms or poses a risk of harm to patients (severity), and of the extent to which the violation was found within the facility, such as isolated, a pattern, or widespread (scope).

"Scope and severity" was not proposed by the Department, given the relative complexity of the system and the need to propose extensive additional material defining and implementing the process. As noted by the commenter, "scope and severity" is being implemented for Medicare- and Medicaid-certified long-term care facilities nationally by the United States Health Care Financing Administration on July 1, 1995. As the Department has not yet implemented the HCFA survey process for long-term care, and the approach suggested by the commenter mandates adopting it for all other licensed health care facilities, such as hospitals, ambulatory care centers, and residential health care facilities, the Department cannot generically institute the system without further study and experience.

The Federal long-term care enforcement rules encompass much more than just "scope and severity." The Department would consider adopting additional elements of the new Federal process, but will defer action until the system has been instituted. The absence of the rule does not preclude use of the mechanism for Federal certification purposes by the Department.

COMMENT: The Francis E. Parker Memorial Home recommended that proposed N.J.A.C. 8:43E-2.4(a) be revised so as to explicitly state that the Department will require submission of a written plan of correction "for any single or multiple determination of an immediate and/or serious threat."

RESPONSE: The Department contends that it is essential that each citation of deficiency may be required to be addressed in a plan of correction—not only those which present an immediate and/or serious threat. The plan of correction would provide some assurance that there would be corrective action taken with respect to violations which present a risk of minimal harm or actual harm which is not immediate in nature. Differences in levels of seriousness or immediacy associated with the violations would be reflected in decisions to require a plan of correction, the types of corrective actions, and the time frames for their completion. The rule, therefore, was not revised.

COMMENT: South Jersey Hospital System asked whether or not the 10-day time period allowed for submission of plans of correction at proposed N.J.A.C. 8:43E-2.4(b) is intended to be 10 "business" days.

RESPONSE: The proposed rule was intended to refer to a period of 10 business days. The rule was revised accordingly.

COMMENT: South Jersey Hospital System stated that, since proposed N.J.A.C. 8:43E-3.4(a)3 and 4 would allow for penalties to be assessed for failure to obtain prior approval for occupancy of an area or initiation of a service or for failure to obtain approval of construction plans prior to construction or renovation, these rules should be revised so as to establish time limits for the Department to respond to requests for approval.

RESPONSE: The Department requests notification from facilities at the time a project is 80 percent complete in order to allow adequate time for a site visit to be scheduled and occupancy approved. In addition, the Department, as a result of staffing constraints, currently exercises discretion in determining which projects warrant an on-site inspection. In instances in which no on-site inspection is conducted, the Department relies upon local building inspections or upon written documentation of project completion in determining whether or not to approve occupancy. On the basis of the above considerations, the Department expects that approvals of occupancy will be granted on a timely basis, and the rule was not revised in the manner suggested.

COMMENT: With regard to proposed N.J.A.C. 8:43E-3.4(a)12, South Jersey Hospital System suggested that the Department "consider a time frame of 2 or 3 years for full CN implementation to allow organizations adequate time to implement a CN and its conditions."

RESPONSE: The rule has been clarified in response to the commenter's concern. The penalties assessed in accordance with the rule would be calculated from the date specified as part of the Certificate of Need condition of approval, if specified, or from the date on which the Certificate of Need was considered to be implemented. With regard to the initiation of a service, this latter date would be the date on which the service began to operate; for a building-related project, it would be the date on which the Department granted approval for occupancy.

COMMENT: South Jersey Hospital System noted that there may be "certain emergency situations which require organizations to exceed licensed bed capacity." Consequently, proposed N.J.A.C. 8:43E-3.6(a)4 should exempt such situations from its scope.

RESPONSE: The Department acknowledges that such emergency situations do occur and that authority to grant exceptions has been recognized under the statute. The rule, therefore, was revised so as to allow the exception as requested. The revised rule requires that the Department be notified immediately in such situations.

#### **Summary of Agency-Initiated Changes:**

COMMENT: The Office of Emergency Medical Services of the Department noted that all non-volunteer ambulance services are required to be licensed by the Department in accordance with N.J.S.A. 26:2H-2. Hence, the proposed rules would apply to these services in the form of enforcement actions resulting from violations of N.J.A.C. 8:40, the Manual of Standards for Licensure of Invalid Coach and Ambulance Services. The rules at N.J.A.C. 8:43E in their proposed form, however, do not specifically address ambulance and invalid coach services. Furthermore, application in their current form could be difficult given the special characteristics of ambulance and invalid coach services which set them apart from more typical health care facilities.

In order to facilitate application of N.J.A.C. 8:43E to ambulance and invalid coach services, the Office of Emergency Medical Services offered

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a number of specific changes to the proposed rules. Among these was a recommendation to add a definition of "ambulance and invalid coach service" to N.J.A.C. 8:43E-1.3.

RESPONSE: Due to their substantive nature, the recommended changes to the proposed rules are not being made as part of this rule adoption. The Department, rather, intends to propose amendments, including a penalty schedule particular to ambulances at N.J.A.C. 8:43E-3.4, at a later date. For the present, however, the definition of "facility" at N.J.A.C. 8:43E-1.3 has been clarified insofar as it has been revised and expanded so as to include ambulance and invalid coach services among those entities to which the definition of "facility" is to apply.

An editorial correction to the published proposal has been made at N.J.A.C. 8:43E-3.10(b).

#### Executive Order No. 27 Statement

The adoption of N.J.A.C. 8:43E is intended to implement State licensing statutes that provide for the inspection of health care facilities and the enforcement of licensing regulations to protect patient health, safety, and welfare. Federal law and regulations are analogous only with respect to Medicaid and Medicare certification, which is voluntary and based upon a contractual relationship between the Federal government and the provider.

For long-term care facilities, the Federal government has recently adopted survey, certification, and enforcement regulations to be utilized for Medicare and Medicaid certification (see 59 FR 56116, Nov. 10, 1994). Various Federal remedies for non-compliance have been incorporated into these rules which will be imposed by HCFA or the State. These include civil monetary penalties ranging as high as \$10,000 per day; denial of payment for new admissions or all patients; appointment of temporary managers; and directed plans of correction. State licensing actions may be imposed separately, which are the subject of these rules. The adopted rules are predicated on different authority and do not contain the identical remedies addressed within the Federal rules, except for civil monetary penalties. As the Federal penalties impose higher fines than do the adopted rules, the latter do not exceed Federal requirements nor do they pose any higher burden.

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 43E

#### ENFORCEMENT OF LICENSURE REGULATIONS

##### SUBCHAPTER 1. SCOPE AND GENERAL PROVISIONS

###### 8:43E-1.1 Scope

The rules in this chapter pertain and apply to all health care facilities licensed by the Department pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. The rules set forth the procedures for the conduct of surveys of health care facilities, the basis and procedures for imposition of penalties and other enforcement actions and remedies, and the rights and procedures available to facilities to request a hearing to contest survey findings and the imposition of penalties.

###### 8:43E-1.2 Purpose

The rules in this chapter are intended to promote the health, safety, and welfare of patients or residents of health care facilities through establishing rules and regulations implementing the Department's legislative mandate to enforce violations of licensing regulations. The rules also are intended to afford health care facilities with appropriate and adequate due process rights and procedures upon the finding of a violation or assessment of a penalty or other enforcement action.

###### 8:43E-1.3 Definitions

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

"Commissioner" means Commissioner of Health.

"Curtailment" means an order by the Department which requires a licensed health care facility to cease and desist all admissions and

readmissions of patients or residents to the facility or affected service.

"Deficiency" means a determination by the Department of one or more instances in which a State licensing regulation or a Federal certification regulation has been violated.

"Department" means New Jersey Department of Health.

"Division" means Health Facilities Evaluation and Licensing, Department of Health.

"Facility" means the entity which has been issued a license to operate a health care facility pursuant to N.J.S.A. 26:2H-1 et seq. **\*For the purposes of this chapter, "facility" includes ambulance and invalid coach services.\***

"Immediate and serious threat" means a deficiency or violation that has caused or will imminently cause at any time serious injury, harm, impairment, or even death to residents or patients of the facility and therefore requires immediate corrective action.

"Patient" means an individual under the medical and nursing care and supervision of a licensed health care facility. For purposes of this chapter, "patient" is synonymous with "resident."

"Plan of correction" means a plan developed by the facility and reviewed and approved by the Department which describes the actions the facility will take to correct deficiencies and specifies the timeframe in which those deficiencies will be corrected.

"Resident" means an individual **\*[permanently]\*** residing in a licensed health care facility and under the **\*[medical and nursing care and]\*** supervision of that facility for **\*[a long-term or chronic condition]\*** **\*the purpose of receiving medical, nursing, and/or personal care services\*.** For purposes of this chapter, "resident" is synonymous with "patient."

"Survey" means the evaluation of the quality of care and/or the fitness of the premises, staff, and services provided by a facility as conducted by the Department and/or its designees to determine compliance or non-compliance with applicable State licensing regulations, statutes, or Federal Medicare/Medicaid certification regulations or statutes.

##### SUBCHAPTER 2. SURVEY PROCEDURES

###### 8:43E-2.1 Scope and types of surveys

(a) The Department, or another State agency to which the Department has delegated the authority for conduct of surveys either partially or fully, may conduct periodic or special inspections of licensed health care facilities to evaluate the fitness and adequacy of the premises, equipment, personnel, policies and procedures, and finances, and to ascertain whether the facility complies with all applicable State and Federal licensure regulations and statutes.

(b) The Department or its designee may also conduct periodic surveys of facilities on behalf of the U.S. Department of Health and Human Services or other Federal agency for purposes of evaluating compliance with all applicable Federal regulations or Medicare and Medicaid certification regulations.

(c) The Department may evaluate all aspects of patient care, and operations of a health care facility, including the inspection of medical records; observation of patient care where consented to by the patient; inspection of all areas of the physical plant under the control or ownership of the licensee; and interview of the patient or resident, his or her family or other individuals with knowledge of the patient or care rendered to him or her.

(d) All information pertaining to an individual patient shall be maintained as confidential by the Department and shall not be available to the public in a manner that identifies an individual patient, unless so consented to by the patient or pursuant to an order by a court of law.

(e) The Department may conduct a survey of a facility upon the receipt of complaint or allegation by any person or agency, including a patient, his or her family, or any person with knowledge of the services rendered to patients or operations of a facility.

(f) The Department may evaluate the quality of patient care rendered by a facility through analysis of statistical data reported by facilities to the Department or other agency, or by review of reportable event information or other notices filed with the Depart-

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ment pursuant to regulation. Upon receipt of information indicating a potential risk to patient safety or violations of licensing regulations, the Department may conduct a survey to investigate the causes of this finding, or request a written response from the facility to ascertain the validity of the data and to describe the facility's plan or current actions to address the identified findings.

(g) Following a reasonable opportunity for facilities to review and comment on the validity of the Department's statistical data related to the quality of patient care by facilities, the Department may make such information, as appropriately amended, available to the public.

**8:43E-2.2 Deficiency findings**

(a) A deficiency may be cited by the Department upon any single or multiple determination that the facility does not comply with a licensure regulation. Such findings may be made as the result of either an on-site survey or inspection or as the result of the evaluation of written reports or documentation submitted to the Department, or the omission or failure to act in a manner required by regulation.

(b) At the conclusion of a survey or within **\*[30]\* \*10 business\*** days thereafter, the Department shall provide a facility with a written summary of any factual findings used as a basis to determine that a licensure violation has occurred, and a statement of each licensure regulation to which the finding of a deficiency relates.

**8:43E-2.3 Informal dispute resolution**

(a) A facility may request an opportunity to discuss the accuracy of survey findings with representatives of the Department in the following circumstances during a survey:

1. During the course of a survey to the extent such discussion does not interfere with the surveyor's ability to obtain full and objective information and to complete required survey tasks; or
2. During the exit interview or other summation of survey findings prior to the conclusion of the survey.

(b) Following completion of the survey, a facility may contact the Health Facilities Inspection Services office to request an informal review of deficiencies cited. The request must be made in writing within 10 business days of the receipt of the written survey findings. The written request must include:

1. A specific listing of the deficiencies for which informal review is requested; and
2. Documentation supporting any contention that a survey finding was in error.

(c) The review will be conducted within **\*[30]\* \*10 business\*** days of the request by supervisory staff of Health Facilities Inspection Services who did not directly participate in the survey. The review can be conducted in person at the offices of the Department or, by mutual agreement, solely by review of the documentation as submitted.

(d) A decision will be issued by the Department within seven business days of the conference or the review, and if the determination is to agree with the facility's contentions, the deficiencies will be removed from the record. If the decision is to disagree with the request to remove deficiencies, a plan of correction is required within five business days of receipt of the decision. The facility retains all other rights to appeal deficiencies and enforcement actions taken pursuant to these rules.

**8:43E-2.4 Plan of correction**

(a) The Department may require that the facility submit a written plan of correction specifying how each deficiency that has been cited will be corrected along with the time frames for completion of each corrective action. A single plan of correction may address all events associated with a given deficiency.

(b) The plan of correction shall be submitted within 10 **\*business\*** days of the facility's receipt of the notice of violations, unless the Department specifically authorizes an extension for cause. Where deficiencies are the subject of informal dispute resolution pursuant to N.J.A.C. 8:43E-2.3, the extension shall pertain only to the plans of correction for the deficiencies under review.

(c) The Department may require that the facility's representatives appear at an office conference to review findings of serious or

repeated licensure deficiencies and to review the causes for such violations and the facility's plan of correction.

(d) The plan of correction shall be reviewed by the Department and will be approved where the plan demonstrates that compliance will be achieved in a manner and time that assures the health and safety of patients or residents. If the plan is not approved, the Department may request that an amended plan of correction be submitted within five business days. In relation to violations of resident or patient rights, the Department may direct specific corrective measures that must be implemented by facilities.

**SUBCHAPTER 3. ENFORCEMENT REMEDIES****8:43E-3.1 Enforcement remedies available**

(a) Pursuant to N.J.S.A. 26:2H-13, 14, 15, 16 and 38, the Commissioner or his or her designee may impose the following enforcement remedies against a health care facility for violations of licensure regulations or other statutory requirements:

1. Civil monetary penalty;
2. Curtailment of admissions;
3. Appointment of a receiver or temporary manager;
4. Provisional license;
5. Suspension of a license;
6. Revocation of a license;
7. Order to Cease and Desist operation of an unlicensed health care facility; and
8. Other remedies for violations of statutes as provided by State or Federal law, or as authorized by Federal survey, certification, and enforcement regulations and agreements.

**8:43E-3.2 Notice of violations and enforcement actions**

The Commissioner shall serve notice to a facility of the proposed assessment of civil monetary penalties, suspension or revocation of a license, or placement on a provisional license, setting forth the specific violations, charges or reasons for the action. Such notice shall be served on a licensee or its registered agent in person or by certified mail.

**8:43E-3.3 Effective date of enforcement actions**

The assessment of civil monetary penalties, or revocation of a license, or the placement of a license on provisional status shall become effective 30 days after the date of mailing or the date personally served on a licensee, unless the licensee shall file with the Department a written answer to the charges and give written notice to the Department of its desire for a hearing in which case the assessment, suspension, revocation, or placement on provisional license status shall be held in abeyance until the administrative hearing has been concluded and a final decision is rendered by the Commissioner. Hearings shall be conducted in accordance with N.J.A.C. 8:43E-4.1.

**8:43E-3.4 Civil monetary penalties**

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure regulations in accordance with the following standards:

1. For operation of a health care facility without a license, or continued operation of a facility after suspension or revocation of a license, \$250.00 per day from the date of initiation of services;
2. For violation of an order for curtailment of admissions, \$250.00 per patient, per day from the date of such admission to the date of discharge or lifting of the curtailment order;
3. For failure to obtain prior approval from the Licensing Program, Division of Health Facilities Evaluation and Licensing, for occupancy of an area or initiation of a service following construction or application for licensure, \$250.00 a day;
4. For construction or renovation of a facility without the Department's approval of construction plans, \$1,000 per room or area renovated and immediate suspension of use of the room or area;
5. For the transfer of ownership of a health care facility without prior approval of the Department, \$250.00 per day from the date of the transfer of interest to the date of discovery by the Department. Such fine may be assessed against each of the parties at interest;

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6. For maintaining or admitting more patients or residents to a facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the Department, \$25.00 per patient per day plus an amount equal to the average daily charge collected from such patient or patients;

7. For violations of licensure regulations related to patient care or physical plant standards that represent a risk to the health, safety, or welfare of patients or residents of a facility or the general public, \$250.00 per violation where such deficiencies are isolated or occasional and do not represent a pattern or widespread practice throughout the facility;

8. Where there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of \$500.00 per violation may be assessed for each day non-compliance is found;

9. For repeated violation of any licensing regulation within a 12-month period or on successive annual inspections, or failure to implement an approved plan of correction, where such violation was not the subject of a previous penalty assessment, \$250.00 per violation, which may be assessed for each day non-compliance is found. If the initial violation resulted in the assessment of a penalty, within a 12-month period or on successive annual inspections, the second violation shall result in a doubling of the original fine, and the third and successive violations shall result in a tripling of the original fine;

10. For violations resulting in either actual harm to a patient or resident, or in an immediate and serious risk of harm, \$1,000 per violation, which may be assessed for each day non-compliance is found;

11. For failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, \$250.00 per day; or

12. For failure to implement a Certificate of Need condition **\*of approval\***, \$1,000 per day\*, **which shall be assessed either from the date specified in the Certificate of Need for implementation of the specific condition of approval, if identified, or from the date on which the Certificate of Need was considered to be implemented\***.

(b) Except for violations deemed to be immediate and serious threats, the Department may decrease the penalty assessed in accordance with (a) above, based on the compliance history of the facility; the number, frequency and/or severity of violations by the facility; the measures taken by the facility to mitigate the effects of the current violation, or to prevent future violations; the deterrent effect of the penalty; and/or other specific circumstances of the facility or the violation.

(c) The Department may increase the penalties in (a) above up to the statutory maximum per violation per day in consideration of the economic benefit realized by the facility for non-compliance.

#### 8:43E-3.5 Failure to pay a penalty; remedies

(a) Upon the receipt of a Notice of the Proposed Assessment of a Penalty, a facility has 30 days in which to notify the Department of its intent to request a hearing pursuant to the Administrative Procedures Act.

(b) The penalty becomes due and owing upon the 30th day from receipt of the Notice of Proposed Assessment of Penalties, if a notice requesting a hearing has not been received by the Department. If a hearing has been requested, the penalty is due 45 days after the issuance of a Final Agency Decision by the Commissioner, if the Department's assessment has not been withdrawn, rescinded, or reversed, and an appeal has not been timely filed with the Appellate Division pursuant to Rule 2:2-3 of the New Jersey Court Rules.

(c) Failure to pay a penalty within 30 days of the date it is due and owing pursuant to (b) above may result in one or more of the following actions:

1. Institution of a summary civil proceeding by the State pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.); or
2. Placing the facility on a provisional license status.

#### 8:43E-3.6 Curtailment of admissions

(a) The Department may issue an order curtailing all new admissions and readmissions to a health care facility in the following circumstances:

1. Where violations of licensing regulations are found that have been determined to pose an immediate and serious threat of harm to patients or residents of a health care facility;

2. Where the Department has issued a Notice of Proposed Revocation or Suspension of a health care facility license, for the purpose of limiting the census of a facility if patients or residents must be relocated upon closure;

3. Where the admission or readmission of new patients or residents to a health care facility would impair the facility's ability to correct serious or widespread violations of licensing regulations related to direct patient care and cause a diminution in the quality of care; or

4. For exceeding the licensed or authorized bed or service capacity of a health care facility\*, **except in those instances where exceeding the licensed or authorized capacity was necessitated by emergency conditions and where immediate and satisfactory notice was provided to the Department\***.

(b) The order for curtailment may be withdrawn upon a survey finding that the facility has achieved substantial compliance with the applicable licensing regulations or Federal certification requirements and that there is no immediate and serious threat to patient safety, or in the case of providers exceeding licensed capacity, has achieved a census equivalent to licensed and approved levels. Such order to lift a curtailment may reasonably limit the number and priority of patients to be admitted by the facility in order to protect patient safety.

#### 8:43E-3.7 Appointment of a receiver

(a) Pursuant to N.J.S.A. 26:2H-37 et seq., the Department may seek an order or judgment in a court of competent jurisdiction, directing the appointment of a receiver for the purpose of remedying a condition or conditions in a residential health care facility, assisted living facility, or long-term care facility, that represent a substantial or habitual violation of the standards of health, safety, or resident care adopted by the Department or pursuant to Federal law or regulation.

(b) The Department shall review and approve the receiver's qualifications prior to submission for court approval. The receiver shall have experience and training in long-term care, assisted living, or residential health care, as appropriate, and, if the facility is a licensed long-term care provider, the receiver shall possess a current New Jersey license as a nursing home administrator and be in good standing. The Department shall maintain a list of interested and approved receivers.

(c) No receiver may be a current owner, licensee, or administrator of the subject facility or a spouse or immediate family member thereof.

#### 8:43E-3.8 Suspension of a license

(a) Pursuant to N.J.S.A. 26:2H-14, the Commissioner may order the summary suspension of a license of a health care facility or a component or distinct part of a facility upon a finding that violations pertaining to the care of patients or to the hazardous or unsafe conditions of the physical structure pose an immediate threat to the health, safety, and welfare of the public or the residents of the facility.

(b) Upon a finding described in (a) above, the Commissioner shall serve notice in person or by certified mail to the facility or its registered agent of the nature of the findings and violations and the proposed order of suspension. Except in the case of a life-threatening emergency, the notice shall provide the facility with a 72-hour period from receipt to correct the violations and provide proof to the Department of such correction.

(c) If the Department determines the violations have not been corrected, and the facility has not filed notice requesting a hearing to contest the notice of suspension within 48 hours of receipt of the Commissioner's notice pursuant to (e) below, then the license

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shall be deemed suspended. Upon the effective date of the suspension, the facility shall cease and desist the provision of health care services and effect an orderly transfer of patients.

(d) The Department shall approve and coordinate the process to be followed during an evacuation of the facility or cessation of services pursuant to an order for suspension or revocation.

(e) If the facility requests a hearing within 48 hours of receipt of the Notice of Proposed Suspension of License in accordance with N.J.S.A. 26:2H-14, the Department shall arrange for an immediate hearing to be conducted by the Commissioner and a final agency decision shall be issued within 48 hours by the Commissioner. If the Commissioner shall affirm the proposed suspension of the license, the order shall become final. The licensee may file for injunctive relief against the Commissioner's order in Superior Court.

(f) Notwithstanding the issuance of an order for proposed suspension of a license, the Department may concurrently or subsequently impose other enforcement actions pursuant to these rules.

(g) The Department may rescind the order for suspension upon a finding that the facility has corrected the conditions which were the basis for the action.

**8:43E-3.9 Revocation of a license**

(a) A Notice of the Proposed Revocation of a health care facility license may be issued in the following circumstances:

1. The facility has failed to comply with licensing requirements, posing an immediate and serious risk of harm or actual harm to the health, safety, and welfare of patients or residents, and the facility has not corrected such violations in accordance with an approved plan of correction or subsequent to imposition of other enforcement remedies issued pursuant to these rules;

2. The facility has exhibited a pattern and practice of violating licensing requirements, posing a serious risk of harm to the health, safety and welfare of residents or patients. A pattern and practice may be demonstrated by the repeated violation of identical or substantially-related licensing regulations during three consecutive surveys, or the issuance of civil monetary penalties pursuant to N.J.A.C. 8:43E-3.4 or other enforcement actions for unrelated violations on three or more consecutive surveys;

3. Failure of a licensee to correct identified violations which had led to the issuance of an order for suspension of a license, pursuant to N.J.A.C. 8:43E-3.6 or 3.8; or

4. Continuance of a facility on provisional licensure status for a period of 12 months or more.

(b) The notice shall be served in accordance with N.J.A.C. 8:43E-3.2, and the facility has a right to request a hearing pursuant to N.J.A.C. 8:43E-4.1.

**8:43E-3.10 Provisional license**

(a) The Department may place a health care facility on provisional license status in the following circumstances:

1. Upon issuance of a Notice for Revocation or Suspension of a License, pursuant to N.J.A.C. 8:43E-3.8 or 3.9, for a period extending through final adjudication of the action;

2. Upon issuance of an order for curtailment of admissions pursuant to N.J.A.C. 8:43E-3.6, for a minimum period of three months and for a maximum period extending through 90 days following the date the Department finds the facility has achieved substantial compliance with all applicable licensing regulations;

3. For failure to satisfy a civil penalty due and owing pursuant to N.J.A.C. 8:43E-3.4; or

4. Upon a recommendation to the Federal government or the New Jersey Division of Medical Assistance and Health Services for termination of a provider agreement for failure to meet the Federal certification regulations.

(b) A facility placed on provisional license status shall receive a notice of the action pursuant to N.J.A.C. 8:43E-3.10. The action is effective upon receipt, although the facility may request a hearing to contest the action in accordance with procedures identified at N.J.A.C. 8:43E-4\*.\*1.

(c) While a facility is on provisional license status, the following will occur:

1. Withholding of authorization or review of any application filed with the Department for approval of additional beds or services;

2. Notification of the action to the Certificate of Need Program, for consideration during any pending application. It may result in withholding of Certificate of Need approval or denial of the Certificate of Need, in accordance with Certificate of Need rules at N.J.A.C. 8:33, or applicable licensing regulations; and

3. Notification of the action to any public agency that provides funding or third party reimbursement to the facility or that has statutory responsibility for monitoring the quality of care rendered to patients or residents. Conspicuous posting of the provisional license in the health care facility must occur.

**8:43E-3.11 Cease and desist order**

(a) Pursuant to N.J.S.A. 26:2H-14 and 15, the Commissioner or his or her designee may issue an order requiring the operation of an unlicensed or unauthorized care facility or service to cease and desist.

(b) The Commissioner may also impose other enforcement actions pursuant to these rules for operation of an unlicensed health care facility.

(c) The Department may maintain an action in Superior Court to enjoin any entity from operation of a health care facility without a license or after the suspension or revocation of a license pursuant to these rules.

**SUBCHAPTER 4. HEARINGS****8:43E-4.1 Hearings**

(a) Notice of a proposed enforcement action shall be afforded to a facility pursuant to N.J.A.C. 8:43E-3.2.

(b) A facility shall notify the Department of its intent to request a hearing in a manner specified in the Notice within 30 days of its receipt.

(c) The Department shall transmit the hearing request to the Office of Administrative Law.

(d) Hearings shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1.

**8:43E-4.2 Settlement of enforcement actions**

(a) The facility may request that the matter be settled in lieu of conducting an administrative hearing concerning an enforcement action.

(b) If the Department and the facility agree on the terms of a settlement, a written agreement specifying these terms shall be executed.

(c) Pursuant to N.J.S.A. 26:2H-16, civil penalties may be settled by the Department in cash or in-kind services to patients where circumstances warrant such agreement and the settlement does not compromise the health, safety, or welfare of patients. In no case shall such settlement reduce a penalty below \$250.00, or \$500.00 for second and subsequent offenses.

(d) The Department may agree to accept payment of penalties over a schedule not exceeding 18 months where a facility demonstrates financial hardship.

(e) All funds received in payment of penalties shall be deposited in the Health Care Facilities Improvement Fund. Such fund shall be designated for use by the Commissioner to make corrections in a health care facility which is in violation of a licensure standard and in which the owner or operator is unable or unwilling to make the necessary corrections. The owner of the facility shall repay the fund any monies plus interest at the prevailing rate that were expended by the State to correct the violation at the facility. If the owner fails to promptly reimburse the fund, the Commissioner shall have a lien in the name of the State against the facility for the cost of the corrections plus interest and for any administrative cost incurred in filing the lien.

(f) If a facility fails to meet the conditions of the settlement, the Department may immediately impose the original enforcement action without any further right to an administrative hearing.

## (a)

**DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL,  
AND OCCUPATIONAL HEALTH SERVICES  
COMMUNICABLE DISEASE CONTROL SERVICE****Immunization of Pupils in School****Adopted Amendments: N.J.A.C. 8:57-4**

Proposed: January 17, 1995 at 27 N.J.R. 270(a).

Adopted: March 13, 1995 by the Public Health Council,  
John D. Slade, Chair.Filed: March 13, 1995 as R.1995 d.201, **with technical changes**  
not requiring additional public notice and comments (See  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-7.

Effective Date: April 13, 1995.

Expiration Date: April 20, 1995.

**Summary of Hearing Officer Recommendations and Agency Responses:**

A public hearing concerning the proposed amendments was held on February 6, 1995 at the Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey. Dr. William A. Frascella, Jr., Member, Public Health Council, served as hearing officer.

After reviewing the oral testimony and written comments submitted, the Public Health Council recommended that the amendments be adopted with the changes described in the Summary of Agency-Initiated Changes below. The Department accepts the recommendation. The record of the public hearing may be reviewed by contacting Ms. Susan P. Eates, Department of Health, CN 360, Trenton, New Jersey 08625-0360.

**Summary of Public Comments and Agency Responses:**

Opportunity to be heard regarding the proposal was invited via notice published on January 17, 1995 at 27 N.J.R. 270(a). The Department also mailed notice of the proposal to representatives of organizations which would be affected by the amendments. The public comment period closed on February 17, 1995. Comments were received from Mr. Walter Trommelen, Burlington County Health Department, Mr. David Richardson, Manalapan Health Department, and the Division of Youth and Family Services.

The comments are available for inspection by contacting the Immunization Program, Division of Epidemiology, Environmental, and Occupational Health Services, University Office Plaza, 3635 Quakerbridge Plaza, Trenton, New Jersey 08619-1247.

COMMENT: The Division of Youth and Family Services (DYFS), Department of Human Services, expressed their support for requiring additional immunizations which are currently recommended by medical advisory bodies.

RESPONSE: The Department acknowledges DYFS's support and appreciates this comment.

COMMENT: One commenter agreed that the Department should initiate the two dose measles vaccine requirement for children born on or after January 1, 1990 and entering Kindergarten or first grade. However, the commenter also suggested that the Department move quickly to cover the older age cohorts in this rule by instituting a phase-in system. The suggested system would require those pupils entering grades 10, 11, or 12 after September 1, 1996, pupils entering grades 7, 8, or 9 after September 1, 1997, and pupils entering grades 4, 5, or 6 after September 1, 1998 to receive a second dose of measles-containing vaccine.

RESPONSE: The Department recognizes that ideally all children in Kindergarten through grade 12 should receive a second dose of measles-containing vaccine. Past experience has demonstrated that the highest compliance with immunization rules occurs when the child first enters a school. Most other states enacting similar rules have only selected one or two specified entry grade levels to ensure implementation, monitoring, enforcement, and provide vaccine support. There are current funding and other constraints within the Department which preclude making publicly-purchased vaccine available to more than one cohort of children per year to implement the two dose measles requirement.

COMMENT: One commenter observed that according to the rules a child who enters Kindergarten on or after September 1, 1995 with no doses of measles-containing vaccines will have only two months to

receive the second dose. The commenter questioned whether a child who did not receive the second dose of measles-containing vaccine within two months after the first, would be in non-compliance and, therefore, subject to exclusion.

RESPONSE: The Department has surveyed the medical literature and contacted other states with similar two dose measles requirements. Most states which require two doses of measles-containing vaccine specify that the interval to the second dose be one month. However, most medical practitioners recognize that the routine interval between most doses in a vaccine series is two months. A child entering Kindergarten with no doses of documented measles-containing vaccine should receive the second dose of measles two months after the first dose; the child becomes non-compliant/delinquent and subject to exclusion under these rules, as would be the case for receiving the second dose of DTP or poliovirus vaccine, when the vaccine has still not been administered by the third month/or 90 days after the first dose.

COMMENT: The Department should prepare clear tables which address revised regulations to assist local health departments to audit the immunization records of school and child care centers.

RESPONSE: The Department intends to prepare a "Health Bulletin" and revise the Annual Immunization Status Report Form to reflect these changes. These documents will be sent to schools, child care centers, and local health departments.

COMMENT: The Department should be aware that the timeframe for implementing this rule by September 1, 1995 may be problematic because school systems traditionally enter new pupils in April and May.

RESPONSE: The Department concurs with the observation and will promptly advise physicians, schools, child care centers, and local health departments. The Department does not think it is the best interest of public health to delay implementation for one year.

**Executive Order No. 27 Statement**

The proposed amendments to N.J.A.C. 8:57-4 do not impose standards on schools, preschools, child care centers, or health care providers in New Jersey that exceed those contained in Federal guidelines, as set forth by Advisory Committee on Immunization Practices, U.S. Public Health Service, U.S. Department of Health and Human Services.

**Summary of Agency-Initiated Changes:**

The Department has made a change to correct a typographical error. In addition, the Department has made minor changes in order to clarify the intent of the rules and to use consistent wording.

1. At N.J.A.C. 8:57-4.4(c), the following typographical error has been corrected; the word "agents" has been changed to "agents."

2. At N.J.A.C. 8:57-4.12(a), the phrase "comparable age" has been added before "entry level special education program" for clarification purposes.

3. At N.J.A.C. 8:57-4.15, the phrase "conjugate vaccine" has been added to the section title for consistency with the form of the other section titles.

4. At N.J.A.C. 8:57-4.15(b), the phrase "a separate or a combination" has been added before the phrase "Hib conjugate vaccine" for consistency and clarity.

**Full text** of the readoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

**8:57-4.1 Applicability**

This subchapter shall apply to all children attending any public or private school, child care center, nursery school, preschool or kindergarten in New Jersey.

**8:57-4.2 Proof of Immunization**

A principal, director or other person in charge of a school, preschool, or child care facility shall not knowingly admit or retain any child whose parent or guardian has not submitted acceptable evidence of the child's immunization, according to the schedules specified in this subchapter. Exemptions to this requirement are identified at N.J.A.C. 8:57-4.3 and 4.4.

**8:57-4.3 Medical exemptions**

(a) A child shall not be required to have any specific immunization(s) which are medically contraindicated.

(b) A written statement submitted to the school, preschool, or child care center from a physician licensed to practice medicine or osteopathy in any jurisdiction of the United States indicating that

an immunization is medically contraindicated for a specific period of time, and the reason(s) for the medical contraindication, based upon valid medical reasons as enumerated by the Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) guidelines, will exempt a pupil from the specific immunization requirement for the stated period of time.

1. The guidelines identified in (b) above are available as follows:

i. Advisory Committee on Immunization Practices, U.S. Public Health Service, Centers for Disease Control and Prevention, Atlanta, GA 30333; and

ii. American Academy of Pediatrics, Committee on Infectious Diseases, PO Box 927, Elk Grove, IL 60009-0927.

(c) The physician's statement shall be retained as part of the child's immunization record and shall be reviewed annually by the school, preschool, or child care facility. When the child's medical condition permits immunization, this exemption shall thereupon terminate and the child shall be required to obtain the immunization(s) from which he or she has been exempted.

(d) Those children with medical exemptions to receiving specific immunizations may be excluded from the school, preschool, or child care facility during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

(e) As provided by N.J.S.A. 26:4-6, "Any body having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school of the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

#### 8:57-4.4 Religious exemptions

(a) A child shall be exempted from mandatory immunization if the parent or guardian objects thereto in a written statement submitted to the school, preschool, or child care center, signed by the parent or guardian, explaining how the administration of immunizing agents conflicts with the pupil's exercise of bona fide religious tenets or practices. General philosophical or moral objection to immunization shall not be sufficient for an exemption on religious grounds.

(b) This statement will be kept by the school, preschool, or child care center as part of the child's immunization record.

(c) Those children with religious exemptions from receiving immunizing \*[agents]\* \*agents\* may be excluded from the school, preschool, or child care center during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

(d) As provided by N.J.S.A. 26:4-6, "Any body having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The State Department of Health shall provide guidance to the school on the appropriateness of any such prohibition. All schools are required to comply with the provisions of N.J.A.C. 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

(e) Those children enrolled in school, preschool, or child care centers before September 1, 1991, and who have previously been granted a religious exemption, shall not be required to reapply for a new religious exemption under N.J.A.C. 8:57-4.4(a).

#### 8:57-4.5 Provisional admission

(a) A child may be admitted to a school, preschool, or child care center on a provisional basis if a physician or health department can document that at least one dose of each required age-appropriate vaccine(s) or antigen(s) has been administered and that the pupil is in the process of receiving the remaining immunization(s).

(b) Provisional admission for children under age five shall be granted in compliance with the specific requirements set forth in N.J.A.C. 8:57-4.10 through 4.15 for a period of time consistent with the current Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) immunization schedule, but shall not exceed 17 months for completion of all immunization requirements.

(c) Provisional admission for children five years of age or older shall be granted in compliance with the specific requirements set forth in N.J.A.C. 8:57-4.10 through 4.14 for a period of time consistent with the current Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) immunization schedule, but shall not exceed one year for completion of all immunization requirements.

(d) Provisional status shall only be granted one time to children entering or transferring into schools, preschools, or child care centers in New Jersey. Information on this status shall be sent by the original school, preschool, or child care center to the new school, preschool, or child care center pursuant to N.J.A.C. 8:57-4.7(b).

(e) Those children transferring into a New Jersey school, preschool, or child care center from out-of-State or out-of-country may be allowed a 30-day grace period in order to obtain past immunization documentation before provisional status shall begin.

(f) The school, preschool, or child care center shall ensure that the required vaccine/antigens are being received on schedule. If at the end of the provisional admission period, the child has not completed the required immunizations, the administrative head of the school, preschool or child care center shall exclude the child from continued school attendance until appropriate documentation has been presented.

(g) Those children in provisional status may be temporarily excluded from the school, preschool, or child care center during a vaccine-preventable disease outbreak or threatened outbreak as determined by the State Commissioner of Health or his or her designee.

#### 8:57-4.6 Documents accepted as evidence of immunization

(a) The following documents shall be accepted as evidence of a child's immunization history provided that the type of immunization and the date when each immunization was administered is listed:

1. An official school record from any school, preschool, or child care center indicating compliance with the immunization requirements of this subchapter; or

2.-3. (No change.)

(b) (No change.)

#### 8:57-4.7 Records required

(a) Every school, preschool, or child care center shall maintain an official State of New Jersey School Immunization Record for every pupil. This record shall include the date of each immunization and shall be separated from the child's other medical records for purpose of immunization record audit.

(b) If a child withdraws, is promoted, or transfers to another school, preschool, or child care center, the immunization record, or a certified copy thereof, along with statements pertaining to religious or medical exemptions and laboratory evidence of immunity, shall be sent to the new school by the original school or shall be given to the parent or guardian upon request, within 24 hours of such a request.

(c) When a child graduates from secondary school, this record, or a certified copy thereof, shall be sent to an institution of higher education or may be given to the parent or guardian upon request.

(d) Each child's official New Jersey School Immunization Record, or a certified copy thereof, shall be retained by every secondary school for a minimum of four years after the pupil has left the school. Every elementary school, preschool, or child care center shall retain an immunization record, or a copy thereof, for a minimum of one year after the child has left the school.

(e) Any computer-generated document or list developed by a school, preschool, or child care center shall be considered a supple-

ment to, and not a replacement of, the official New Jersey School Immunization Record.

#### 8:57-4.8 Reports to be sent to State Department of Health

(a) A report of the immunization status of the pupils in every school, preschool, or child care center shall be sent each year to the State Department of Health by the principal, director, or other person in charge of the school, preschool, or child care center.

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

(d) A copy of this report shall be sent to the local board of health in whose jurisdiction the school, preschool, or child care center is located.

(e) Those schools, preschools, and child care centers not submitting the annual report by December 1 will be considered delinquent. A delinquency involving schools, preschools, and child care centers may be referred to the New Jersey State Department of Education or the New Jersey State Department of Human Services, as appropriate based on the length of time delinquent, number of times delinquent, and efforts made toward compliance. The local health department will also be notified of the delinquency.

#### 8:57-4.9 Records available for inspection

Each school, preschool, and child care center shall maintain records of their children's immunization status. Upon 24 hour notice, these records shall be made available for inspection by authorized representatives of the State Department of Health or the local board of health in whose jurisdiction the school or child care center is located.

#### 8:57-4.10 Diphtheria and tetanus toxoids and pertussis vaccine

(a) Every child born on or after January 1, 1986 shall have received a minimum of four doses of diphtheria and tetanus toxoids and pertussis vaccine (DTP), or any vaccine combination containing DTP, such as DTP/Hib, one dose of which shall have been given on or after the child's fourth birthday.

(b) Those children enrolled in child care centers who are too young to meet this requirement, shall be in compliance with this section if they are appropriately immunized for their age as recommended by the Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service.

(c) Pediatric diphtheria-tetanus toxoid (DT) shall be accepted in lieu of DTP or DTaP for children under age seven if a physician's written medical contraindication to further pertussis vaccine has been presented as specified at N.J.A.C. 8:57-4.3.

(d) Diphtheria, tetanus, and acellular pertussis vaccine (DTaP) for children under age seven shall be accepted in lieu of DTP vaccine for the fourth or fifth dose in the DTP series, if given on or after 15 months of age.

(e) Children seven years of age and older who have not completed this requirement shall receive tetanus and diphtheria toxoids (adult Td) instead of DTP. Any appropriately spaced combination of three doses of DTP, DTaP, DT, or Td in a child over age seven shall be acceptable as adequate immunization for this vaccine series.

(f) The requirement to receive a school entry booster dose of DTP after the child's fourth birthday shall not apply to children while enrolled in child care centers.

(g) Those children born on or after January 1, 1986, who have received a total of five or more doses of DTP and DTaP shall have satisfied the DTP requirement.

#### 8:57-4.11 Poliovirus vaccine

(a) Every child born on or after January 1, 1986 shall have received at least three doses of live, trivalent, oral poliovirus vaccine (OPV), or inactivated poliovirus vaccine (IPV) if medically appropriate, either separately or in combination, one dose of which shall have been given on or after the child's fourth birthday.

(b) Those children enrolled in child care centers who are too young to meet this requirement, shall be considered to be in compliance with this section if they are appropriately immunized for their age as recommended by the Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service.

(c) Any child 18 years of age or older shall not be required to receive poliovirus vaccine.

(d) For children seven years of age and older, any appropriately spaced combination of three doses of OPV or IPV shall satisfy the poliovirus vaccine requirement.

(e) The requirement to receive a school entry dose of OPV or IPV after the child's fourth birthday shall not apply to children while enrolled in child care centers.

#### 8:57-4.12 Measles virus vaccine

(a) Every child born on or after January 1, 1990 shall have received two doses of a live measles-containing vaccine, or any vaccine combination containing live measles vaccine, such as the preferred measles, mumps, rubella (MMR) vaccine, prior to school entrance for the first time into Kindergarten, Grade One, or \*[an]\* \*a comparable age\* entry level special education program with an unassigned grade. The first dose shall have been administered on or after the child's first birthday, and the second dose shall have been administered no less than one month after the first dose.

(b) Those children younger than 15 months of age who are enrolled in a preschool or child care center, shall be considered to be in compliance with this section until reaching the age of 15 months, which is the medically recommended age for receiving the first measles immunization.

(c) Children born before January 1, 1990 shall have received one dose of live measles vaccine or any measles-containing combination vaccine on or after their first birthday.

(d) Children born on or after January 1, 1990 and enrolling in school (Kindergarten or Grade One) for the first time after September 1, 1995, with no documented doses of measles vaccine, shall receive the second dose of measles or another measles-containing combination vaccine, no sooner than one month and no later than two months after receiving the first dose.

(e) Children who present documented laboratory evidence of measles immunity shall not be required to receive measles vaccine.

(f) Those children enrolled in school, preschool, or child care centers before September 1, 1991 who have a current immunization record with physician diagnosed and documented measles disease shall not be required to receive the first or second dose of measles vaccine.

#### 8:57-4.13 Rubella vaccine

(a) Every child shall have received one dose of live rubella virus vaccine, or any vaccine combination containing live rubella virus vaccine, administered on or after the child's first birthday.

(b) Those children younger than 15 months of age who are enrolled in a preschool or child care center, shall be considered to be in compliance with this section until reaching the age of 15 months, which is the medically recommended age for routine rubella immunization.

(c) Rubella virus vaccine shall not be required of children who present documented laboratory evidence of rubella immunization.

#### 8:57-4.14 Mumps vaccine

(a) Every child shall have received one dose of live mumps virus vaccine, or any vaccine combination containing live mumps virus vaccine, administered on or after the child's first birthday.

(b) Those children younger than 15 months of age who are enrolled in a preschool or child care center shall be considered to be in compliance with this section until reaching the age of 15 months, which is the medically recommended age for routine mumps immunization.

(c) Children enrolled in school, preschool, or child care centers before September 1, 1995 and who previously provided written certification from the diagnosing physician that the pupil had mumps disease shall not be required to receive mumps vaccine.

(d) Children who present documented laboratory evidence of mumps immunity shall not be required to receive mumps vaccine.

#### 8:57-4.15 Haemophilus influenzae type b (Hib) \*conjugate vaccine\*

(a) Every child from 12 months to 59 months of age enrolling in any child care center or preschool facility after September 1, 1995, shall have received at least one age-appropriate dose of a separate or a combination Hib conjugate vaccine.

(b) Every child from two months to 11 months of age enrolling in a child care center after September 1, 1995 shall have received a minimum of two age-appropriate doses of **\*a separate or a combination\*** Hib conjugate vaccine, or fewer as appropriate for the child's age.

#### 8:57-4.16 Providing immunization

(a) A board of education and/or a local board of health may provide at public expense, the necessary equipment, materials and services for immunizing children with the following immunizing agents, either singly or in combination:

1. Diphtheria toxoid;
2. Pertussis vaccine;
3. Tetanus toxoid;
4. Measles virus vaccine, live, attenuated;
5. Rubella virus vaccine, live;
6. Poliovirus vaccine;
7. Mumps virus vaccine, live;
8. Haemophilus influenzae type B conjugate vaccine;
9. Other immunizing agents when specifically authorized to do so by the State Department of Health.

#### 8:57-4.17 Emergency powers of the State Commissioner of Health

(a) (No change.)

(b) All children failing to meet these additional requirements shall be excluded from a school, preschool, or child care center until the outbreak or threatened outbreak is over.

(c) (No change.)

#### 8:57-4.18 Optimal immunization recommendations

The specific vaccines and the number of doses required under this subchapter are intended to establish the minimum vaccine requirements for child care center, preschool, or school entry and attendance in New Jersey. Additional vaccines or vaccine doses are recommended by the State Department of Health, in accordance with the guidelines of the American Academy of Pediatrics (AAP) and the Advisory Committee on Immunization Practices (ACIP) for optimal immunization protection and may be administered, although they are not required for school attendance.

## (a)

### DIVISION OF ADDICTION SERVICES

#### Intoxicated Driving Program/Intoxicated Driver Resource Centers

**Adopted Repeal: N.J.A.C. 8:66**

**Readoption with Amendments: N.J.A.C. 8:66A**

Proposed: January 17, 1995 at 27 N.J.R. 274(a).

Adopted: February 28, 1995 by Terrence O'Connor, Director, Division of Addiction Services, and March 2, 1995 by Len Fishman, Commissioner, Department of Health.

Filed: March 3, 1995 as R.1995 d.183, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 39:4-50 et seq., specifically 39:4-50(f).

Effective Date: March 3, 1995, Readoption;

April 3, 1995, Repeal and Amendments.

Expiration Date: March 3, 2000.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

#### Executive Order No. 27 Statement

There are no comparable Federal regulations related to this adoption. These regulations are promulgated solely under the authority of State law.

#### Summary of Agency-Initiated Changes:

A typographical error in the fourth paragraph of the Summary incorrectly cited N.J.S.A. 39:4-50a. The correct citation is: N.J.S.A. 39:4-50. In N.J.A.C. 8:66A-4.6(a), "Resources" has been amended to "Resource,"

and "approved" has been amended to "affiliated" to be consistent with amendments to the definition of an "affiliated" treatment agency and amendments to N.J.A.C. 8:66A-5.1.

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:66A.

**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]\***):

#### 8:66A-1.1 Purpose and scope

The purpose of this chapter is to improve the driving behavior of individuals who have been identified as having some alcohol or drug involvement in connection with the operation of a motor vehicle or vessel. The chapter applies to all county Intoxicated Driver Resource Centers, all approved treatment programs, and the Department of Health, and all individuals convicted in New Jersey of a drug or alcohol offense related to the operation of a motor vehicle or vessel after May 25, 1977, and individuals subject to N.J.A.C. 13:20-31, adopted December 15, 1972.

#### 8:66A-1.2 Definitions

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

...  
"Affiliated treatment agency" means an agency or practitioner affiliated with an Intoxicated Driver Resource Center with the approval of the Intoxicated Driving Program pursuant to N.J.A.C. 8:66A-5.3 to provide alcohol and drug treatment services for the education, rehabilitation, and treatment of clients.

"Alcohol or drug related offense" means a conviction by a court of law or a finding by the Division of Motor Vehicles of operating under the influence, pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-34.19 et seq. or N.J.S.A. 12:7-46 et seq., or refusal to submit to a chemical test, pursuant to N.J.S.A. 39:4-50.4(a) et seq., or N.J.S.A. 12:7-57 et seq., or N.J.S.A. 39:4-50.14 et seq., N.J.S.A. 39:3-10.24, et seq. or N.J.S.A. 39:4-14.3g.

...  
"Counselor" means a person certified for the State of New Jersey by the Alcohol and Drug Counselor Certification Board of New Jersey, Inc. or another state to counsel alcohol abusers or drug abusers, or a person with five years continuous experience in the treatment of alcohol or drug abusers.

...  
"First offender program" means the program administered by the county Intoxicated Driver Resource Centers for detention, evaluation, and referral for first offenders which may also be used to evaluate other offenders or referrals for evaluation. The program normally consists of six hours a day for two consecutive days for a total of 12 hours.

...  
"Intoxicated Driver Resource Center" (IDRC) means the personnel and facilities approved by the Intoxicated Driving Program that detain and determine, on the basis of an evaluation instrument and counselor evaluation and other information, the extent, if any, of a client's alcohol or drug related problem and that monitor and report on referrals to approved treatment programs.

...  
"Self-help group" means a peer support group that is of no cost to its members.

"Third and subsequent offenders" means a person convicted of three or more offenses under N.J.S.A. 39:4-50(a)(3) or N.J.S.A. 12:7-54(a)(3) within the statutory period.

#### 8:66A-1.3 Establishment of an Intoxicated Driver Resource Center (IDRC)

(a) Subject to the approval of the Intoxicated Driving Program, the counties shall, with its cooperation, designate or establish Intoxicated Driver Resource Centers on a county or regional basis as required by N.J.S.A. 39:4-50(f). The counties may establish such a center themselves or in cooperation with other counties. The counties may either operate the IDRCs themselves, or they may contract for the operation of the IDRCs.

**ADOPTIONS****HEALTH**

(b) A county or regional program proposing to establish or substantially change an Intoxicated Driver Resource Center shall notify the Intoxicated Driving Program of its intent to do so in writing 180 days prior to the proposed effective date. The notice shall indicate whether the county intends to operate the Intoxicated Driver Resource Center itself, or contract for services. Within 60 days of the notice of intent the county shall provide a program description, action plan, budget, table of personnel, proposed program schedule and curriculum to the Intoxicated Driving Program. If the county proposes to contract for services, it shall provide the Intoxicated Driving Program with a schedule for calling for proposals, containing, but not limited to, the information specified above, and shall review, rank and approve such proposals in accordance with applicable State and county laws and rules governing the issuance of contracts for such services.

(c) The Intoxicated Driving Program shall consult with the county and provide assistance as needed in the course of the process established pursuant to (a) and (b) above.

**SUBCHAPTER 2. ACTIONS SUBSEQUENT TO CONVICTION FOR N.J.S.A. 39:4-50 OR N.J.S.A. 12:7-34.19 OR N.J.S.A. 12:7-46 OR N.J.S.A. 39:4-50.4a OR N.J.S.A. 12:7-57 OR N.J.S.A. 39:4-50 OR N.J.S.A. 39:3-10.24 OR N.J.S.A. 39:4-14.3g**

**8:66A-2.1 Notification and evaluation**

(a) The Intoxicated Driving Program shall be notified of every conviction for violation of N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50(a) and N.J.S.A. 12:7-54; N.J.S.A. 12:7-34.19; N.J.S.A. 12:7-46; N.J.S.A. 12:7-57; N.J.S.A. 39:4-14.3g; N.J.S.A. 39:3-10.24 and N.J.S.A. 39:4-50.14 through (by) the sentencing court.

(b) The Intoxicated Driving Program shall schedule persons who have been convicted in (a) above, or referred, in accordance with N.J.A.C. 8:66A-2.3, for an interview and evaluation at an appropriate Intoxicated Driver Resource Center.

(c) (No change.)

**8:66A-2.2 Report to court and the Division of Motor Vehicle Services following non-compliance**

(a) (No change.)

(b) Failure on the part of the client to comply with the course of action or fee schedule required by the Intoxicated Driving Program/Intoxicated Driver Resource Center or the course of action at an approved treatment agency shall result in a report of non-compliance to the sentencing court and the Division of Motor Vehicle Services for appropriate action pursuant to N.J.S.A. 39:4-50(b).

**8:66A-2.3 Authorized referrals to the Intoxicated Driving Program**

(a) The Chief of the Intoxicated Driving Program may receive referrals in writing from courts, Motor Vehicle licensing authorities, highway safety agencies, law enforcement agencies, physicians, family members, health agencies or social service agencies regarding persons who are believed to be posing a public danger in the operation of a motor vehicle or vessel. The Intoxicated Driving Program may schedule an interview with the individual at an appropriate Intoxicated Driver Resource Center or the office of the Intoxicated Driving Program for evaluation and appropriate action. A copy of the referral document will be given to the client at the time of the interview. Client failure to attend the interview or any ordered treatment or referral under this chapter shall result in a referral to the Division of Motor Vehicles for appropriate action.

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

**8:66A-2.4 Fees**

Fees shall be paid as provided for at N.J.S.A. 39:4-50, N.J.S.A. 39:4-50.4, N.J.S.A. 39:4-50.14, N.J.S.A. 39:4-14.3g, N.J.S.A. 12:7-57, N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46, and 39:3-10.24 or any amendment thereto and shall be payable as designated by the Division of Alcoholism and Drug Abuse, from every person each time the person is convicted of an alcohol or drug related offense. These fees are owed and due upon conviction, pursuant to N.J.S.A. 39:4-50 if the conviction occurred after October 9, 1986, and upon referral

or evaluation to the Intoxicated Driver Resource Center/Intoxicated Driving Program Unit if the conviction occurred prior to October 9, 1986.

**8:66A-2.7 Intoxicated Driver Resource Center Income and Expenditure Report**

(a) At the beginning of each calendar year, each Intoxicated Driver Resource Center shall submit a detailed income and expenditure report specified by Intoxicated Driving Program which shall include information on:

1.-14. (No change.)

**8:66A-3.3 Rescheduling**

(a) A rescheduling of a client for attendance at the Intoxicated Driver Resource Center may be granted for the following reasons only:

1.-4. (No change.)

(b) The reasons or instances in (a)1-4 above shall be proved by documentation, such as a physician's letter, obituary notice, or a letter from an employer.

(c) (No change in text.)

**8:66A-3.5 Transfers from one county to another prior to initial attendance at an Intoxicated Driver Resource Center**

(a) A client may be transferred from one county's program to another with the consent of the Intoxicated Driver Resource Center Director. The recipient Intoxicated Driver Resource Center shall not be responsible for any administrative client details until a transfer form is received. A transfer form shall be sent by the transferring Intoxicated Driver Resource Center and shall include: The original abstract from the Intoxicated Driving Program, the record of the conviction, the original scheduling notice from the Intoxicated Driving Program and a noncompliance form, if one has been issued. If a client has a new address, it shall be noted. Upon receipt of the transfer documents, the recipient county shall become responsible for all administrative procedures. The transferring Intoxicated Driver Resource Center shall maintain a log of transferred clients.

(b) (No change.)

**8:66A-3.6 Second offender treatment referral and monitoring**  
(No change in text.)

**8:66A-3.7 Scheduling and monitoring of third and subsequent offenders**

Third and subsequent offenders shall be referred to the 12 hour Intoxicated Driver Resource Center for evaluation, referral to treatment and/or self-help group participation, pursuant to N.J.A.C. 8:66A-4.2, and N.J.A.C. 8:66A-4.5. Third and subsequent offenders shall be monitored by the Intoxicated Driver Resource Center for one full year from the time the client begins treatment.

**8:66A-4.2 Criteria for client referral to treatment**

(a) (No change.)

(b) A referral to treatment or for further evaluation shall take into consideration the following facts as relevant to a client's need for treatment or further evaluation:

1.-5. (No change.)

6. Driving record. There must be a clear, independent reason for a treatment referral other than the driving record; however, a driving record that includes motor vehicle or boat accidents, reckless or careless driving, or persistent moving or other motor vehicle violations shall be considered in making a treatment referral and shall be mentioned on any client evaluation documents;

7.-8. (No change.)

**8:66A-4.4 (Reserved)**

**8:66A-4.6 Referral procedures**

(a) The Intoxicated Driver Resource\*[s]\* Center shall provide each client referred for treatment with a list of \*[approved]\* \***affiliated**\* treatment programs. The list shall reflect the following items:

1.-2. (No change.)

3. Days/times of operation of any Intoxicated Driver Resource Center client group sessions;

**HEALTH****ADOPTIONS**

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

(d) When a specific modality or program is recommended it shall be noted on the appropriate form with the reason for recommendation. All clients shall sign the form to indicate that they understand the content.

(e) Intoxicated Driver Resource Centers shall not make direct referrals to a self help group following evaluation unless the client can demonstrate that he or she is currently actively participating in the self help group. All other treatment appropriate clients shall be referred to self help groups by a treatment program as an addition to treatment. Referrals to self help groups shall not be made on the basis of indigence.

- (f)-(h) (No change.)

## **SUBCHAPTER 5. TREATMENT PROGRAM APPROVAL REQUIREMENTS**

### **8:66A-5.1 Affiliated treatment programs**

(a) In order for a treatment program to be affiliated, the program shall apply to the relevant county Intoxicated Driver Resource Center Program and the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program. The Intoxicated Driving Program has final approval authority based on the recommendations of the county, following an evaluation of staff credentials and program quality. It shall be the responsibility of the Intoxicated Driver Resource Center Director to evaluate and renew the affiliation of each treatment program after an annual site visit or providers meeting. All parties to the agreement shall be notified in writing.

(b) The Chief of the Intoxicated Driving Program or an Intoxicated Driver Resource Center Director may approve an individual treatment plan at a non-affiliated agency or provider in or out of the State. Such approval shall not exceed four months and shall be approved in the best interest of a client.

(c) All approved treatment programs shall report to the Division of Alcoholism and Drug Abuse through the Division's Alcohol and Drug Abuse Data System or any successor treatment management information system implemented by the Division.

### **8:66A-5.2 Treatment program affiliation criteria**

(a) Every treatment program, in order to be affiliated, shall provide the following information to the Intoxicated Driving Program and to the county Intoxicated Driver Resource Center:

- 1.-6. (No change.)

7. A list of proposed IDRC staff and their resumes.

(b) The Intoxicated Driving Program will deny approval to treatment agencies who do not meet the requirements of this chapter. The Intoxicated Driving Program shall indicate the reasons for denial and shall accept reapplication, if the agency eliminates the obstacles which resulted in the nonapproval.

### **8:66A-5.3 Affiliation agreements**

In order to be approved to treat Intoxicated Driver Resource Center/Intoxicated Driving Program clients, a treatment program shall sign an affiliation agreement, which must be approved by the Intoxicated Driving Program, with the county Intoxicated Driver Resource Center. All affiliation agreements shall expire the last day of June of the relevant calendar year.

### **8:66A-5.4 (Reserved)**

### **8:66A-6.6 Self help group involvement**

The treatment plan for clients shall include some exposure to a self help group. This may be accomplished by requiring a specified number of monitored meetings, having someone from a self help group do a presentation, or educating the client about group purposes and functions. In any event, a client shall not be referred to a self help group without being given specific orientation and education about self help group functions and purposes. Self help group meetings shall not be substituted for individual or group sessions during the 16 week minimum period.

### **8:66A-6.7 Determining number of self help group meetings per week**

(a) If a client is referred to self help in lieu of treatment by the Intoxicated Driver Resource Center or Intoxicated Driving Program, the client shall attend no less than one, and no more than three, meetings during any seven day period. If three meetings are required during any seven day period, there must be documentation by the Intoxicated Driver Resource Center to support the decision.

(b) Required self help attendance as an adjunct to treatment shall be determined on an individual basis pursuant to N.J.A.C. 8:66A-4.2 and 4.5

### **8:66A-6.9 Evaluation of client progress**

The progress of the client shall be monitored and recorded by the treatment program staff on a weekly basis. A client who may be in need of additional treatment, such as detoxification, intensive outpatient, or inpatient treatment, may be assigned to such treatment, with approval from the Intoxicated Driver Resource Center. Clients who continue to abuse alcohol/drugs, or otherwise fail to comply with program requirements, shall be reported to the Intoxicated Driving Program by the Intoxicated Driver Resource Center.

Recodify existing 8:66A-6.9 and 6.10 as 6.10 and 6.11 (No change in text.)

### **8:66A-6.12 Client transfers from one treatment program to another (No change in text.)**

### **8:66A-6.14 Client treatment procedures**

(a) The Intoxicated Driver Resource Center or Intoxicated Driving Program, as appropriate, and the treatment program must conclude that the client is appropriate for treatment before treatment commences. If the treatment program, after performing a proper evaluation under this chapter, indicates the client is not appropriate for treatment or needs an alternate treatment referral, the client shall be referred back to the Intoxicated Driver Resource Center for appropriate action. The Intoxicated Driver Resource Center or Intoxicated Driving Program will close the case unless it is determined that the criteria used, in accordance with N.J.A.C. 8:66A-4.2, justify treatment. A client refusing to participate in treatment after two findings that treatment is appropriate shall be referred to the sentencing court as non-compliant, in accordance with N.J.A.C. 8:66A-8.

### **8:66A-6.18 Treatment after arrest**

(a) The Intoxicated Driver Resource Center may give credit for attendance in treatment after arrest, if the treatment was at an approved facility; such time served does not exempt offenders from Intoxicated Driver Resource Center detention requirements.

(b) The Intoxicated Driver Resource Center, subject to applicable confidentiality statutes and rules, shall require the previous treatment program to submit the results of its evaluation. The Intoxicated Driver Resource Center shall perform its own evaluation, and develop a new treatment plan with the offender, as appropriate.

### **8:66A-7.1 Intoxication at the Intoxicated Driver Resource Center**

(a) If a client appears to be under the influence of alcohol or drugs upon arrival or during the Intoxicated Driver Resource Center session, the Intoxicated Driver Resource Center may implement the following procedure:

- 1.-2. (No change.)

3. If the client is not incapacitated, but is intoxicated, the Intoxicated Driver Resource Center may admit the client or reschedule the client. This determination shall take into account the welfare and the safety of other clients, and the degree of disruption the client's attendance creates. The fact that the client was under the influence shall be noted in the client's file and shall be used as part of the counselor's evaluation;

4. All persons who appear to be under the influence of alcohol or drugs (clients or non-clients) and are observed driving a vehicle away from the Intoxicated Driver Resource Center may be reported to the police; and

5. (No change.)

## ADOPTIONS

### 8:66A-9.1 Multiple offenders

(a) Prior to restoration of a multiple offender's driver's license, the offender shall be evaluated by the Intoxicated Driver Resource Center/Intoxicated Driving Program, and if treatment is complete, a recommendation for license restoration will be made to the Division of Motor Vehicles providing that:

1. (No change.)

2. The client has successfully completed at least three months of approved treatment requirements and agrees to complete the remainder of any ordered treatment plan.

(b) If treatment completion took place more than a year before the request to restore the driver's license, documentation and an update by a counselor are required, or reevaluation may be required by the Intoxicated Driver Resource Center at an approved facility, or the reevaluation may be done by the Intoxicated Driver Resource Center itself.

### 8:66A-9.2 Out-of-State offenders

(a) Out-of-State residents may satisfy program requirements in their home state or in New Jersey. If a client chooses to participate in his or her home state, the Intoxicated Driving Program will provide the client with a blank certificate of detention and instructions on program compliance. Out-of-State residents within reasonable driving distance (one hour's travel time) of an Intoxicated Driver Resource Center shall be scheduled in New Jersey.

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

## INSURANCE

### (a)

#### INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

##### Notice of Administrative Changes Individual Health Coverage Program

##### N.J.A.C. 11:20-2.1, 6.4, 8.2, 9.2, 9.6, 13.3, 17.3 and Appendix Exhibit K

Take notice that the Individual Health Coverage Program Board has requested, and OAL has agreed to permit, administrative changes throughout N.J.A.C. 11:20 to reflect the replacement of the Program's Interim Administrator with the permanent office of the Individual Health Coverage Program Board. This notice of administrative changes is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the changed rules follows (additions indicated in boldface **thus**; deletions indicated in cursive brackets {thus}):

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

##### 11:20-2.1 Purpose and structure

(a)-(g) (No change.)

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

{The Individual Health Coverage Program Board  
c/o Interim Administrator  
The Prudential Insurance Company of America  
P.O. Box 4080  
Iselin, NJ 08830}  
**New Jersey Individual Health Coverage Program  
20 West State Street, 10th Floor  
CN 325  
Trenton, NJ 08625  
Telephone (609) 633-1882  
Fax (609) 633-2030**

## INSURANCE

#### SUBCHAPTER 6. INDIVIDUAL HEALTH BENEFITS CARRIERS INFORMATIONAL FILING REQUIREMENTS

##### 11:20-6.4 Informational filing procedures

(a) The informational filing filed by the member with the Board pursuant to N.J.A.C. 11:20-6.3(a) or (b) above shall be filed in triplicate {as follows:

New Jersey Individual Health Coverage Program  
c/o The Prudential Insurance Company of America  
P.O. Box 4080

Iselin, NJ 08830} **with the Executive Director at the address listed in N.J.A.C. 11:20-2.1(h).**

(b)-(e) (No change.)

#### SUBCHAPTER 8. THE IHC PROGRAM MARKET SHARE AND NET PAID LOSS REPORT

##### 11:20-8.2 Filing of the market share and net paid loss report form

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

(c) Certified report forms shall be submitted by facsimile to the {Interim Administrator at (908) 632-7409, or to:} **or mailed or delivered to the Executive Director at the address listed in N.J.A.C. 11:20-2.1(h).**

{Interim Administrator  
New Jersey Individual Health Coverage Program  
c/o The Prudential Insurance Company of America  
P.O. Box 4080  
Iselin, New Jersey 08830}

#### SUBCHAPTER 9. EXEMPTIONS

##### 11:20-9.2 Filing for an exemption from assessments for reimbursements

(a) A member seeking to be exempted from the obligation to pay assessments for reimbursement of losses shall submit a written request for such exemption to the Board. A written request for an exemption shall be submitted annually on or before May 1, except that in 1993, written request for exemptions shall be submitted to the Board on or before August 1, 1993 and in 1994, written request for exemptions shall be submitted to the Board on or before June 1, 1994. No exemptions from assessments for 1992 losses will be granted. Written requests shall be submitted to{:

Interim Administrator  
New Jersey Individual Health Coverage Program  
c/o The Prudential Insurance Company of America  
P.O. Box 4080

Iselin, NJ 08830} **the Executive Director at the address listed in N.J.A.C. 11:20-2.1(h).**

(b)-(e) (No change.)

##### 11:20-9.6 Good Faith Marketing Report

(a) (No change.)

(b) Carriers required to submit the marketing report described in (a) **above** shall send it to {the following address:

New Jersey Individual Health Coverage Program  
20 West State Street, 10th Floor  
CN 325

Trenton, New Jersey 08625} **the Executive Director at the address listed in N.J.A.C. 11:20-2.1(h).**

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

#### SUBCHAPTER 13. CERTIFICATION OF NON-MEMBER STATUS

##### 11:20-13.3 Filing of non-member certification requests

(a) A carrier or other entity that desires to be considered a non-member of the IHC Program for a given calendar year shall file with the Board a request for non-member certification by April 1, 1994, for calendar year 1993, and thereafter by March 1 following the end of the calendar year for which non-member status is sought. Such request shall be sent to {:

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Non-Member Status Certification  
IHC Program Administrator  
c/o The Prudential Insurance Company of America  
P.O. Box 4080

Iselin, New Jersey 08830} **the Executive Director at the address listed in N.J.A.C. 11:20-2.1(h).**

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

### SUBCHAPTER 17. ENROLLMENT STATUS REPORT

#### 11:20-17.3 Filing requirements

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

(d) Members shall submit completed enrollment status reports to **the Executive Director at the address listed in N.J.A.C. 11:20-2.1(h)** [the Board at the following address] no later than 45 days following the end of the quarter or end of the year (for annual reporting purposes[:]).

[Enrollment Status Report  
IHC Interim Administrator  
c/o The Prudential Insurance Company of America  
P.O. Box 4080  
Iselin, New Jersey 08830}

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

#### APPENDIX EXHIBIT K

New Jersey Individual Health Coverage Program  
Carrier Market Share and Net Paid Loss Report

This Report must be completed in accordance with the provisions of N.J.A.C. 11:20-8, and certified to by the Chief Financial Officer or other duly authorized officer of the Carrier. In 1993, Reports must be completed and returned on or before June 28, 1993. Thereafter, Reports must be completed and returned on or before March 1 annually. Completed Reports must be returned to:

Interim Administrator, IHC Program  
c/o The Prudential Insurance Co. of America  
P.O. Box 4080  
Iselin, NJ 08830

fax number (908) 632-7409} **the Executive Director at the address listed in N.J.A.C. 11:20-2.1(h).**

...

### (a)

#### INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

##### Notice of Administrative Correction Individual Health Coverage Program Standard Application Form N.J.A.C. 11:20-4.1 and 12.5

**Take notice** that the Individual Health Coverage Program Board has discovered an error in the proposed and adopted text of recent amendments to N.J.A.C. 11:20-4.1(b) and 12.5. In the proposal (see 26 N.J.R. 4884(a)), the text of new paragraphs N.J.A.C. 11:20-4.1(b)1 and 2 and the deletion of subsection (c) appears erroneously after the text of N.J.A.C. 11:20-12.5. The proper location of the paragraphs is obvious from the proposal Summary discussion of the amendments to N.J.A.C. 11:20-4.1 and the text and miscodification of the paragraphs themselves. The misplacement of these paragraphs persisted in the notice of adoption (see 27 N.J.R. 565(a)). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

**Full text** of the corrected rules follows (additions indicated in boldface **thus**; deletions indicated in cursive brackets {thus}):

#### 11:20-4.1 Standard application form

(a) All members offering standard health benefits plans with an effective date on or after August 1, 1993, shall use the standard application form approved by the Board and specified in Exhibit G of the Appendix to this chapter, except as provided in (b) below.

(b) A member may submit to the Board for approval an alternative application form that differs in format but not in content from the standard form set forth in Exhibit G of the Appendix. The member may use the alternative form when submitted unless and until disapproved by the Board.

**1. The alternative application form shall be submitted along with the Certification Form set forth in the Appendix to this subchapter as Exhibit Q.**

**2. Alternative application forms shall be submitted in triplicate to the Board at the following address:**

**Executive Director  
Individual Health Coverage Program Board  
20 West State Street, 10th Floor  
CN-325  
Trenton, NJ 08625**

3. The Board shall disapprove any alternative application form that is not consistent with the purpose of this chapter.

4. If any proposed alternative application form is disapproved, it may not be used with a policy form delivered or issued for delivery unless and until such disapproval is withdrawn.

5. Upon request by the member for a hearing, the Board's disapproval of an alternative application form shall be subject to review in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules Act, N.J.S.A. 1:1.

11:20-12.5 Selection of a standard health benefits plan by a person covered by an individual health benefits plan

(a)-(g) (No change.)

**1. The alternative application form shall be submitted along with the Certification Form set forth in the Appendix to this subchapter as Exhibit Q.**

**2. Alternative application form shall be submitted in triplicate to the Board at the following address:**

**Executive Director  
New Jersey Individual Health Coverage Program  
20 West State Street, 10th Floor  
CN 325  
Trenton, NJ 08625**

3.-5. (No change.)

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### (b)

#### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF DENTISTRY

##### State Board of Dentistry Rules

##### Readoption with Amendments: N.J.A.C. 13:30

##### Adopted Repeal and New Rules: N.J.A.C. 13:30-2

Proposed: January 17, 1995 at 27 N.J.R. 293(a).

Adopted: March 1, 1995 by the State Board of Dentistry, Stephen Candio, D.D.S., President.

Filed: March 10, 1995 as R.1995 d.191, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:6-3, 45:6-19.4, and 45:6-50.

Effective Date: March 10, 1995, Readoption;  
April 3, 1995, Amendments, Repeal and New Rules.

Expiration Date: March 10, 2000.

The State Board of Dentistry afforded all interested parties an opportunity to comment on the proposed readoption with amendments to N.J.A.C. 13:30 and proposed repeal and new rules N.J.A.C. 13:30-2, the rules of the State Board of Dentistry. The official comment period ended on February 16, 1995. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 17, 1995 at 27 N.J.R. 293(a). Announcements also were forwarded to: Newark

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Star Ledger, Trenton Evening Times, Asbury Park Press, Camden Courier Post, Bergen Record, New Jersey Dental Association, New Jersey Hospital Association, New Jersey Department of Health, and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting:

Board of Dentistry  
124 Halsey Street  
Newark, New Jersey 07102

### Summary of Public Comments and Agency Responses:

During the official 30-day comment period which ended on February 16, 1995, the Board received written comments from the following: Betty Jane Dolan, R.D.H.; Elaine Biscemi, R.D.H., Chair, Dental Hygiene Program, Middlesex County College; Deborah C. Myers, R.D.H., President, The New Jersey Dental Hygienists' Association; Arthur Meisel, Esq., General Counsel, New Jersey Dental Association; Dorothy S. LaRue, R.D.H.; Kathleen J. Somers, R.D.H.; Sandra Sangster, R.D.H., Liaison for New Jersey Dental Hygienists' Association; Carol Kester Bjornsen; Elaine Fisvitz, R.D.H.; and Claudine Drew, Ed.D., R.D.H., Associate Professor, UMDNJ School of Health Related Professions.

A summary of the comments received and the Board's responses follows:

**COMMENT:** New rules N.J.A.C. 13:30-2 will serve the best interests of dental services consumers, especially in regard to the changes concerning continuing education requirements.

**RESPONSE:** The Board agrees with this commenter that the continuing education requirement required clarification and updating in order to be consistent with modern dental practice and educational opportunities.

**COMMENT:** One commenter asked whether the Board inadvertently deleted amalgam polishing from the permissible duties for dental hygienists.

**RESPONSE:** The Board now has included that duty in new N.J.A.C. 13:30-2.3(a)1 which provides, among other things, that a hygienist may perform the polishing of natural and restored teeth.

**COMMENT:** Several hygienist commenters urged the Board to consider permitting hygienists to administer local anesthesia and/or to utilize nitrous oxide without the physical presence of a dentist in the operator.

**RESPONSE:** The Board's Advisory Committee for Auxiliaries has those matters under review at the present time, and the Board anticipates receiving a report and recommendations from the Committee in the very near future. Further proposed rulemaking will take place, if necessary, once the full Board has had the opportunity to review the Committee's analysis and recommendations.

**COMMENT:** The elimination of the prior "specialist" category of dental hygiene licensure is appreciated.

**RESPONSE:** The Board agrees that registered dental hygienists are trained adequately to perform all of the listed duties safely under the direct supervision of a licensed dentist and that a separate classification for expanded duties was no longer necessary.

**COMMENT:** The commenter supports the changes to N.J.A.C. 13:30-2.6 concerning the resumption of active practice by inactive dental hygienists.

**RESPONSE:** The Board agrees that clarification was required, even though no substantive change was made in the rule, in order to assure that inactive hygienists understand the necessity of remaining current in knowledge and skills if resumption of active practice is contemplated.

**COMMENT:** A commenter who is employed in a State institution requested the amendment of N.J.A.C. 13:30-2.3(b) in order to permit additional duties for those hygienists working in an institution setting under the supervision of a dentist.

**RESPONSE:** Although the Board acknowledges that certain hygiene duties may be performed without direct supervision for the purpose of making such services available to many people in an institutional setting, to date the Board members have not been persuaded that expansion of those duties is in the best interests of the public. However, the Board found merit in some of the suggestions made by this commenter and has referred the matter to its Advisory Committee for Auxiliaries for further study and recommendations.

**COMMENT:** The Board should not limit the number of continuing education hours a hygienist may take by way of home study courses. This commenter found such courses very helpful in circumstances where both parents were very ill and required her free time.

**RESPONSE:** The Board recognizes the convenience afforded to licensees in fulfilling continuing education requirements through home

study courses. However, such courses lack the educational benefits presented by a course in a classroom or clinical setting. Licensees who need special consideration concerning continuing education requirements due to hardship or illness may apply to the Board for waiver or modification of the requirements upon presentation of proper documentation.

**COMMENT:** Licensure of hygienists from out-of-State by credentials without examination is a very positive step.

**RESPONSE:** The new provision at N.J.A.C. 13:30-2.1(c) which provides for waiver of examination and licensure by credentials codifies what has been the Board's practice pursuant to N.J.S.A. 45:6-54 which permits the Board to waive examination when it is in the public interest. The new provision sets forth the criteria which must be met in order to be eligible for such consideration.

**COMMENT:** One commenter urged the Board to delete the provision in N.J.A.C. 13:30-8.5(b) which permits the Board to withhold sensitive material in a patient complaint when it is forwarded to the licensee for response because it is unfair to require a dentist to respond to a redacted complaint.

**RESPONSE:** The Board believes it necessary in a proper case to retain the discretion to edit, summarize, or withhold sensitive information in a complaint. Although it does not happen often, it has been the Board's experience over the course of many years of reviewing patient complaints that they sometimes contain information that the patient does not want disclosed to the dentist because of its very private nature or that such disclosure would, in the Board's analysis, undermine or impede a proper investigation of the matter. The Board acknowledged, however, that the language of the rule may benefit from a refinement which will clarify the Board's intent concerning the types of cases in which it is necessary to withhold information at the early stages of an investigation. Accordingly, this matter has been referred to the rulemaking committee for further study and recommendations.

In addition, it has come to the Board's attention during the review of this proposal that N.J.A.C. 13:30-1.1(c)2 and 3, which set forth two of the criteria which must be met by an applicant who is seeking dental licensure on the basis of Northeast Regional Board examination scores that are more than five years old, may be too restrictive in that they absolutely bar such application by anyone who has had professional disciplinary action of any kind taken in another state or who may not have five years of continuous employment. For example, a dentist who had a penalty imposed by another state for a minor advertising violation or who was unemployed for a period of time for a maternity leave would not be permitted to make an application. It was not the Board's intention to bar absolutely such an individual from seeking licensure pursuant to this section. The Board would prefer to evaluate any prior disciplinary actions and prior professional employment history on a case by case basis rather than to establish an absolute prohibition on application. The same argument and rationale apply to the parallel section concerning hygienists at N.J.A.C. 13:30-2.1(d)2 and 3. In addition, N.J.A.C.

13:30-2.1(c)4 presents the same difficulty for hygienists seeking licensure by credentials who may not have five years of continuous employment immediately preceding the application. Accordingly, the Board has changed these sections in this adoption by deleting N.J.A.C. 13:30-1.1(c)2 and 3, 2.1(d)2 and 3, and 2.1(c)4, which set forth absolute bars to application for licensure. However, new provisions are added providing that the Board will consider prior disciplinary actions and prior professional employment history as part of its complete evaluation and review of the application. These changes benefit the applicants because they can request that the Board consider their application for licensure even if there has been a prior disciplinary action or break in employment continuity. Such changes can be made while simultaneously assuring the safety of the public because the Board will review thoroughly any prior disciplinary actions and the employment history prior to issuing a license.

### Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules being adopted 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. 13:30.

**Full text** of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## 13:30-1.1 Qualifications of applicants

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

(c) To obtain a license to practice dentistry, the candidate must pass the Northeast Regional Board Examination. The Board will recognize successful completion of the Northeast Regional Board examination for up to five years. After five years, the Board will review each request on a case by case basis and may, in its discretion, recognize successful completion of the Northeast Regional Board Examination provided the candidate submits, at a minimum, evidence satisfactory to the Board that the candidate:

1. Holds a license in good standing in every state where currently licensed; **\*and\***

**\*[2.]** Has had no professional disciplinary action taken, and there are no professional disciplinary investigations or actions pending in any other state;

3. Has practiced dentistry continuously in the five years immediately preceding the application; and **]\***

**\*[4.]\*2.\*** Has successfully completed 40 hours of continuing dental education in the two years immediately preceding the application.

**\*(d) As part of its review of applicants requesting recognition of the Northeast Regional Board Examination after five years as set forth in (c) above, the Board will consider and evaluate any prior record of disciplinary action or pending disciplinary action or investigation in any other state and the applicant's complete professional employment history.\***

**\*(d)]\*\*\*(e)\*** (No change.)

**\*(e)]\*\*\*(f)\*** To obtain a license to practice dentistry, the candidate must pass all parts of the National Board Dental Examinations.

## 13:30-1.2 Resident permit

Prior to obtaining licensure, a graduate of an approved dental school who has passed Part I and Part II of the National Board Dental Examination may serve as a resident in an approved hospital upon obtaining a resident permit from the Board. A resident permit shall be renewed annually for the length of the residency program.

## SUBCHAPTER 2. APPLICANTS FOR LICENSE AND STANDARDS FOR PRACTICE FOR DENTAL AUXILIARIES

## 13:30-2.1 Qualifications of applicants for license to practice dental hygiene

(a) All persons desiring to practice dental hygiene in New Jersey must first secure a license from the Board.

(b) A candidate for licensure as a dental hygienist shall present proof satisfactory to the Board of the following:

1. National Dental Hygiene Board certification;
2. Northeast Regional Board certification;
3. Successful completion of the New Jersey jurisprudence examination; and
4. Graduation from an educational program in dental hygiene approved by the Board and the Commission on Dental Accreditation.

(c) The Board may, in its discretion, grant a waiver of Northeast Regional Board performance testing depending upon the record of the candidate. The candidate shall submit, at a minimum, evidence in the form required by the Board of the following:

1. Licensure in another state and licensure in good standing in all states where licensed;
2. Graduation from an educational program in dental hygiene approved by the Board and the Commission on Dental Accreditation;
3. Test results of any clinical examination other than the Northeast Regional Board; **\*and\***

**\*[4.]** Five years of continuous employment in dental hygiene practice immediately preceding application; and **]\***

**\*[5.]\*4.\*** Ten credits of continuing education in dental hygiene earned within two years prior to the application.

(d) The Board will recognize successful completion of the Northeast Regional Board Examination for up to five years. After five years, the Board will review each request on a case by case basis and may, in its discretion, recognize successful completion of

the Northeast Regional Board examination provided the candidate submits, at a minimum, evidence in the form required by the Board of the following:

1. Licensure in good standing in every state where currently licensed; **\*and\***

**\*[2.]** No professional disciplinary action taken or investigation pending in any other state;

3. Five years of continuous employment in dental hygiene practice immediately preceding application; and **]\***

**\*[4.]\*2.\*** Ten credits of continuing education in dental hygiene earned within two years prior to the application.

**\*(e) As part of its review of applicants requesting waiver of Northeast Regional Board testing as set forth in (c) above or recognition of the Northeast Regional Board Examination after five years as set forth in (d) above, the Board will consider and evaluate any prior record of disciplinary action or pending disciplinary action or investigation in any other state and the applicant's complete professional employment history.\***

## 13:30-2.2 Qualifications of registered dental assistants

(a) A dental assistant desiring to secure registration from the Board shall have the following qualifications:

1. Satisfactorily completed and graduated, within the past 10 years, from an educational program for dental assistants approved by the Board and the Commission on Dental Accreditation; or

2. Successfully completed high school (or its equivalent) and obtained at least two years' work experience as a dental assistant during the five year period prior to making application for registration.

(b) The candidate shall have satisfactorily completed the Certification Examination administered by the Dental Assisting National Board within 10 years prior to the application.

(c) All registered dental assistants shall furnish the Board with proof of one of the following:

1. A certificate of graduation from an approved educational program in dental assisting in which the expanded functions or duties as listed in N.J.A.C. 13:30-2.4(a) are taught;

2. A certificate of successful completion of an examination for clinical competency in expanded functions in dental assisting administered by the Board or its delegated authority; or

3. A certificate of successful completion of an approved program in expanded functions in dental assisting. The Board may recognize the following as providers of approved programs in expanded functions:

- i. An institution approved by the Commission on Dental Accreditation;
- ii. Institutions of higher education which have met the standards of the Commission of Higher Education or a regional agency recognized by the council on Post-Secondary Accreditation;
- iii. In-service training programs conducted at the graduate level by agencies of the Federal, State, or local government; and
- iv. Internship and residency programs conducted in hospitals which are approved by the Council on Hospital Dental Services of the American Dental Association.

## 13:30-2.3 Duties of licensed dental hygienist

(a) A licensed dental hygienist practicing under the direct supervision of a licensed dentist may:

1. Perform a complete prophylaxis including the removal of all hard and soft deposits from all surfaces of human natural and restored teeth to the epithelial attachments and the polishing of natural and restored teeth. Root planing may be performed as a separate procedure or as part of the prophylaxis;

2. Provide prophylactic and preventive measures such as the application of fluorides and pit and fissure sealants and other recognized topical agents for the prevention of oral disease or discomfort;

3. Examine soft and hard tissue of the head, neck and oral cavity; note deformities, defects and abnormalities therein;

4. Fabricate athletic mouth guard appliances;

5. Place and remove rubber dams;

6. Place and remove matrices and wedges;

7. Place temporary sedative restorations;

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8. Remove excess cement from crowns or other restorations and orthodontic appliances;
9. Remove sutures;
10. Fabricate and cement temporary crowns and bridges after preparation of tooth (teeth) by a dentist. This does not include intra-oral occlusal adjustment;
11. Take impressions for diagnostic models and models to be used as counters for fixed or removable prostheses;
12. Place amalgam and gold foil in a tooth for condensation by the dentist;
13. Place and remove retraction cords and medicated pellets;
14. Perform bite registration procedures to determine occlusal relationship of diagnostic models only;
15. Place and remove periodontal dressings and other surgical dressings;
16. Trial size (pre-select) orthodontic bands, wires, stainless steel crowns and temporary crowns intra-orally;
17. Prepare teeth for bonding;
18. Remove arch wires and ligature wires;
19. Make radiographic exposures as permitted by the Department of Environmental Protection;
20. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;
21. Apply topical anesthetic agents;
22. Take and record vital signs;
23. Retract patient's cheek, tongue or other tissue parts during a dental operation;
24. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes and water;
25. Isolate the operative field, not to include rubber dam;
26. Trial size (pre-select) orthodontic bands, wires, stainless steel crown and temporary crowns on a diagnostic model;
27. Hold a curing light in the process of restoring a tooth;
28. Take dental photographs including the use of intra-oral cameras;
29. Select shades for prosthetic appliances; and
30. Assist a licensed dentist in the administration of nitrous oxide, provided the licensed dentist is physically present in the operatory at all times during the procedure.

(b) A licensed dental hygienist practicing within an institution subject to the supervision of a New Jersey licensed dentist in the institution may:

1. Perform a complete prophylaxis including the removal of all hard and soft deposits from all surfaces of human natural and restored teeth to the epithelial attachments and the polishing of natural and restored teeth. Root planing may be performed as a separate procedure or as part of the prophylaxis;
2. Provide prophylactic and preventive measures such as the application of fluorides and pit and fissure sealants and other recognized topical agents for the prevention of oral disease or discomfort;
3. Examine soft and hard tissue of the head, neck and oral cavity, and note deformities, defects and abnormalities therein;
4. Make radiographic exposures as permitted by the Department of Environmental Protection;
5. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;
6. Take and record vital signs; and
7. Take dental photographs including the use of intra-oral cameras.

(c) Each licensed dentist may utilize no more than two licensed dental hygienists at one time in a dental office.

### 13:30-2.4 Duties of a registered dental assistant and a dental assistant without registration

(a) A registered dental assistant may perform the following duties under the direct supervision of a licensed dentist:

1. Place and remove rubber dams;
2. Place and remove matrices and wedges;
3. Place temporary sedative restorations;

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4. Remove excess cement from crowns or other restorations and orthodontic appliances;
5. Remove sutures;
6. Fabricate and cement temporary crowns and bridges after preparation of tooth (teeth) by a dentist. This does not include intra-oral occlusal adjustment;
7. Take impressions for diagnostic models and models to be used as counters for fixed or removable prostheses;
8. Place amalgam and gold foil in a tooth for condensation by the dentist;
9. Place and remove retraction cords and medicated pellets;
10. Perform bite registration procedures to determine occlusal relationships of diagnostic models only;
11. Place and remove periodontal dressings and other surgical dressings;
12. Trial size (pre-select) orthodontic bands, wires, stainless steel crowns and temporary crowns intra-orally;
13. Prepare teeth for bonding not to include prophylaxis;
14. Remove arch wires and ligature wires;
15. Take impressions for and perform laboratory fabrication of athletic mouth guards not to include insertion of the appliance;
16. Make radiographic exposures as permitted by the Department of Environmental Protection;
17. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;
18. Apply topical anesthetic agents;
19. Take and record vital signs;
20. Retract patient's cheek, tongue or other tissue parts during a dental operation;
21. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes and water;
22. Isolate the operative field, not to include rubber dam;
23. Trial size (pre-select) orthodontic bands, wires, stainless steel crown, and temporary crowns on a diagnostic model;
24. Hold a curing light in the process of restoring a tooth;
25. Take dental photographs including the use of intra-oral cameras;
26. Select shades of prosthetic appliances; and
27. Assist a licensed dentist in the administration of nitrous oxide, provided the licensed dentist is physically present in the operatory at all times during the procedure.

(b) A dental assistant who has not obtained a registration from the Board may perform the following duties under the direct supervision of a licensed dentist:

1. Make radiographic exposures as permitted by the Department of Environmental Protection;
2. Provide oral health education such as, but not limited to, dietary analysis and clinical instruction in order to promote dental health;
3. Apply topical anesthetic agents;
4. Take and record vital signs;
5. Retract patient's cheek, tongue or other tissue parts during a dental operation;
6. Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes and water;
7. Isolate the operative field, not to include rubber dam;
8. Trial size (pre-select) orthodontic bands, wires, stainless steel crown, and temporary crowns on a diagnostic model only;
9. Hold a curing light in the process of restoring a tooth;
10. Take dental photographs including the use of intra-oral cameras;

11. Select shades for prosthetic appliances; and  
12. Assist a licensed dentist in the administration of nitrous oxide, provided the licensed dentist is physically present in the operatory at all times during the procedure.

(c) A dental assistant may provide a written work authorization for emergency repair of a dental prosthesis provided that the prosthesis does not require any intra-oral procedure and will be thereafter inserted by a licensed dentist.

**LAW AND PUBLIC SAFETY****ADOPTIONS****13:30-2.5 Continuing education requirements; dental hygienists and dental assistants**

(a) All licensed dental hygienists and registered dental assistants shall submit proof of completion of 10 hours of continuing education every two years at the time of registration renewal. No more than four hours of continuing education in the two year period may be fulfilled through home study courses.

(b) An acceptable form of continuing education shall directly enhance the licensee or registrant's knowledge, skill or competence in dental service to the community.

(c) The following shall be considered acceptable forms of continuing education:

1. Scientific courses applicable to the delivery of dental care, including, but not limited to, preventive services, radiography, dental photography, nutrition, patient counseling, community health, C.P.R. certification, and infection control; and

2. Courses which directly relate to or concern the practice of dentistry, including, but not limited to, organization and office management, office design, communication skills, behavioral science, dental-legal matters and methods of health care delivery.

(d) The Board may recognize as acceptable the courses of study and amount of hours credited in continuing education programs approved by:

1. The American Dental Association and its constituents and components;

2. The Academy of General Dentistry and its constituents and components;

3. The American Dental Hygienists Association and its constituents and components;

4. The American Dental Assistants' Association and its constituents and components; and

5. Accredited colleges or universities which meet the definition of acceptable courses in (c) above.

(e) It shall be the responsibility of each licensee/registrant to maintain an authenticated record of all continuing education activity completed and to be prepared to submit evidence of completion of the credit requirements to the Board upon request. Each licensee/registrant shall obtain from the continuing education course sponsor and retain for a period of four years an authenticated record of attendance which shall include, at a minimum, the following:

1. The participant's name;

2. The title or subject area of the course;

3. The instructor;

4. The course sponsor;

5. The date and location of the course;

6. The number of hours; and

7. Verification of successful completion by the course sponsor.

(f) The Board may inspect the licensee/registrant's records as may be necessary to insure that the continuing education requirements have been met.

**13:30-2.6 Resumption of active practice by inactive dental hygienists**

(a) Any dental hygienist who has been on the inactive status list for any period of time and wishes to resume the active practice of dental hygiene shall, in addition to making application for a current certificate of registration and paying the appropriate fee, submit satisfactory evidence of completion of 10 hours of continuing education earned in the two years preceding the application for active status.

(b) The minimum standards which shall be met by applicants who have been on the inactive status list for five or more years and who want to resume the practice of dental hygiene are as follows:

1. The individual shall apply to the Board for a current biennial certificate of registration and pay the prescribed registration fee;

2. An individual licensed and practicing in another state shall furnish the Board with a certification from the other state that the licensee to practice dental hygiene is in good standing; and

3. An individual who has not practiced for five or more years shall:

- i. Pass the Northeast Regional Board (N.E.R.B.) examination in dental hygiene; or

ii. Complete satisfactorily a Board approved clinical refresher course provided by an institution accredited by the American Dental Association Commission on Dental Accreditation.

(c) An individual who has not practiced for more than 10 years shall pass the N.E.R.B. examination in dental hygiene.

**13:30-8.2 Parenteral conscious sedation**

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

(c) No dentist shall use PCS for dental patients unless such dentist possesses a PCS permit issued by the State Board of Dentistry. The dentist holding such permit shall be subject to review, and such permit shall be renewed biennially.

(d) Any dentist who wishes to obtain a Board permit to employ PCS shall complete an application as provided by the Board office and shall provide certified or verifiable proof that the dentist has completed a minimum of 100 hours of continuing education in didactic training and 100 hours in clinical training in PCS within three years preceding the application.

(e)-(m) (No change.)

**13:30-8.5 Complaint review procedures**

(a) Complaints to the Board shall be in writing.

1.-2. (No change.)

(b) (No change.)

(c) All completed complaints along with the responses of the licensee(s) shall then be forwarded to a dentist member of the Board for review and to report for consideration at the next scheduled Board meeting concerning review of complaints.

(d) The Board shall review each complaint in order to make one or more of the following determinations:

1. That the information contained in the complaint and/or the response is insufficient. In such cases, the Board shall notify the complainant or the licensee(s) to provide the needed information without delay;

2. That the information contained in the complaint and/or response is insufficient and requires information from a subsequent treating licensee(s). In such cases, the Board shall request needed information from said subsequent treating licensee(s) without delay;

3.-5. (No change.)

(e) Upon completion of its review of a complaint the Board shall make one of the following determinations:

1.-4. (No change.)

**13:30-8.10 Dental insurance forms; professional misconduct**

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

(c) A licensee who renders dental services or procedures to a patient enrolled in any dental prepayment contract plan with co-payment features and intends to waive any part of or all of the co-payment by the patient shall, when submitting any claim form or bill to the third party payor, conspicuously disclose on the face of the claim form or bill in a legible and readable manner that co-payment, or a portion of co-payment, will not be billed to or collected from the patient.

(d)-(f) (No change.)

(a)

**DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF OPHTHALMIC DISPENSERS AND  
OPHTHALMIC TECHNICIANS**

**State Board of Ophthalmic Dispensers and  
Ophthalmic Technicians Rules**

**Readoption with Amendments: N.J.A.C. 13:33**

Proposed: January 17, 1995 at 27 N.J.R. 298(a).

Adopted: March 1, 1995 by the State Board of Ophthalmic Dispensers and Ophthalmic Technicians, Robert Troast, President.

Filed: March 10, 1995 as R.1995 d.192, **without change**.

Authority: N.J.S.A. 52:17B-41.13.

**ADOPTIONS****LAW AND PUBLIC SAFETY**

Effective Date: March 10, 1995, Readoption;  
April 3, 1995, Amendments.  
Expiration Date: March 10, 2000.

**Summary of Public Comments and Agency Responses:**

During the 30-day comment period, the board received one letter of comment regarding the Proposed Readoption with Amendments to N.J.A.C. 13:33. On behalf of LensCrafters and Cole Vision, the commenter objects to the adoption of three proposed amendments: N.J.A.C. 13:33-1.13(c)3 and (f); 13:33-1.30(d); and 1.39(c).

COMMENT: The commenter objects to the new requirement in N.J.A.C. 13:33-1.13(c)3 and (f) that an apprentice who fails the licensing exam for the second time obtain the Board's written approval to continue to utilize the same preceptor. The commenter writes that the rule is unfair to preceptors, because it enables the Board to disapprove a preceptor without identifying the standards by which the Board will evaluate a preceptor's competence and responsiveness to the apprentice.

RESPONSE: The Board deems it entirely appropriate that before the third preceptor session begins, it should be in a position to assess whether the preceptor has provided appropriate supervision to his or her apprentice.

COMMENT: The commenter opposes the clarifying amendment N.J.A.C. 13:33-1.30(d) placing responsibility on employers of licensed ophthalmic dispensers and technicians for the employees' compliance with continuing education requirements. The commenter objects to a third amendment, N.J.A.C. 13:33-1.39(c), which clarifies that the Board will provide employers with the notice that is currently required pursuant to N.J.A.C. 13:33-1.39(a). That notice is intended to inform consumers of ophthalmic services that employers of temporary ophthalmic dispensers, technicians and apprentices must register such employees with the Board. Respondent opines that both amendments exceed the Board's statutory authority.

RESPONSE: The Board has promulgated these amendments in order to ensure that apprentices obtain the requisite practical experience and skill and, further, to ensure that consumers be made aware of the protection afforded by the regulatory scheme. Pursuant to N.J.S.A. 52:17B-41.13, the Board has the authority to promulgate regulations necessary to give full force and effect to the law and to regulate the practice of ophthalmic dispensers and ophthalmic technicians. In the field of ophthalmic dispensing, the employer, although unlicensed, is inter-related to the licensee to such an extent that certain obligations may properly be placed on the employer. The Board is of the opinion that these amendments will impose no additional burdens on employers. In addition, the Board's ability to ensure that optimal training is available to would-be licensees is enhanced by these amendments, and will serve to improve the quality of ophthalmic services offered to the public.

**Executive Order No. 27 Statement**

An Executive Order No. 27 analysis is not required because the rules being adopted 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. 13:33.

**Full text** of the adopted amendments follows:

**13:33-1.3 Supervision of apprentice ophthalmic dispensers and technicians**

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

(e) A work-study program is defined as that activity which places students enrolled in the Ophthalmic Science curriculum of any school approved by the National Commission on Accreditation into the optical field on a limited basis under the supervision of a college-approved preceptor for the purpose of gaining college-supervised practical experience. A college-approved preceptor is that individual licensed in New Jersey as an ophthalmic dispenser or ophthalmic technician who meets the conditions established by the college in the development of its work-study program.

1. (No change.)

**13:33-1.11 Out-of-state applicants; Ophthalmic Dispensers**

(a) (No change.)

(b) Qualifications for examinations and licensure are as follows:

1. Any individual with out-of-state optical qualifications may apply for examination and licensure as an Ophthalmic Dispenser, without

having worked in the State of New Jersey, provided that the applicant:

i. Holds an associate degree and has four months of experience in the optical field subsequent to the award of the degree and within the immediately preceding five-year period; or

ii. Has satisfactorily completed 30 credit hours of Board-approved courses in ophthalmic science and thereafter has worked in the optical field for three calendar years, the last year of which shall have been acquired within five years of the date of application for examination.

**13:33-1.13 Examination: apprenticeship requirements**

(a) (No change.)

(b) The requirements for the Dispenser examination are as follows:

1.-4. (No change.)

5. If the candidate is unsuccessful in passing three consecutive examinations, he/she must return his/her permit. However, no individual may be denied the right to continue to take any examination for licensure for which he/she qualifies, provided that the last year of experience in the optical field has been acquired within the past two years. In the event that the candidate meets the requirements to sit for examination and neither applies for, appears at, or is excused from said examination, an automatic failure will be imposed.

(c) The requirements for the Technician examination are as follows:

1.-2. (No change.)

3. If the candidate is unsuccessful in passing three consecutive examinations, he/she must return his/her permit. However, no individual may be denied the right to continue to take any examination for licensure for which he/she qualifies, provided that the last year of experience in the optical field has been acquired within the past two years. In the event that the candidate meets the requirements to sit for examination and neither applies for, appears at, or is excused from said examinations, an automatic failure will be imposed.

(d) An unsuccessful candidate may apply to the Board for a review of his/her examination work or grades except in such instances as the written Dispenser or Technician examination is failed. Such application must be submitted to the Executive Director of the Board in writing within one month following notification of examination results. The Executive Director shall subsequently arrange a date for the candidate to review the deficiencies in his/her examination work in the Board office in conference with an examiner.

(e) (No change.)

(f) In the event an apprentice ophthalmic dispenser or technician fails the licensing examination for the second time, the apprentice shall obtain the Board's written approval of the preceptor under whose immediate supervision the apprentice intends to continue his or her apprenticeship.

**13:33-1.14 Military service**

Any licensee who is engaged in active duty in the military service of this country shall be required to renew his/her license to keep it in force, but shall not be required to pay the renewal fee for any year during which he/she is in the service. Notwithstanding a licensee's engagement in active duty, a licensee shall be required to meet all continuing education requirements prior to returning to practice.

**13:33-1.22 Failure to apply for licensure within two years of examination; reexamination required**

Any applicant who satisfactorily passes the examinations given by this Board shall be required to apply for a license within two years from the date of having taken the examination. If an applicant fails to apply for a license within the two year period, the applicant shall be required to take the examination again before applying for a license.

**13:33-1.24 Application for examination**

(a) Applications for examination by this board made in accordance with the provisions of N.J.S.A. 52:17B-41.9 shall be com-

pleted and filed with the executive director of the Board at least 30 days prior to the date on which the examination is to be held.

(b) (No change.)

#### 13:33-1.29 Record of prescriptions filled

(a) Each person licensed as an ophthalmic dispenser shall maintain for a period of at least six years at a New Jersey establishment the following records:

1. (No change.)
2. All data required in the preparation and dispensing of:
  - i. Eyeglasses;
  - ii. Frames, such as eye size, bridge size and temple length; and
  - iii. Lenses, such as sphere, cylinder, axis, prism base, add, patient pupillary distance (P.D.) eyeglass pupillary distance (P.S.) and height of segment (Seg) if multifocal, base curve, frame size, eye size, bridge size and temple length.

3. The record shall identify up to the point of original delivery to the consumer individuals involved in interpreting and measuring, duplicating, fabricating, verifying and fitting and adjusting all eyeglasses, frames and lenses fabricated and dispensed.

4. (No change in text.)

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

#### 13:33-1.30 Compliance with rules and regulations

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

(d) The employer shall be responsible for ensuring that each employee is in compliance with the continuing education requirements set by the Board.

#### 13:33-1.31 Preparation of apprentice ophthalmic technicians for examination

(a) It shall be the responsibility of employers of apprentice ophthalmic technicians to give the employee the opportunity to learn the following in order to prepare for the examination given by the board:

1.-4. (No change.)

5. To be able to neutralize and identify a series of single vision and multifocal lenses; and one of the following:

i. Surface grinder to be able to mark up a surface a pair of single vision or multifocal lenses from a pair of semifinished lens blanks; or

ii. Benchman to be able to make a complete pair of eyeglasses, given a pair of uncut lenses and a frame or mounting.

#### 13:33-1.33 Display of certificate of registration

(a) Every holder of a certificate of registration issued by this Board, including renewal certificates and validating certificates, shall conspicuously display it to the public at the location for which it is issued.

(b) (No change.)

#### 13:33-1.39 Permits: registration

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

(c) The employer shall conspicuously post in all optical establishments a sign, which shall be supplied by the Board, stating that the employer is responsible for the registration of all employees.

#### 13:33-2.2 Optical equipment required for practice of ophthalmic dispensing in establishments where no fabricating is done on premises and where no apprentices are registered

(a) All optical establishments where ophthalmic dispensers practice and where no fabricating is done on the premises and no apprentices are registered, shall be equipped with a minimum of optical equipment as follows:

1.-4. (No change.)

##### 5. One hand finishing stone; and

6. One set of samples of frames and mountings, minimum 25, including zyl, rimless and metal rims.

(b) All optical establishments that do not have a laboratory on the premises shall conspicuously display to the public a sign stating, "No laboratory on the premises." The size of the sign shall be a minimum of eight inches by 10 inches.

(a)

## DIVISION OF CONSUMER AFFAIRS OFFICE OF CONSUMER PROTECTION

### Personnel Services

### Registration Requirements for Health Care Service Firms and Standards for Placement of Health Care Practitioners

**Adopted Amendments: N.J.A.C. 13:45B-1.2, 2.1 to 2.8, 3.1, 4.1, 4.2, 4.5 to 4.7, 6.4, 6.6, 7.1, 8.2, 10.1, 11.1 and 12.1**

**Adopted Repeal: N.J.A.C. 13:45B-4.3**

**Adopted New Rules: N.J.A.C. 13:45B-14 and 15**

Proposed: November 7, 1994 at 26 N.J.R. 4316(a).

Adopted: March 7, 1995 by Mark Herr, Director, Division of Consumer Affairs.

Filed: March 10, 1995 as R.1995 d.190, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with proposed new rules N.J.A.C. 13:45B-15.7 and 15.8 not adopted at this time.**

Authority: N.J.S.A. 34:8-54 and 56:8-1 et seq.

Effective Date: April 3, 1995.

Expiration Date: September 21, 1997.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed amendments, repeal, and new rules relating to personnel services as well as registration requirements for health care service firms and standards for placement of health care practitioners. The official comment period ended on December 7, 1994. Announcement of the opportunity to respond to the Division appeared in the New Jersey Register on November 7, 1994, at 26 N.J.R. 4316(a). Announcements were also forwarded to the Star Ledger, the Bergen Record, the Courier-Post, the Atlantic City Press, the Trenton Times, the Asbury Park Press, the New Jersey Hospital Association, the New Jersey State Nurses Association, the Licensed Practical Nurse Association of New Jersey, the New Jersey League for Nursing, the Hospital Professionals and Allied Employees of New Jersey, the Home Health Assembly of New Jersey, the New Jersey Home Health Services and Staffing Association, the Home Care Council of New Jersey, the New Jersey Association of Staffing Professionals, the New Jersey Association of Temporary Services, the Mid-Atlantic Association of Personnel Consultants, the Association of Human Resource Consultants, many directors of nursing and nursing associations, personnel services, temporary health service firms, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, Post Office Box 45027, Newark, New Jersey 07101.

### Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Division of Consumer Affairs received 29 letters regarding the proposal. Comments were received from the following:

Senior Services Unlimited of Lakewood, N.J. by Carolyn Reser  
Expert Health Care, Inc., by Norris, McLaughlin & Marcus, Somerville, N.J., Marion K. Littman, Esq.

Hunterdon Hospice, Inc. by Catherine M. Keevey, President  
Hospice of Morris County, by Ann Liebers, RN MS, Executive Director

Extended Family Care, Hackensack, N.J., by Camille A. Bruno, MS  
RN, Vice President

The New Jersey Hospital Association, by Geraldine Moon, Vice President, Hospital Operations

Emerald Health Care, Pompton Lakes, N.J., by Judith A. Earley, RN, President

New Jersey Association of Health Care Facilities, by James E. Cunningham, President

Nursing Services Associates, Newton, N.J., by Linda L. Hunter, RN, BS, CNA, CCM, Chief Executive Officer

Lakeland Temporary Services, Dover, N.J., by George F. Gardenberger, President

**ADOPTIONS**

New Jersey Association of Temporary Services, by M. Lynne Clare, President  
 Valley Health Affiliates, Inc., Ridgewood, N.J., by Kathleen Skrobala, RN BSN, Director  
 Bayada Nurses, by Michelle Moran, Staff Supervisor  
 Visiting Home Care, Inc., Cranford, N.J., by Vivian Switzer, Executive Director  
 Laurel Rehabilitation Services, Inc., Blackwood, N.J., by Patricia Defler, RN, CIRS, CCM, President, and Elizabeth Adomanis, RN, Director  
 Hackensack Medical Center, by Maryann Collins, RN, MS, Hospice Director  
 Unitemp Temporary Personnel, by Theodore S. Kissel, President  
 Olsten Kimberly Quality Care, by Michelle Mendelson, Area Vice President  
 New Jersey Hospice Organization, by Jean L. Withers, RN, President  
 Home Health Services and Staffing Association of New Jersey, by Jean Alan Bestafka, Executive Director, and M. Jordan Connors, Manager, State Government Relations  
 Valley Home Care, Inc., by Donna M. Fry, Executive Director and Joan Schaper, Director of Hospice  
 Executive Search, Englewood Cliffs, N.J., by Phyllis Solomon, President  
 Home Health Assembly by Carol J. Kientz, RN, MS, Executive Director  
 SJ Enterprises, Inc., Trenton, N.J., by Conrado N. Poblete  
 Ridgewood Registered Professional Nurses Association, Inc., by Janet Kelly, RN, Trustee  
 New Jersey State Nurses Association, by Andrea W. Aughenbaugh, RN, CS, Deputy Director  
 Karem Home Health Care Services, Lakewood, N.J., by Josephine Sienkiewicz, RN, MSN, Executive Director  
 At Home Therapy, Inc., by Penelope O'Mullan, President

A number of commenters questioned the feasibility and possible legal consequences of N.J.A.C. 13:45B-15.6(a)3, 15.7 and 15.8. N.J.A.C. 13:45B-15.6(a)3 would require an agency to secure an evaluation of an applicant's performance from all employers of that person within the previous year, including statements as to the applicant's honesty and reliability. N.J.A.C. 13:45B-15.7 mandates that an agency record and divulge to another agency information regarding the cessation of employment of a health care practitioner. N.J.A.C. 13:45B-15.8 places upon the agency the duty to disclose adverse information about a health care practitioner when making a referral. Such adverse information might include gross incompetence, dishonesty, theft, impairment caused by drugs or alcohol, etc. Several persons opposing these requirements cited possible legal liability under the Americans with Disabilities Act of 1990, civil rights and other laws, and also voiced concerns regarding the confidentiality of medical information. Recognizing the complexity of the issues raised, the Division will not adopt these rules at this time, reserving N.J.A.C. 13:45B-15.6(a)3, 15.7, and 15.8 for future provisions.

Many persons criticized the requirement of a Bachelor of Science degree for health care practitioner supervisors, as indicated in the definition of that term in N.J.A.C. 13:45B-15.1. Commenters charged that the rule would screen out registered nurses with ample home care industry experience, would be financially burdensome and beyond necessary professional requirements, and that the availability of BSN staff was questionable. Because of the substantial nature and severity of the comments, the Division is reproposing elsewhere in this issue of the New Jersey Register the definition to reflect existing licensing standards of the State Department of Health for "nursing supervisor." In its licensing standards for home health agencies, the Health Department defines a "nursing supervisor" as a registered professional nurse who has either a Bachelor of Science degree in nursing and two years combined public health nursing and progressive professional responsibilities in public health nursing, or three years combined public health nursing and progressive professional responsibilities in public health nursing. The Health Department's standards are obviously less stringent than the standards set forth by the Division in the proposal now being adopted. By reproposing the definition, the Division is announcing its intention to conform with Health Department standards, and is providing notice as well as the opportunity to comment on that change. Pending a final definition of "health care practitioner supervisor," the Division will, as a matter of operational policy, require the supervisor to adhere to Department of Health requirements as set forth in the notice of reproposal published elsewhere in this issue of the New Jersey Register.

**LAW AND PUBLIC SAFETY**

As a further result of comments, the Division has made the following changes from the proposal as published, in addition to withdrawing and reserving N.J.A.C. 13:45B-15.6(a)3, 15.7 and 15.8:

A definition of "managing agent" has been added to clarify information required on applications. Also, the registration form for health care service firms now defines "owners," in effect, by limiting the listing of owners to those persons with an ownership interest of 10 percent or more. In N.J.A.C. 13:45B-15.2, the words "where applicable" clarify the rule regarding malpractice insurance information.

N.J.A.C. 13:45B-15.3 has been changed to make clear that the agency alone is ultimately responsible for compliance with the regulations. A similar modification permits a designee other than the health care practitioner supervisor to assume responsibility for verification of the license status of individuals to be placed or referred.

The job order provision, N.J.A.C. 13:45B-15.5(b), was slightly revised to allow for blanket job orders in specific circumstances. Finally, wording has been added to the on-site, in-home evaluation rule to indicate the purpose of the required visit, which is evaluation of the plan of care.

For details regarding these changes, see the comments and responses below.

Comments regarding N.J.A.C. 13:45B-15.6(a)3, 15.7, and 15.8, are discussed above. A summary of additional comments received, together with the Division's responses, follows:

**General**

**COMMENT:** It is difficult to determine what entities apply for which type of license. Clarification in the regulations themselves is needed to guide providers in determining which license(s) they must obtain.

**RESPONSE:** The Division appreciates the complexity of licensing regulations. In an effort to make procedures to obtain a license clearer, the Division is in the process of gathering together edited versions of the statutes and regulations pertaining to licensure. In the meantime, both the statute and regulations are printed in booklet form and are available at no charge upon request to the following address:

Regulated Businesses Section  
 Division of Consumer Affairs  
 P.O. Box 45028  
 Newark, New Jersey 07101

**COMMENT:** A commenter asked how nurse's registries that are operating but currently unlicensed by the Division of Consumer Affairs are going to be held to the same standards as licensed agencies.

**RESPONSE:** All nurses' registries, except those that are exempt, are required to be registered pursuant to N.J.S.A. 34:8-43 et seq. Those nurses' registries which are required to obtain licensure under current law and fail to do so are subject to enforcement actions, including the imposition of penalties.

**N.J.A.C. 13:45B-1.2**

**COMMENT:** We suggest that the regulations define "managing agent" for the purpose of disclosing information on applications. Is this the administrator, supervising health professional, ownership corporation or all of these?

**RESPONSE:** The Division agrees that a definition of the term is necessary for thorough comprehension of these regulations, and one has been added in N.J.A.C. 13:45B-1.2, which applies to the entire chapter.

**N.J.A.C. 13:45B-4.6**

**COMMENT:** "Temporary help service firm" is well-defined in N.J.A.C. 13:45B-1.2, but N.J.A.C. 13:45B-4.6 provides for a temporary placement operation (functioning within an employment agency and integrated). Regulatory confusion over temporary help "service" and temporary "placement operation" does not favor the public.

**RESPONSE:** The concept of a temporary placement operation, functioning within an employment agency and integrated, is taken from N.J.S.A. 34:8-51(b)3.

**N.J.A.C. 13:45B-7.1**

**COMMENT:** The change in annual registration fee for health care service firms to \$500.00 reflects a 100 percent increase. This fee is double the amounts charged for employment agency or temporary help service firms.

**RESPONSE:** All fees are based on projected expenses for efficient administration and enforcement.

**N.J.A.C. 13:45B-12.1**

COMMENT: N.J.A.C. 13:45B-12.1(g) on advertising and solicitations is unclear as to whether all of N.J.A.C. 13:45B-12.1 does not apply to temporary help service firms or consulting firms.

RESPONSE: After deletion of the words bracketed in the proposal, the remaining sentence under N.J.A.C. 13:45B-12.1(g) will clearly indicate the exemption.

**N.J.A.C. 13:45B-14.2**

COMMENT: Robert J. Fogg, Director, Licensing, Certification and Standards, Health Facilities Evaluation of the Department of Health, commented that N.J.A.C. 13:45B-14.2, Definitions, does not either specify or limit the number of services which may be provided by the health care service firm. Any full-service firm which provides nursing, homemaker-health aide, and physical therapy services should be licensed by the Department of Health. Andrea W. Aughenbaugh, Deputy Director of the New Jersey State Nurses Association, seconded this assertion, stating that "quality issues for home care agencies can best be monitored by the Department of Health. The Division of Consumer Affairs needs to concentrate on regulating individuals in the health care field and allow the Department of Health to regulate agencies."

RESPONSE: The Legislature conferred upon the Division of Consumer Affairs the licensure of health care service firms. In its operations, the Division calls upon the expertise of the 19 health professions it licenses in addition to health care service firms.

COMMENT: Hospice organizations should not be included in the definition of "employment agency," N.J.A.C. 13:45B-14.2. Hospice programs are almost all Medicare-certified, are surveyed under Federally-mandated regulation and statutes which require scrupulous recordkeeping, accepted legal and clinical standards of care as well as supervision of staff.

RESPONSE: The commenter's claim that almost all hospices are Medicare-certified appears to be inaccurate, according to information received from the State Department of Health. Under N.J.S.A. 34:8-43, the Director of the Division of Consumer Affairs has the authority to determine that a particular employment agency or career-related service is subject to whichever requirements of the act he or she deems appropriate. The Division will continue to study the issue of hospice inclusion with members of the industry. For the present, however, hospices are considered as falling within the definition of health care service firm.

COMMENT: Marion K. Littman, Esq., on behalf of a "referral agency," stated that the agency refers home health aides to persons who contract with it to do so. These persons then employ the home health aides if they choose to do so. There is no contract, or employer/employee relationship, between the agency and the home health aides. Under the proposed regulations, a referral agency is held to professional standards applicable to agencies furnishing health care services. The regulations may have the effect of transforming the health care practitioners into employees of the referral agency placing them, when this would not otherwise be the case.

RESPONSE: These regulations are not intended to create a legal relationship between the agency and the individual. They do look to existing law, however, and an employment relationship is clearly contemplated by N.J.S.A. 45:11-23(c). By statutory definition, a "homemaker-home health aide" must be employed by an agency, and cannot be sent out as an individual contractor.

COMMENT: Penelope O'Mullan, President of At Home Therapy, Inc., stated that her firm provides physical therapy, occupational therapy, and speech therapy and does not now nor has ever provided professional or paraprofessional nursing service. She therefore questions the requirement to employ a physician or registered nurse as a supervisor, adding that it would neither be economically feasible to do so nor would it constitute appropriate supervision for physical, occupational and speech therapists. Ms. O'Mullan requests that nurse supervision be waived in favor of appropriate professional supervision.

RESPONSE: Since this specialized business renders services which do not call for nurse or physician supervision, it would be inappropriate to apply the regulation in such circumstances. Accordingly, a nurse or physician supervisor will not be required.

**N.J.A.C. 13:45B-14.3**

COMMENT: Why are the residence addresses of officers, directors and managing agents needed for disclosure? The business address should suffice. There should also be clarification of the requirements for dis-

closure of "owners" of publicly traded corporations. We suggest that either the corporation (with officers and directors disclosed) suffice, or the regulations specify that the "ownership interest" disclosed be only for interests of five percent or more in the entity.

RESPONSE: Residential addresses are sometimes needed for enforcement purposes and for service of process. The suggestion as to size of interest in the corporate entity has been adopted. N.J.A.C. 13:45B-14.3(a)1iv now specifies an ownership interest of 10 percent or more.

**N.J.A.C. 13:45B-14.6**

COMMENT: N.J.A.C. 13:45B-14.6(a)3 prohibits a health service firm from mutually agreeing with individuals it employs that those individuals will not accept other specified employment. This is flagrant interference with a firm's right to freely conduct its business. Non-compete clauses are standard business practice.

RESPONSE: All health care service firms were formerly registered as temporary help service firms, and were subject to N.J.S.A. 34:8-43 et seq. The statute mandated that any temporary help service firm which imposed an employment restriction had to become licensed as an employment agency, a requirement that is continued in these regulations. Thus, a health care service firm is free to impose an employment restriction, but must become licensed as an employment agency in order to do so.

COMMENT: N.J.A.C. 13:45B-14.6(a)4 has the potential for imposing unfair restrictions on health care service business which are not generally applied to non-health care businesses. This prohibition is discriminatory in its intent, and seriously jeopardizes access to care for the community served by a health care facility not under the National Labor Relations Board where a strike or lockout is in progress. Another commenter stated that by prohibiting a health care service firm from supplying replacement workers to a health care facility during a strike or lockout, the Division is involving itself in a labor dispute on the side of labor, an inappropriate role. Further, the Division would be taking away from the employer an interim alternative that could be used while negotiations continue.

RESPONSE: N.J.S.A. 34:13C-1 et seq., the "Strikebreakers Act," has since 1960 prohibited any person, firm or corporation in New Jersey from recruiting persons to take the place of employees during a strike or lockout. In N.J.S.A. 34:13C-3, employment agents are specifically prohibited from referring an applicant for employment to an employer any of whose employees are then engaged in a strike or have been locked out.

**N.J.A.C. 13:45B-15.1**

COMMENT: Carol Kientz, Executive Director of the Home Health Assembly of New Jersey, Inc., commented on the definition of "health care practitioner supervisor" in N.J.A.C. 13:45B-15.1, which says that the term means a New Jersey licensed physician or a registered nurse who holds a Bachelor of Science degree with a major in nursing, and has a specified amount of experience. Ms. Kientz stated that the requirement of a BSN for the position of health care practitioner supervisor is financially burdensome and goes beyond necessary professional requirements. She suggested instead use of the State Health Department's current licensed Home Health Agency Nursing Supervisor standard.

RESPONSE: The proposed definition is not being adopted. For consistency with the Health Department standard, the Division is repropounding its definition of "health care practitioner supervisor," elsewhere in this issue of the New Jersey Register.

**N.J.A.C. 13:45B-15.2**

COMMENT: One person criticized the complexity of application forms for applicants seeking placement by or through an agency. A second commenter stated that dictating what information the firm's employee application should contain and what information a firm's employee evaluation form should contain is unnecessary "micro-regulation."

RESPONSE: Details of the application form were carefully worked out in conjunction with industry representatives, who considered the required information reasonable and good business practice.

COMMENT: Under N.J.A.C. 13:45B-15.2(a)3, information to be elicited of an applicant includes "the type of license held (R.N., L.P.N., H.H.A., N.A.)." A commenter criticized the use of the word "license" in reference to personnel who may be merely registered or certified.

RESPONSE: "License" is defined in the previous section to include a certification, registration or license required by law as a precondition to the practice of a regulated profession or occupation. The word, as

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broadened by the cited definition, is used here only to describe information that must be set forth on an internal document. If, as the commenter fears, "licensed" should be misused in advertising to refer to persons holding merely certification or registration, appropriate steps can be taken by the Division to halt and punish the practice.

COMMENT: Are there requirements for the practitioner's insurance?

RESPONSE: Certain individuals are regulated under their practice acts as to malpractice insurance. Homemaker-home health aides are not required to have malpractice insurance; the agency that employs them is responsible.

COMMENT: The words "where applicable" should be added to N.J.A.C. 13:45B-15.2(a)10 and 11, to make clear the fact that purchase of malpractice insurance is not mandatory for the employee.

RESPONSE: The Division agrees, and has made this change.

### N.J.A.C. 13:45B-15.3

COMMENT: Regarding N.J.A.C. 13:45B-15.3(g), further inquiry should be made into the current legally accepted standards for maintenance of medical records, and the time period in this regulation appropriately altered for those particular types of records maintained by firms.

RESPONSE: Based upon comments from the regulated community, such as Carol J. Kientz of N.J. Home Health Assembly, suggesting that the Division determine whether the proposed regulation on records maintenance was consistent with other Board and agency standards, the Division has investigated the current legally accepted standards for maintenance of medical records. That inquiry revealed that the proposed regulation does not conform to other Boards and agencies conducting similar activities. For example, the regulation, as proposed, did not conform to the Board of Medical Examiners requirement to retain records for seven years. The Division intended to make proposed regulations on records maintenance consistent with Boards conducting similar activities. Regulatees' comments also suggest that this is the best regulatory approach. Accordingly, the Division has decided to increase the time records must be maintained from five to seven years.

COMMENT: We are disturbed about the concept, in N.J.A.C. 13:45B-15.3(d), of "joint responsibility" of the firm and the health care practitioner supervisor to establish practices and procedures for compliance with these rules. The recommendation is made that the reference be deleted. "It is not the generally accepted concept of management in the health care industry and seems to be out of place in this regulation as well, unless the supervisor is also an owner or carries a broader management title, such as 'director'."

RESPONSE: References to joint responsibility have been deleted and words added to make clear that the supervisor assists in establishing practices and procedures.

COMMENT: N.J.A.C. 13:45B-15.3(h) references general liability insurance. Is this intended to apply only to the agency?

RESPONSE: Yes.

COMMENT: It seems unnecessary to stipulate who in the agency should carry out the license/certificate verification function, and it is recommended that reference to the supervisor be deleted or the wording altered to make the agency and the health care supervisor responsible. Such a change would allow for the establishment of an effective process to comply with verification.

RESPONSE: The wording of N.J.A.C. 13:45B-15.4(c) has been modified, to allow the designation of an alternate individual to be responsible for this function.

COMMENT: Josephine Sienkiewicz, Executive Director of Karemed noted that the requirement to maintain copies of current licenses or registrations is contrary to recommendations from the Board of Nursing, which is concerned about the fraudulent use of copied licenses to obtain employment.

RESPONSE: The agency is required to write a notation across the entire front of the license copy it retains. This precaution is expected to disable its use for fraudulent purposes. Exact wording of the notation is set forth in N.J.A.C. 13:45B-15.4(d).

### N.J.A.C. 13:45B-15.5

COMMENT: The job order requirement in subsection (b) is unclear. What is the purpose of this document? Does it apply only if the agency is serving as an employment agency placing/referring a person for employment by another entity or will it also be applied in some way for staffing and home care cases in which the practitioner remains the employee of the agency? For whom is it prepared and where is it maintained? This appears to be another case where a requirement

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intended for one segment of the market is not appropriate for all the market segments the regulations intend to cover and the proposed regulation does not indicate that the requirement is limited to one type of provider.

RESPONSE: Without such records, it would be difficult to make an appropriate placement in terms of the patient's need. Maintenance of the job order is proof of compliance with the requirement, set forth in N.J.A.C. 13:45B-15.5, to match the applicant to the need. The rule applies to every agency as defined in N.J.A.C. 13:45B-15.1, and the job order is maintained like every other record kept in the ordinary course of business.

COMMENT: For people who handle county contracts and receive multiple openings at one time, a blanket job order should be sufficient instead of one job order for every position where a referral is made.

RESPONSE: A blanket job order for a specific job specification within a single institution would be sufficient in such instances. Wording has been added in N.J.A.C. 13:45B-15.5(b) to clarify the matter.

### N.J.A.C. 13:45B-15.6

COMMENT: Michelle Mendelson, Area Vice President, Olsten Kimberly Quality Care, stated that it would be difficult to adhere to N.J.A.C. 13:45B-15.6 and still maintain compliance with company policy and be consistent in all areas of employment. It is the company's policy to verify dates of employment and job title. Non-compliance to company policy would increase risk of exposure. M. Jordan Connors of the Home Health Services and Staffing Association of New Jersey also voiced opposition, in the belief that these types of disclosure requirements will result in law suits between employers and former employees.

RESPONSE: Recognizing the concerns expressed by this and other commenters, the Division has reserved N.J.A.C. 13:45B-15.6(a)3 and will further examine issues that were brought up concerning the proposed requirement.

### N.J.A.C. 13:45B-15.9

COMMENT: The Home Health Assembly concurs with N.J.A.C. 13:45B-15.9(g) with respect to supervision of homemaker-home health aides. However, the broad language in this provision would also encompass professionals such as registered and licensed practical nurses, physical therapists, etc. The general industry standard for home care agencies, including those licensed by the State Department of Health, is an on-site annual evaluation of practice in the home setting. The Division is urged to revise the rule to reflect that annual standard for evaluation of professionals employed by health care service firms.

RESPONSE: Wording has been inserted in this subsection to clarify that the plan of care, not professional practice, is to be evaluated on site at least once during each 60 day period during which the agency has placed or referred a health care practitioner in the home care setting.

COMMENT: We are a firm specializing in the temporary/supplemental staffing of various facilities, and the professionals we send out are independent contractors. Our clients are large facilities with an extensive organizational structure, and standards of care. We believe that it is not necessary for the health care service firm's nursing supervisor to visit the health care workers in their place of work every 60 days if they are already being closely monitored by the facility's supervisor. This requirement would place an undue burden on our resources. Our situation is unlike a home health care agency where health care workers are usually not supervised while they are alone in the house with the patient. We request that this requirement be waived for supplemental/temporary staffing companies.

RESPONSE: N.J.A.C. 13:45B-15.9(g), requiring an on-site evaluation of the plan of care, specifically refers only to the home care setting.

COMMENT: How do the duties relating to placements in home care settings apply if the office is providing employees to staff another home care agency rather than being the provider of services? It is not clear which agency is responsible for developing and monitoring the plan of care and the periodic contacts and visits. Is the agency providing staff responsible for seeing that the agency which is the provider of services has developed a plan of care?

RESPONSE: The agency making the actual placement in the home is responsible. It matches the employee to the patient and the plan of care is prepared and monitored by its health care practitioner supervisor.

### Executive Order No. 27 Statement

The Federal government does not register or mandate standards for health care service firms. Federal regulations merely set forth conditions of participation for agencies providing health care services and desiring

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to qualify for Medicare reimbursement. Thus the rules being adopted do not exceed any Federally-required standards for health care service firms in general.

**Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):**

### 13:45B-1.2 Definitions

The following words and terms, when used in this chapter and in license application forms and licenses, shall have the following meanings unless the context clearly indicates otherwise:

...  
 "Broker" means a person who acts, works or performs duties as an agent for others, in return for a fee, charge or commission.

...  
 "Division" means the Division of Consumer Affairs, Department of Law and Public Safety, 124 Halsey Street, Newark, New Jersey 07102.

...  
 "Executive Director" means the Executive Director of the Office of Consumer Protection.

...  
**"Managing agent" means any individual or entity that controls, supervises, or has the responsibility to direct day-to-day operations of an employment agency or health care service firm."**

...  
 "Nurses' registry" means any person who operates a firm which directly or indirectly procures, assigns, or supplies, or offers, arranges or attempts to procure, assign or supply temporary or permanent personnel service(s) classified as the practice of nursing, and receives or attempts to receive a payment, fee, charge or commission for such service(s). Under N.J.S.A. 34:8-43 et seq., a nurses' registry is licensed as an employment agency.

...  
 "Section" means the Regulated Business Section of the Office of Consumer Protection, created as a result of the transfer of the Bureau of Employment and Personnel Services Unit and the Charities Registration Section to the Office of Consumer Protection pursuant to Reorganization Plan No. 002 of 1992.

### 13:45B-2.1 Employment agency license requirements

(a) (No change.)

(b) If the employment agency provides health care services, the applicant for an employment agency license shall include the following information on the application form in addition to the information required pursuant to (a) above:

1. The name, residence and business street address, and business telephone number of each person with an ownership interest in the agency and the percentage of ownership held;

2. The name, residence and business street address and business telephone number of each person who is a managing agent of the agency; or, if the managing agent is a corporation, association or other company, its name, street address and telephone number and the names and addresses of its officers and directors; and

3. The name and address of malpractice insurance carrier and malpractice insurance policy number.

(c) Every person, including an owner of a licensed employment agency, who places or refers jobseekers or furnishes information as to where the help or employment may be obtained, or who personally manages, operates, or carries on the business of an employment agency, shall obtain an employment agent's license by application to the Section and fulfill all requirements for such license.

(d) The holder of an employment agency license shall be under a continuing obligation to inform the Executive Director of any change in information contained in a license or license application, such as change of address, change of ownership, change of contact person, conviction of a crime, etc.

(e) (No change in text.)

(f) The Executive Director shall act upon any application for a license within 30 days after receiving it, except that the Director

may extend the maximum time for acting upon an application to 60 days for the purpose of allowing an applicant to submit additional information or if a hearing on an application is required.

### 13:45B-2.2 Posting

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

(c) There shall be posted in each employment agency the agency's schedule of fees, as well as a certified abstract of the Act and these rules. Such posting shall be in a manner and place as to be readily seen and readable by persons doing business with the employment agency. The employment agency shall also have full copies of the Act and these rules available for any job seeker's or employer's review. The certified abstract shall be available from the Section for a fee of \$5.00.

### 13:45B-2.3 Bond required

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

(e) The bond shall be retained by the Section until 90 days after either the expiration or revocation of the license.

### 13:45B-2.4 Records

(a) To effectuate the purposes of the Act, every holder of an employment agency license, as well as every representative authorized by the owner to supervise or conduct the operation of the employment agency, shall keep and maintain, readily available for inspection by the Director or the Director's duly authorized representative for a period of at least two years, the following:

1.-2. (No change.)

3. A record of fees charged, collected, and refunded, and such accounting record as may be necessary to enable the Section to readily verify the record of fees charged, fees collected, and refunds made;

4. All correspondence concerning references of job seekers including written records of information secured by telephone or other oral communication. In cases where the job seeker applies for a position of trust or work with a family and the employer waives references, written records of such waivers shall be kept available for inspection by the Section; and

5. (No change.)

### 13:45B-2.5 Agreements; fee schedules

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

(d) Upon application for licensure, an employment agency shall file with the Section a copy of the form(s) of contract used or to be used for all agreements between the employment agency and job seekers.

(e) Every employment agency shall file with the Section for the Executive Director's approval, the employment agency's proposed schedule of fees to be charged for any service rendered or product sold to job seekers. The Executive Director, who shall respond within 14 days of receipt, shall not approve the fee schedule unless he or she is satisfied that the fee schedule is in a form which makes the schedule reasonably understandable by job seekers and that the fee schedule is in compliance with all applicable provisions of the Act. The schedule of fees may thereafter be changed or supplemented by filing an amended or supplemental schedule with the Section. The changes shall not become effective until approval has been granted by the Executive Director and the amended or supplemental fee schedule has been posted on agency premises pursuant to N.J.A.C. 13:45B-2.2(c). The agency shall adhere to the schedule in charging for these services or products.

(f) An employment agency shall:

1. (No change.)

2. Not accept payment of a fee or attempt to collect any fee from a job seeker for a service rendered or product sold where employment has not been accepted except:

i.-ii. (No change.)

iii. Employment agencies which offer resume services or products to a job seeker may accept a fee for these services or products if the fee for such a service or product is included on the fee schedule filed with the Section and the fee is not collected prior to the delivery of the product or service;

3.-5. (No change.)

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(a) Before being permitted to sit for the written examination as required by the Act and by this chapter, an applicant for an employment agent's license shall submit the following to the Section. All affidavits shall include the address and telephone number of the affiant:

1. Affidavits of the applicant and the holder of the employment agency license by whom the applicant is to be employed, and such other evidence as the Director may reasonably require, indicating that:

i. The applicant has, for a period of at least one year, been engaged actively, lawfully and reputably in business in the capacity of owner or employee, or in a licensed profession or occupation; and

ii. The applicant has, for a period of at least six months, been employed in the handling of personnel problems including the securing of help for employers and jobs for employees in the types or classes of occupations for which application is made; and

2. Affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least one year. If the applicant finds it impossible to submit such affidavits from two New Jersey citizens, the applicant may substitute the following:

i. Affidavits from two citizens of any state who have known the applicant for at least one year; and

ii. An affidavit substantiating why it is impossible to obtain affidavits from two New Jersey citizens.

(b) If the holder of an employment agent's license has his or her employment terminated, the licensed agency's owner shall notify the Executive Director within five business days of such termination. Upon such notification, the Executive Director shall cancel the employment agent's license held by that person; the person is nevertheless entitled to a new license for the unexpired term of the old license, upon payment of the transfer fee, if employed elsewhere by a properly-licensed employment agency owner. However, the Director may refuse to issue the new license for good cause consistent with the provisions of the Act.

(c) The holder of an employment agent's license shall be under a continuing obligation to inform the Executive Director of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

**13:45B-2.7 Employment agent's conditional license qualifications**

(a) (No change.)

(b) Before being granted an agent's conditional license, an applicant shall submit the following to the Section. All affidavits shall include the address and telephone number of the affiant:

1. An affidavit and such other evidence as the Director may reasonably require establishing that the applicant has at least one year of business experience or equivalent education;

2. Two affidavits attesting to the applicant's good moral character, pursuant to the provisions of N.J.A.C. 13:45B-2.6(a)2;

3. Evidence of graduation from a duly recognized high school or a Graduate Equivalency Diploma or successful passage of the written licensing examination;

4. The name, business address and employment agency license number of the licensee who will be supervising the applicant; and

5. The name and license number of the duly licensed agent on premise who will supervise the conditional agent.

(c) The holder of an agent's conditional license shall be under a continuing obligation to inform the Executive Director of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

(d) A conditional license remains effective for one year only.

**13:45B-2.8 Identification and introductory card**

(a) (No change.)

(b) The employment agency shall require all job seekers applying for positions of trust or work with private families to furnish the agency with names and addresses of individuals available as character

references, and shall communicate, orally or in writing, with at least one of the individuals given by the job seeker as a character reference.

1. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the employment agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be written upon the referral slip given by the employment agency to the job seeker to present to the prospective employer. The written result of the verification to determine the character and responsibility of any job seeker shall be kept on file in the employment agency subject to examination by the Executive Director.

2. (No change.)

**13:45B-3.1 Business locations; special permits**

(a) (No change.)

(b) An employment agency license, or registration under N.J.S.A. 34:8-65 or 66, shall not authorize activities at any place other than the place designated in the license or registration except upon issuance of a special permit by the Director, as follows:

1. Where an activity is to take place away from the premises designated in the license, application for a special permit shall be made on a form supplied by the Section, which must be received by the Section no later than seven business days before the event.

2.-4. (No change.)

(c) (No change.)

(d) The following shall apply to entertainment showcases:

1. (No change.)

2. If services are offered by electronic means for a prospective employer in the home of the prospective employer, a special permit is not required. However, at the beginning of any electronic presentation, the name, address and license number of the entertainment agency and the name and address of this Section shall be displayed on an electronic screen for a minimum period of 20 seconds or, if any other type of electronic presentation is given, the above information shall be supplied in written form.

**13:45B-4.1 Examination subjects**

(a) Each applicant for an employment agent's license shall, in the manner and at the time and place designated by the Executive Director, answer written questions concerning the following:

1.-3. (No change.)

**13:45B-4.2 "Aeronautical" classification**

Applicants for an employment agent's license who include "aeronautical" in the type or class of occupation in which they intend to furnish help or employment shall furnish to the Executive Director a written statement from the Division of Aeronautics in the State Department of Transportation certifying to the Executive Director that, in the opinion of the Division of Aeronautics, the applicant has sufficient knowledge of the types of licenses required by persons to be legally engaged in the operation, maintenance or repair of aircraft.

**13:45B-4.3 (Reserved)****13:45B-4.5 "Career counseling" classification**

(a) (No change.)

(b) To be classified as a career counseling agent, an applicant shall:

1.-2. (No change.)

3. Pass the career counseling examination administered by the Section.

(c) (No change.)

**13:45B-4.6 Temporary placement operation (functioning in conjunction with an employment agency and integrated)**

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

(c) Employment agencies may integrate the permanent placement and temporary placement operations, provided that:

1. (No change.)

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2. An employment agency shall charge the employer or the job seeker a fee based on the fee schedule the agency has submitted to the Section;

3.-5. (No change.)

**13:45B-4.7 Employment agency providing temporary help**

An employment agency providing temporary help shall comply with all requirements in this chapter that apply to employment agencies. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed.

**13:45B-6.4 Entertainment agency contracts**

(a) (No change.)

(b) Each entertainment agency shall file a copy of the form(s) of any contract used or to be used by the agency with the Regulated Business Section of the Office of Consumer Protection, 124 Halsey Street, P.O. Box 45028, Newark, New Jersey 07102.

(c) Copies of all executed contracts between the entertainment agency and performing artists shall be maintained by the agency in a form suitable for inspection by the Section. These copies shall be made available for inspection by representatives of the Section.

(d)-(f) (No change.)

**13:45B-6.6 Information required**

(a) Information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided to the Regulated Business Section, Office of Consumer Protection, 124 Halsey Street, Newark, New Jersey 07102 (Mailing address: P.O. Box 45028, Newark, New Jersey 07101) on January 1 of each year. Where the entertainment agency begins operation after January 1, the information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided with the agency's application. Application forms shall be supplied by the Section.

(b) (No change.)

**13:45B-7.1 Fee schedule**

The following fees shall be charged by the Office of Consumer Protection, Regulated Business Section:

Employment agency annual license .....	\$250.00
Consulting firm annual registration .....	\$250.00
Career consulting or outplacement firm annual registration .....	\$250.00
Health care service firm annual registration, each primary location .....	\$500.00
Job listing service and registration .....	\$250.00
Prepaid computer job matching service annual registration .....	\$250.00
Temporary help service firm annual registration, primary location .....	\$250.00
Temporary help service firm, permit for operation of each other location .....	\$10.00
Agent's annual license .....	\$25.00
Agent's conditional license .....	\$25.00
Transfer of agent's license .....	\$10.00
Agent-registrants .....	\$25.00
Fee for abstract of law .....	\$5.00
Examination fee .....	\$25.00
Late fee for renewals .....	\$25.00
Special (off-premises) permit .....	\$10.00

**13:45B-8.2 Registered agent**

Each out-of-State holder of a New Jersey employment agency license, or out-of-State entity required to be registered under the Act, shall register with the Executive Director the name and address of a New Jersey agent for service of process and other matters.

**SUBCHAPTER 10. REGISTRATION FOR CAREER CONSULTING OR OUTPLACEMENT ORGANIZATIONS**

(a) The following entities are required to be registered with the Regulated Business Section of the Office of Consumer Protection in order to operate within New Jersey:

1. (No change.)

(b) An application for registration and an abstract of the law covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Section upon request.

(c) (No change.)

(d) Upon application for registration, a prospective registrant shall file with the Section a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Section of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) (No change.)

(g) Upon initial registration with the Section and annually thereafter, every career consultant or outplacement organization and every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of \$10,000 with a duly authorized surety company as surety, to be approved by the Director. The bond shall be payable to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in their name for the recovery of damages sustained by the breach.

1.-2. (No change.)

3. The bond shall be retained by the Section until 90 days after either the expiration or revocation of the registration, as appropriate.

(h) (No change.)

**13:45B-11.1 Registration process**

(a) The following entities are required to be registered with the Section in order to operate within New Jersey:

1. (No change.)

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Section upon request.

(c) (No change.)

(d) Upon application for registration, a prospective registrant shall file with the Section a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Section of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) (No change.)

(g) Upon initial registration with the Section and annually thereafter, every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of \$10,000 and shall be subject to all bonding requirements set forth in N.J.A.C. 13:45B-10.1(g).

**13:45B-12.1 Advertisements and solicitations**

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

(e) Copies of all advertisements and solicitations shall be maintained by the licensed or registered firm or entertainment agency in a form suitable for inspection and shall be made available for inspection by the Section for two years following publication or dissemination.

(f) A record of all advertisements and solicitations with date and place of publication or dissemination, including identification of media used, shall be maintained in a form suitable for inspection and made available upon request of representatives of the Section for two years following publication or dissemination.

(g) This section shall not apply to temporary help service firms or consulting firms, as defined in N.J.A.C. 13:45B-1.2.

#### SUBCHAPTER 14. HEALTH CARE SERVICE FIRMS

##### 13:45B-14.1 Authority, purpose and scope

(a) The authority for this subchapter is derived from N.J.S.A. 34:8-43 under the definition of "employment agency."

(b) Firms providing health care services are licensed and/or registered under several categories pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq. In order to consolidate these firms into an appropriate category and subject all firms operating in a similar manner to uniform regulation, the Director is hereby identifying a new class of licensure: "health care service firm."

(c) This subchapter applies to all persons operating a health care service firm, as defined by N.J.A.C. 13:45B-14.2, including persons whose residence or principal place of business is located outside of this State.

##### 13:45B-14.2 Definitions

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise: "Health care service firm" means any person who operates a firm that employs individuals directly or indirectly for the purpose of assigning the employed individuals to provide health care services either directly in the home or at a care-giving facility, and who, in addition to paying wages or salaries to the employed individuals while on assignment, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; carries or is required to carry worker's compensation insurance; and sustains responsibility for the action of the employed individuals while they render health care services.

"Health care services" means:

1. Any services rendered for the purpose of maintaining or restoring an individual's physical or mental health; or
2. Any health related services for which licensure is required as a pre-condition to the rendering of such services.

##### 13:45B-14.3 Initial registration requirements

(a) Except as set forth in N.J.A.C. 13:45B-14.4, each health care service firm shall register with the Division by submitting the following, on forms provided by the Director:

1. A registration form which shall include the following information:
  - i. The name of the health care service firm and any fictitious or trade name used in its operation;
  - ii. Each primary location including street and street number of the building(s) and place(s) where its business is to be conducted;
  - iii. The name and residence address of each officer, director, and principal;
  - iv. The name, residence and business street address, and business telephone number of each person with an ownership interest **\*of 10 percent or more\*** in the agency and the percentage of ownership held; and
  - v. The name, residence and business street address and business telephone number of each person who is a managing agent of the agency; or, if the managing agent is a corporation, association or other company, its name, street address and telephone number and the names and addresses of its officers and directors;
2. A certification of each officer, director, principal or owner setting forth whether he or she has ever been convicted of a crime as set forth in N.J.S.A. 34:8-44; and

3. A bond of \$10,000 to secure compliance with P.L. 1989, c.331 (N.J.S.A. 34:8-43 et seq.). The Director may waive the bond requirement for any corporation or entity having a net worth of \$100,000 or more. In order to obtain a waiver, the health care service firm shall provide a copy of a certified financial report prepared by a certified public accountant or licensed accountant establishing a net worth of \$100,000 or greater.

**\*[(c)]\*\* (b)\*** A health care service firm shall provide the information set forth in (a)iv and v above prior to any change in ownership or management.

**\*[(d)]\*\* (c)\*** If any information required to be included on the application changes, the health care service firm shall provide that information to the Section, in writing, within 30 calendar days of the change.

**\*[(e)]\*\* (d)\*** In the event an officer, director, principal or owner is convicted of a crime subsequent to filing the affidavit required by (a) above, the health care service firm shall obtain a new affidavit from that individual and shall file the affidavit with the Section within 30 days of the conviction.

13:45B-14.4 Firms registered prior to **\*[the effective date of these regulations]\* \*April 3, 1995\*** and meeting the definition of health care service firm

(a) A firm registered prior to **\*[insert date—the effective date of these rules]\* \*April 3, 1995\*** and meeting the definition of a health care service firm shall not be required to comply with the initial registration requirements of N.J.A.C. 13:45B-14.3(a)1 and 2. Such entity shall, however, comply with the provisions of N.J.A.C. 13:45B-14.3(a)3 by ensuring that it has filed a \$10,000 bond with the Director, unless the Director has waived the bond requirement for the reasons set forth therein.

(b) The firm shall return the old certificate of registration to the Division by **\*[insert date—within 30 days after the effective date of these rules]\* \*May 3, 1995\***. The Division will issue a new certificate within 15 days after receipt of the old certificate.

##### 13:45B-14.5 Registration renewal

(a) A health care service firm shall renew registration on or prior to July 1 of each year by submitting the following, on forms provided by the Director.

1. A renewal application which shall provide the information set forth in N.J.A.C. 13:45B-14.3(a)1 above; a certification that no new principals or owners have been added since the previous renewal; and a list of primary locations.

2. A \$10,000 bond, unless the health care service firm has a perpetual bond or the Director has waived the bond requirement for the reasons set forth in N.J.A.C. 13:45B-14.3(a)3.

##### 13:45B-14.6 Prohibited acts

(a) A health care service firm shall not:

1. Provide or offer to provide health care services without first obtaining a registration;
2. Charge a fee or a liquidated damage charge to any individual employed by the health care service or in connection with employment by the firm. If a fee or liquidated damage charge is imposed, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2;
3. Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person. If the health care service firm charges an individual pursuant to such contract a fee when the individual becomes employed by any other person, the health care service firm shall obtain a license as an employment agency pursuant to N.J.A.C. 13:45B-2; or
4. Knowingly send individuals it employs to, or knowingly continue to render services to, any health care facility not under the jurisdiction of the National Labor Relations Board where a strike or lockout is in progress, for the purpose of replacing individuals who are striking or who are locked out.

## SUBCHAPTER 15. PLACEMENT OF HEALTH CARE PRACTITIONERS

### 13:45B-15.1 Definitions

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Agency" means a health care service firm as defined in N.J.A.C. 13:45B-14.2 or an employment agency licensed pursuant to N.J.S.A. 34:8-47 and 48 and operating as a nurses' registry. Agency also means any holder of an employment agency license who places or employs a health care practitioner.

"Health care practitioner" means an individual placed or employed by an agency for the purpose of rendering health care services, as defined in N.J.A.C. 13:45B-14.2, to an individual. Health care practitioner shall include, but not be limited to, an acupuncturist, athletic trainer, chiropractor, dentist, marriage counselor, optometrist, orthotist, prosthetist, pharmacist, physician assistant, physician or surgeon, physical, occupational or speech therapist, podiatrist, psychologist, registered nurse, licensed practical nurse, nurse practitioner, a home health aide, or a nurse's aide, respiratory therapist or social worker. The term shall also include an individual placed by an agency for the purpose of rendering health care services where a license under State law is not required.

"Health care practitioner supervisor" means a New Jersey licensed physician, or a registered nurse in good standing holding at least a Bachelor of Science degree, with a major in nursing and at least two years of full time or full time equivalent experience as a registered professional nurse within the five year period immediately preceding employment with an agency. One year of said experience shall have been in community health, public health or home care.

"Home care setting" means the personal residence of a patient receiving services of a health care practitioner.

"Licensed" means holding any certification, registration or license required by law as a precondition to the practice of a regulated profession or occupation.

### 13:45B-15.2 Application form; minimum information required

(a) An agency shall create an application form for each applicant seeking placement or employment by or through the agency. The application form shall require the following minimum information:

1. The applicant's name, address and telephone number;
2. The applicant's Social Security Number;
3. The type of license held (R.N., L.P.N., H.H.A., N.A.);
4. The license-issuing authority or board;
5. The license number;
6. The license expiration date;
7. The names and addresses of all institutions, patients and agencies worked for within the one year period preceding the date of application, a statement of reasons for leaving each employer and the name(s) of all supervisors having knowledge of the applicant's performance at each location. If the applicant has been employed by more than five employers within the stated one year period, the applicant shall be required to disclose only the five employers immediately preceding the date of application;

8. Areas of actual working experience and period of time during which experience was acquired (for example, I.C.U.—one year, med surg—one year, private residence—one year);

9. The applicant's education (diplomas/degrees held);

10. The applicant's malpractice insurance carrier (name and address)\*, **where applicable\***; and

11. The applicant's malpractice insurance policy number\*, **where applicable\***.

(c) An application form shall contain the following duly executed authorization:

I, \_\_\_\_\_ (Applicant) \_\_\_\_\_, hereby authorize \_\_\_\_\_ (agency) \_\_\_\_\_ to request and receive from all prior employers within one year of the date of this application, any and all pertinent information concerning my prior employment and its termination, including the reasons for such termination.

### 13:45B-15.3 General duties

(a) An agency shall comply with accepted professional standards and principles that apply to furnishing services to be provided by health care practitioners.

(b) An agency shall comply with all Federal, State and local laws and shall not direct, request, condone or aid or abet any health care practitioner in the performance of an unlawful act.

(c) An agency shall employ not less than one health care practitioner supervisor who shall be licensed as an employment agent, provided, however, that a health care service firm may employ a health care practitioner supervisor who need not be licensed as an employment agent.

(d) The agency \*[and]\* **\*with the assistance of\*** the health care practitioner supervisor shall be \*[jointly]\* responsible for establishing such practices and procedures as may be necessary to assure the agency's compliance with this subchapter. \*[The agency shall give each health care practitioner supervisor written notice of the joint responsibility imposed by this subsection.]\*

(e) An agency shall not submit, record or convey to another agency information which the agency knows or has reason to know is false, deceptive or misleading.

(f) An agency shall make available for inspection by the Executive Director of the Office of Consumer Protection, or by his or her designated agent, any book, record or account required by law, including these regulations, to be made, maintained or kept.

(g) An agency shall retain all records required to be maintained by this regulation for a period of \*[five]\* **\*seven\*** years from the date on which the record is required to be made.

(h) An agency shall either maintain, or ensure the existence of, a general liability insurance policy which shall insure against any placed health care practitioner's negligence, malpractice or any other unlawful conduct occurring within the scope of the health care practitioner's placement. The policy shall be in the amount of not less than \$1,000,000.

(i) An agency shall, upon receipt of a duly authorized release, provide to another agency a copy of all mandated testing and immunization results for the health care practitioner.

(j) The agency and the health care practitioner supervisor shall immediately report any violation of this subchapter to the Executive Director of the Office of Consumer Protection.

(k) The agency and the health care practitioner shall cooperate in providing information to any investigation conducted to determine whether a violation of this subchapter or any applicable statute has occurred.

(l) An agency's failure to comply with this subchapter may be deemed good cause within the meaning of N.J.S.A. 34:8-53, upon notice to the agency and an opportunity to be heard, for the suspension or revocation of licensure or for such other relief or sanctions as may be authorized by law.

### 13:45B-15.4 Duty to refer only licensed individuals

(a) When licensure to perform a health care service or function is required by law, an agency shall refer or place only those health care practitioners who are currently licensed or certified and in good standing with their respective New Jersey licensing or registration boards.

(b) A nurses' registry shall not furnish broker services to anyone other than a registered nurse, a practical nurse, or a nurse practitioner/clinical nurse specialist licensed by the State Board of Nursing.

(c) The agency shall, through its health care practitioner supervisor **\*or other designated individual\***, verify the license status of each individual to be placed or referred prior to the referral or placement. Licensure shall be verified only by personally inspecting the original of the current biennial registration or license issued to the individual to be referred or placed.

(d) The agency shall maintain a copy of the license or registration with the following notation conspicuously written across the entire face of the license: "COPY OF ORIGINAL NOT VALID FOR VERIFYING CURRENT LICENSURE STATUS."

(e) The agency shall maintain a record of licensure verification in which the following information is recorded:

## ADOPTIONS

## LAW AND PUBLIC SAFETY

1. The registrant's name and address;
2. The New Jersey board or agency issuing license or registration;
3. The license or registration number;
4. The period for which licensure or registration was issued;
5. The date of license inspection; and
6. The name of the individual making the inspection on behalf of the licensee.

(f) When the agency knows or has reason to know that the license of any health care practitioner placed or referred has been suspended, revoked or otherwise limited or restricted so as to preclude the rendering of the health care service for which employment or placement was intended, the agency shall verify the licensure status at the earliest possible time. Upon a determination that the license has been suspended, revoked or otherwise limited or restricted, the agency shall directly terminate the health care practitioner's employment and notify the individual or entity currently receiving services from the health care practitioner that the practitioner's authority to practice has been suspended or revoked.

## 13:45B-15.5 Duty to match credentials to need

(a) An agency shall make diligent inquiry of employers and applicants for employment in order to ascertain the relevant needs of the place of employment and the applicant's qualifications. An agency shall not place or refer an applicant whose qualifications do not reasonably match the needs and requirements of an employer.

(b) An agency shall create a job order for every position\*, or type of position within a single institution\*, for which a referral or placement is to be made. The following minimum information shall be entered on the job order:

1. A description of setting (for example, pediatrics, I.C.U., C.C.U., med-surg, home/residence of client);
2. The hours to be worked;
3. The title of position (for example, supervising nurse, staff nurse, charge nurse, clinical specialist);
4. Duties;
5. Special skills or certifications required;
6. Special equipment to be operated; and
7. Special employer policies or limitations to be required.

## 13:45B-15.6 Duty to verify work history \*[and evaluate performance]\*

(a) Prior to placing or referring an applicant, an agency shall:

1. Verify the applicant's work history by confirming employment at all disclosed employment locations for the one year period prior to the date of the application; **\*and\***
2. Inquire of all employers disclosed on the application form the reason for any termination, resignation or cessation of employment\*[, and]\*\*.\*

\*[3. Secure an evaluation of the applicant's performance from all employers of said individual within the one year preceding the date of the application; provided, however, no such evaluation shall be secured from an employer where a current employment relationship exists without the express written consent of the applicant. The evaluation shall include the employer's comments with regard to the health care practitioner's performance in the following areas:

- i. Honesty;
- ii. Reliability;
- iii. Timeliness in reporting for assigned work;
- iv. Knowledge of work performed; and
- v. Quality of care rendered.]\*

(b) The agency shall record the information required by (a) above and the name and title of the individual providing the information.

## \*[13:45B-15.7 Duty to record and disclose to another agency reasons for employment termination

(a) Upon receiving notice that a placed or referred health care practitioner is to be terminated, the health care practitioner supervisor shall inquire as to the reason for such termination and shall record such reason in the health care practitioner's file. The name and position of the person supplying this information shall be recorded in the file.

(b) An agency shall disclose the following information to another agency:

1. The reasons for termination, resignation or cessation of employment where the agency maintained an employment relationship with a health care practitioner; and
2. Any information concerning the termination, resignation or cessation of employment where the agency placed or referred the health care practitioner.

## 13:45B-15.8 Duty to disclose adverse information in making referrals

(a) An agency receiving information that a health care practitioner has engaged in any of the following acts or conditions shall not refer, place or employ such practitioner without first complying with this section:

1. Gross malpractice, gross incompetence or gross neglect;
2. Repeated acts of malpractice, negligence or incompetence;
3. The use of fraud, dishonesty, misrepresentation or deception;
4. Any act of theft from a patient, a patient's household or from any work site;
5. The unlawful use or possession of any drug or other substance;
6. The use of alcohol or any drug resulting in current impairment of the ability to provide a health care with reasonable skill and safety;
7. Possessing a medical condition resulting in current impairment of the ability to provide a health care service with reasonable skill and safety. For the purposes of this subsection, a medical condition shall include physiological, mental or psychological conditions or disorders, such as, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional or mental illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism;
8. Any diversion, misappropriation or unlawful possession of a controlled dangerous substance;
9. Any improper sexual contact with a patient;
10. Any physical abuse of a patient; or
11. Any criminal act evidenced by a conviction involving the scope of health care activity embodied within the license held by the health care practitioner or establishing a lack of good moral character.

(b) Upon receipt of any information which would cause a reasonable person to believe that any of the acts or conditions in (a) above has occurred, is occurring or will occur, the health care practitioner supervisor shall:

1. Immediately record the nature and facts of the conduct or condition and the identity of the person(s) supplying the information;
2. Apprise the health care practitioner about whom adverse information is received about the complaint; and
3. Solicit and record the health care practitioner's response to the adverse information in the complaint.

(c) If, after consideration of the health care practitioner's response, reasonable cause exists to believe that any of the conduct or conditions identified in (a) above has occurred or is continuing, the health care practitioner supervisor shall:

1. Immediately disclose the information received and the response thereto to the agency and to the individual or entity currently receiving services from the placed health care practitioner; and
2. Not later than five days following receipt of the initial information, submit a written report of the information and the health care practitioner's response to the health care practitioner's licensing board or agency. The supervisor shall notify the health care practitioner that a report has been submitted to such board or agency, but the supervisor shall maintain the report as a confidential communication between the agency and any board or agency to which the report is submitted. The report shall be available to the health care practitioner only upon order of the licensing board or agency to which it is submitted or subsequent to the filing of a disciplinary complaint pursuant to proper discovery request made in such proceeding.

(d) The agency shall not thereafter refer or place any licensed, certified or registered health care practitioner for whom a report is submitted, or any other health care practitioner, unless prior written disclosure of the information received and the response thereto is made to any person or entity with whom a placement or referral is contemplated.]\*

**\*13:45B-15.7 and 15.8 (Reserved)\***

**13:45B-15.9 Duties relating to placements in home care settings**

(a) Prior to referring or placing a health care practitioner in a home care setting, an agency shall assure that an appropriately licensed person evaluates the patient's needs and establishes, in writing, a plan of care. The health care practitioner preparing the plan of care shall sign it and indicate thereon his or her license designation.

(b) An agency shall make referrals or placements consistent with the level of care indicated in the plan of care.

(c) Unless the circumstances of the patient's care or another specific regulatory standard requires otherwise, the health care practitioner supervisor shall, not less than once during each 30-day period during which the health care practitioner is rendering services in the home care setting:

1. Inquire of the health care practitioner and such other persons as may be necessary whether the plan of care is adequate to meet the patient's needs; and

2. Make reasonable inquiry to determine whether the plan of care is being discharged appropriately by the health care practitioner.

(d) The health care practitioner supervisor shall record the responses received.

(e) If the responses indicate that the plan of care needs to be reassessed or revised, the health care practitioner supervisor shall ensure that an appropriately licensed person immediately reassesses or revises the plan.

(f) If the responses indicate that the health care practitioner is not discharging the plan of care appropriately, the agency shall immediately take necessary corrective action.

(g) The health care practitioner supervisor shall make an on-site, in home evaluation **\*of the plan of care\*** not less than once during each 60 day period during which the agency has placed or referred a health care practitioner in the home care setting.

(h) The agency shall maintain the original of the plan of care and any revised plan of care and shall give copies to the patient or the patient's representative.

**(a)**

**NEW JERSEY RACING COMMISSION**

**Harness Rules**

**Safety Vests**

**Adopted New Rule: N.J.A.C. 13:71-19.6**

Proposed: November 21, 1994 at 26 N.J.R. 4482(b).

Adopted: March 10, 1995 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: March 14, 1995 as R.1995 d.203, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: April 3, 1995.

Operative Date: August 15, 1995.

Expiration Date: January 25, 2000.

On February 15, 1995, the New Jersey Racing Commission, pursuant to N.J.S.A. 5:5-30 and in accordance with the applicable provisions of the Administrative Procedures Act, adopted the new rule N.J.A.C. 13:71-19.6 with an operative date of August 15, 1995. This rule was adopted as proposed in the notice published November 21, 1994 at 26 N.J.R. 4482(b) without change.

During the comment period, written comments were received from Pat Salerno of the New Jersey Standardbred Breeders' and Owners' Association and the following 21 standardbred drivers: Chris Ryder, Carl Cito, Mark Kesmodel, Shaun Vallee, Ben Stafford, Jr., Ron Waples, Bill Bresnahan, Art Stafford, Jr., Ron Camden, Carl LeCausse, Jack Moiseyev, E. Tom Clendining, Jarett Kelly, Harold Kelly, Herve Filion, Richard Wojcio, Joe Schwind, Howard Parker, Jacqueline Ingrassia, Ron Pierce and Robert Cotton, Jr. A summary of these comments and the Racing Commission's response is set forth below.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** In opposing the adoption of the regulation, 16 commenters stated that the vests are uncomfortable and restrictive.

**RESPONSE:** Rejected. While the wearing of a safety vest may be considered by some to be uncomfortable, this must be weighed against the inherent purpose of the rule. In the Commission's estimation, the benefit from a safety perspective to the race participants greatly outweighs the comfort factor. Moreover, with anticipated short-term design improvement to the safety vests, the concerns some may have with respect to comfort may be alleviated prior to the rule's operative date through anticipated design modifications.

**COMMENT:** Several commenters indicated that the vests are not effective.

**RESPONSE:** Rejected. A study conducted by MIT on the effectiveness of the vest suggests that the vest works in two ways to protect the wearer. It absorbs impact energy and spreads out the duration of impact time and should offer considerable protection from injury.

**COMMENT:** Several commenters suggested that the wearing of vests should be optional.

**RESPONSE:** Rejected. The Racing Commission believes, and the available evidence suggests, that the vest reduces risk of serious injury. Accordingly, the Commission is of the view that the wearing of the vest must be mandatory.

**COMMENT:** Commenters requested that the Racing Commission delay making the vests mandatory until further research and development can be completed for use in the harness industry.

**RESPONSE:** Rejected in part. While the Commission rejects such comments to the extent they suggest that further research and development are necessary, the Commission has determined to delay the operative date of the rule to August 15, 1995 to allow time for the manufacture, ordering, and delivery of the vests to the subject of the regulation. The Commission considers this a valid suggestion and has taken into account design and supply concerns when determining the rule's operative date.

**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 new rule is not addressed or affected by any analogous Federal requirements or standards.

**Full text** of the proposed new rule follows:

**13:71-19.6 Safety vests**

All individuals, at all times, on horseback or in a sulky or jogging cart affixed to a horse, on a racetrack or licensed off-track stabling facility, shall wear a safety vest designed to provide shock absorbing protection of at least a rating of five, as defined by the British Equestrian Trade Association (BETA).

**TREASURY-TAXATION**

**(b)**

**DIVISION OF TAXATION**

**Corporation Business Tax**

**Doing Business in New Jersey; Definition and Rules of Construction**

**Adopted Amendment: N.J.A.C. 18:7-1.9**

Proposed: February 6, 1995 at 27 N.J.R. 471(a).

Adopted: March 10, 1995 by Richard D. Gardiner, Director, Division of Taxation.

Filed: March 13, 1995 as R.1995 d.194, **without change**.

Authority: N.J.S.A. 54:10A-27 and 54:50-1.

Effective Date: April 3, 1995.

Expiration Date: March 14, 1999.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

## ADOPTIONS

## TREASURY-TAXATION

**Executive Order No. 27 Statement**

The adopted amendment does not contain requirements or standards which exceed requirements or standards imposed by Federal law. The rule at present conflicts with Federal Law 86-272, the Interstate Income Act, as interpreted by the United States Supreme Court, by making the providing of an automobile to sales people an activity that would create nexus for an out-of-State corporation for purposes of the Corporation Business Tax. The U.S. Supreme Court in *Wisconsin Dept. of Revenue v. William Wrigley, Jr. Company*, 112 S.Ct. 2447 (1992), stated that the provision of an automobile to sales people should not create nexus under P.L. 86-272. The amendment is intended to bring the rule into conformance with Federal law under the *Wrigley* holding.

**Full text of the adoption follows:**

18:7-1.9 Doing business in New Jersey; definition and rules of construction

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

(d) If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filled by shipment or delivery from a point outside the State, then such corporation is not subject to tax in New Jersey, provided it is not subject to tax by virtue of other contacts. (See P.L. 86-272, 15 U.S.C. §381.)

1. (No change.)

2. Examples of activities that may be considered non-immune are: i-vi. (No change.)

vii. Approving or accepting orders or securing deposits on sales; ix. (No change.)

x. Carrying samples for sale, exchange or distribution in any manner for consideration or other value;

xi-xii. (No change.)

3. Examples of immune activities are:

i-ii. (No change.)

iii. Providing automobiles, owned or leased, registered or not registered in New Jersey, to sales personnel for their use in conducting protected activities.

iv-viii. (No change.)

(e) (No change.)

(a)

**DIVISION OF TAXATION****Public Utility Tax**

**Adopted Amendments: N.J.A.C. 18:22-5.5 and 11.12**

**Adopted New Rules: N.J.A.C. 18:22-14.1 through 14.3**

Proposed: February 6, 1995 at 27 N.J.R. 473(a).

Adopted: March 10, 1995 by Richard D. Gardiner, Director,  
Division of Taxation.

Filed: March 13, 1995 as R.1995 d.195, **without change**.

Authority: N.J.S.A. 54:50-1.

Effective Date: April 3, 1995.

Expiration Date: February 24, 1999.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Executive Order No. 27 Statement**

The adopted amendments and new rules do not relate to, or contain any standards or requirements which exceed, standards or requirements imposed by Federal law.

**Full text of the adoption follows:**

18:22-5.5 Apportionment of taxes to municipalities

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

(c) For the purposes of calculation of the local general purposes tax rate identified in N.J.S.A. 54:30A-24.1 to determine which municipalities shall be affected by the limitations based on local tax

rates imposed in that place the rate shall be expressed to two decimal places and shall be derived by truncating all additional decimal places to the right of the decimal.

(d) No funds shall be distributed to qualifying municipalities unless the taxes representing the funds have actually been remitted to the State.

**Statutory Reference**

As to apportionment of taxes to municipalities, see N.J.S.A. 54:30A-24 and 54:30A-24.1.

18:22-11.12 Apportionment of gross receipts tax

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

(c) For the purposes of calculation of the local general purposes tax rate identified in N.J.S.A. 54:30A-61.1 to determine which municipalities shall be affected by the limitations based on local tax rates imposed in that place the rate shall be expressed to two decimal places and shall be derived by truncating all additional decimal places to the right of the decimal.

(d) No funds shall be distributed to qualifying municipalities unless the taxes representing the funds have actually been remitted to the State.

**Statutory Reference**

As to apportionment of gross receipts tax, see N.J.S.A. 54:30A-61 and 54:30A-61.1.

**SUBCHAPTER 14. MUNICIPAL PURPOSES TAX ASSISTANCE FUND**

**18:22-14.1 Municipal purposes tax assistance fund; establishment; distribution of deposits**

There is established in the Department of the Treasury for the purpose of providing State aid to qualifying and participating municipalities a "Municipal Purposes Tax Assistance Fund" to be administered by the State Treasurer. All amounts deposited in the fund pursuant to law shall be distributed to qualifying municipalities pursuant to the Municipal Purposes Tax Assistance Act of 1980, N.J.S.A. 54:1-46 et seq. No funds shall be distributed to qualifying municipalities unless the taxes representing the funds have actually been remitted to the State.

**18:22-14.2 Deposits to municipal purposes tax assistance fund**

Deposits are made to the municipal purposes tax assistance fund pursuant to N.J.S.A. 54:30A-24.1 and 54:30A-61.1. See N.J.A.C. 18:22-5.5 and 11.12 for apportionment of taxes to municipalities.

**18:22-14.3 Calculation of rates**

(a) For the purpose of calculation of the rates which are used in determining eligibility for participation or qualification in the Municipal Purposes Tax Assistance Fund, the municipal purposes equalized tax rate, defined in N.J.S.A. 54:1-47d, shall be expressed in two decimal places derived by truncation.

(b) For the purpose of calculation of the rates which are used in determining eligibility for participation or qualification in the Municipal Purposes Tax Assistance Fund, the State municipal purposes equalized tax rate, defined in N.J.S.A. 54:1-47j, shall be expressed in two decimal places derived by truncation.

**Statutory Reference**

**Municipal Purposes Tax Assistance Act of 1980, N.J.S.A. 54:1-46 et seq.**

(a)

**DIVISION OF TAXATION**

**Savings Institution Tax Act Rules**

**Readoption: N.J.A.C. 18:36**

**Adopted New Rule: N.J.A.C. 18:36-1.5**

Proposed: February 6, 1995 at 27 N.J.R. 479(a).

Adopted: March 10, 1995 by Richard D. Gardiner, Director,  
Division of Taxation.

Filed: March 13, 1995 as R.1995 d.196, **without change**.

Authority: N.J.S.A. 54:50-1, 54:10D-14 and P.L. 1979, c.160, §4.

Effective Date: March 13, 1995, Readoption;  
April 3, 1995, New Rule.

Expiration Date: March 13, 2000.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Executive Order No. 27 Statement**

The Savings Institution Tax Act in its definition of "net income" defines that term with reference to the amount of taxable income, before net operating loss and special deductions which the taxpayer is required to report Federally. N.J.S.A. 54:10D-2d.

While the statute enacted by the Legislature refers to Federal law as a starting point for certain calculations required to compute State tax liability and, therefore, there may be different standards and requirements being imposed in the calculation of applicable Federal and State tax on a subject taxpayer, the adopted rules do not regulate any area in which Federal standards or requirements apply.

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:36.

**Full text** of the adopted new rule follows:

18:36-1.5 Tax credit; commuter transportation benefits

Taxpayers may be eligible for a credit against tax for a portion of the cost of commuter transportation benefits for the relevant accounting or privilege period pursuant to N.J.S.A. 27:26A-15 and rules promulgated thereunder.

**OTHER AGENCIES**

(b)

**HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION**

**Notice of Administrative Correction**

**Zone Regulations**

**Research Distribution Park Zone; Special Exceptions**

**N.J.A.C. 19:4-4.75**

**Take notice** that the Hackensack Meadowlands Development Commission has discovered an error at N.J.A.C. 19:4-4.75. In the production of the 11/21/94 update to the Administrative Code, N.J.A.C. 19:4-4.75(a)6, which was added to this section effective April 2, 1990 (see 21 N.J.R. 3441(a) and 22 N.J.R. 1150(c)), was inadvertently deleted. This notice of administrative correction reinserting the missing paragraph 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**):

19:4-4.75 Research distribution park zone; special exceptions

(a) Special exceptions in the research distribution park zone include:

1.-5. (No change.)

**6. Any satellite antenna that must be located on a tower.**

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(c)

**DIVISION OF REGULATORY AFFAIRS**

**Check Cashing**

**Adopted New Rules: N.J.A.C. 3:24**

**Adopted Amendment: N.J.A.C. 3:23-2.1**

Proposed: December 19, 1994 at 26 N.J.R. 4863(b).

Adopted: March 8, 1995 by Elizabeth Randall, Commissioner,  
Department of Banking.

Filed: March 10, 1995 as R.1995 d.189, **with substantive technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:15A-30 et seq., 17:1-8 and 17:1-8.1.

Effective Date: April 3, 1995.

Expiration Date: April 3, 2000, N.J.A.C. 3:24;  
July 6, 1997, N.J.A.C. 3:23.

**Summary of Public Comments and Agency Responses:**

During the comment period which closed on January 18, 1995, the Division received comments from one source, the New Jersey Check Cashers Association.

**COMMENT:** Commenter objects to N.J.A.C. 3:24-5.6(a), which requires that the checks, drafts, money orders or cash of any other business in which the licensee is engaged shall not be commingled with the cash or checks on hand. Commenter asserts that past policy has permitted licensees to utilize cash from its other businesses, such as check selling or foreign money remitting, to conduct the day-to-day business of check cashing, and that the accounts need be separated only by means of accounting procedures and separate bank accounts. Commenter believes that check selling, wire transfers, utility payments, food stamps and miscellaneous financial services are ancillary services of the check cashing business and are not "other businesses" within the meaning of the check cashers law.

**RESPONSE:** The Department has no objection to a check casher's provision of other services to the consumer. Such services are to be encouraged as enhancing the financial stability of the licensee. However, problems associated with tracing the flow of funds are magnified during examination procedures and are exacerbated when check cashers commingle funds from the check cashing operation with those of unlicensed activities or other licensed businesses, such as foreign money remitting and check selling. The Department does not agree that separate books and separate bank accounts are sufficient to remedy this problem. By requiring that funds utilized in the check cashing business be kept separate in the day-to-day operation of the business, the Department will minimize illicit practices, enhance examination effectiveness, and further the statutory objectives.

**COMMENT:** Commenter objects to the requirement in N.J.A.C. 3:24-2.1(a) that an applicant submit to the Department an unqualified, audited financial statement prepared by a Certified Public Accountant to satisfy capital and net worth requirements. Such financial statement would be prohibitively expensive if required for every branch office and mobile office. He proposes that the Department accept a written opinion rather than a formal audit, from an accountant or CPA for all applications which are subsequent to the licensee's original application.

**RESPONSE:** The Department will continue to require an unqualified, audited financial statement prepared by a CPA for an applicant's initial licensing application. However, N.J.A.C. 3:24-2.1 will be modified upon adoption to provide that for each subsequent application, the applicant may use the initial unqualified, audited financial statement, provided that it is less than 12 months old and that it indicates that the applicant meets the higher net worth and liquid assets necessary for the additional offices sought to be approved.

**COMMENT:** Commenter contends that the definition of "cash" (cashing a check) should not include acceptance of a replacement check for one which has been returned for lack of funds. He questions the Department's legislative authority for such definition.

**RESPONSE:** The Legislature has defined the activity which requires licensing as "cashing a check for consideration" (see N.J.S.A. 17:15A-49a). Whether this involves cashing a check when initially presented, or cashing a replacement check, it is part of an ongoing

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transaction directly involved in the check casher's licensed activity. The Commissioner is granted broad authority to promulgate rules and regulations deemed necessary to effectuate the purposes of this act, N.J.S.A. 17:15A-52. The Department believes that the definition of "cash" is well within such authority.

COMMENT: It is suggested that N.J.A.C. 3:24-4.1 permit a licensee to impose a charge for a returned check.

RESPONSE: It is the Department's intention to prohibit a licensee from imposing a fee on the **customer** who cashes a check which is returned for lack of funds. However, the rule will be amended upon adoption to permit a licensee to impose a fee on the **maker** of such check, which is sufficient to reimburse it for the charge imposed on the licensee by the bank.

COMMENT: It is pointed out that N.J.A.C. 3:24-6.1 is confusing because it appears that in addition to the \$50.00 fee imposed for filing a report under subsection (a), the fee is also required to be paid for providing Currency Transaction Reports. Commenter asks that this be clarified.

RESPONSE: The Department intends to charge a fee of \$50.00 for filing a report when required by N.J.A.C. 3:24-6.1(a). To clarify this issue, subsection (c) will be recodified as subsection (b), and proposed subsection (b) redrafted as (c) to specify that CTR's be maintained in the licensee's files for five years, available to the Department for examination.

COMMENT: Commenter objects to N.J.A.C. 3:24-1.5(a)3, which imposes an application fee of \$250.00 charged for a limited branch office, since these offices are not in operation on a full time basis. A reduced amount, \$25.00, is suggested for a limited branch office.

RESPONSE: This request must be rejected. Although the fee for a limited branch office is a one-time charge, the Department is required to perform considerable work in connection with the processing of such application, and it must recover its costs by means of an appropriate fee, which the Department believes is reasonably related to the work performed.

COMMENT: Commenter suggests that N.J.A.C. 3:24-5.2(a)5 be deleted, since the customer is given the receipt and the mechanism by which the receipt is produced does not allow for an additional copy which could be retained. Commenter believes that the intent of the statute is satisfied by providing the receipt to the customer, and by maintaining other records of transactions specified in these rules.

RESPONSE: The Department disagrees, in that it believes there is no other reliable method by which to verify individual check cashing transactions. It is impractical to rely on a customer's complaint concerning overcharges for check cashing, since most customers do not complain and because there will be no way to improve the occurrence of the overcharge, without a duplicate copy of the receipt. A number of licensees are already using duplicate tape machines which satisfy this requirement.

COMMENT: Commenter suggests that N.J.A.C. 3:24-5.3 serves no useful purpose, is cumbersome and should be deleted.

RESPONSE: There are several fact situations which may give rise to one or more returned checks. One is a situation where one employer may write several pay checks to its employees, all of which bounce. The licensee's follow-up in such situations usually results in the checks' clearing for payment. On the other hand, an improper situation may occur when one or more checks of a particular customer are returned unpaid, and never collected. This will result in a loan to the customer, which is prohibited. By monitoring the licensee's efforts to recover such sums the Department intends to curb such activity to the extent possible. This requirement comports with N.J.S.A. 17:15A-44j, which requires that a licensee notify the Department of the action taken. The Department agrees that a weekly report may be unduly burdensome, and will therefore amend N.J.A.C. 3:24-5.3(a)11 to require that the report be updated monthly.

COMMENT: Commenter suggests that N.J.A.C. 3:24-5.4(a)11 is also cumbersome, has no regulatory purpose, and should be deleted.

RESPONSE: The Department disagrees. To accomplish reconciliation proper accounting procedures require that there be a detailed, well documented record, including cash on hand at close of business day. The existence of a shortage or overage of funds indicates that an error occurred, which must be explained and corrected. The Department intends to continue to monitor such occurrences together with reasons therefor.

COMMENT: Commenter seeks to eliminate the requirement in N.J.A.C. 3:24-5.5(a) that a licensee make its daily deposits in a bank

located in the vicinity of the licensed location and during regular business hours. Commenter states that there are a limited number of banks which transact business with check cashers, these banks are not always located "in the vicinity," and, in any case, some banks have night deposit windows which obviate the need to make deposits during the day.

RESPONSE: The Department agrees with this comment and will modify N.J.A.C. 3:24-5.5(a) to specify that a licensee shall deposit all checks, drafts and money orders no later than the next business day, in the financial institution in this State which has been identified to the Department. Use of a bank's night deposit facility, if any, is permitted.

COMMENT: Commenter objects to N.J.A.C. 3:24-5.7(a)1 which prohibits a licensee from cashing a check made out to "cash." There is no statutory authority, nor regulatory purpose for such prohibition.

RESPONSE: The Department disagrees. Authority for this prohibition is found in N.J.S.A. 17:15A-47a and b. The prohibition against cashing a check made out to "cash" is designed to curb illicit practices.

COMMENT: Commenter suggests that N.J.A.C. 3:24-5.7(a)3 be expanded to include exceptions in addition to a disabled payee, where the licensee knows its customer and agrees to assume the risk of cashing a check for someone other than the named payee.

RESPONSE: The Department declines to so expand this section. By limiting the exception to a disabled payee, the Department intends to curb abuses which arise when a person other than the named payee attempts to cash a check.

COMMENT: Commenter objects to N.J.A.C. 3:24-3.1 which requires documentation sufficient to demonstrate compliance with applicable State, county and municipal laws, ordinances and traffic regulations. In its place it is proposed that a Certificate of Occupancy be provided, since this would indicate that the location has passed appropriate reviews.

RESPONSE: The Department disagrees. There are a number of State and local laws which may affect a licensee's intended use of a particular premises. Not all of these would be satisfied, or even would require a Certificate of Occupancy. The Department would prefer to rely on the applicant to demonstrate that all appropriate measures have been taken to insure compliance. Nevertheless, the Department will amend N.J.A.C. 3:24-3.1 to specify that where it is not feasible to supply written documentation from a governmental entity, the licensee shall supply a notarized written statement which identifies the measures taken and which certifies that the licensee is in compliance.

COMMENT: Commenter proposes an addition to N.J.A.C. 3:24-1.6 as follows: An applicant shall demonstrate to the Commissioner's satisfaction that one or more of the partners, officers, directors, substantial stockholders or owners of the applicant, as the case may be, has management or supervisory experience of at least one year in the check cashing business with a licensee in this State or in the case of changes of control that at least one individual with such experience or such other equivalent experience deemed adequate by the Commissioner has been engaged by the applicant for a period of at least one year following the date of commencement of business or the effective date of the change of control, whichever is the case. Commenter states that the above proposal is similar to a regulation presently in effect in New York State and that it would help to insure that the check cashing business would be operated honestly and fairly.

RESPONSE: The Department declines to impose additional requirements based on experience, at this time. Other licensed activities, some of which are more complex than check cashing, do not have similar restrictions, and it is believed that such restrictions would be unduly restrictive to business opportunity for entrepreneurs in New Jersey. Protection of the public is enhanced by other features of the application process, such as criminal background checks, proof of financial responsibility and evidence of good character.

COMMENT: Commenter suggests an additional amendment to the rules to state that any licensee who does not engage in the business of check cashing for a period of three consecutive months, shall be determined to be engaging in conduct which is grounds for revocation of the license. He states that this makes sense in light of the prohibition against the location of any office or mobile office within 2,500 feet of an existing office or mobile office, because it would prevent a licensee from obtaining a license for the sole purpose of limiting competition in a particular area.

RESPONSE: The Department believes that it is unnecessary to impose such rule at this time. There is no evidence that licensees are engaging, or will engage in the practice described by the commenter, and there are situations where licensees are unable to begin their business activity for a period of time after having received their licenses, as for example,

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when a location is undergoing extensive renovation. This suggestion may be reevaluated at a future time if appropriate. In the interim, any case which is brought to the Department's attention will be carefully scrutinized.

**COMMENT:** Commenter suggests that any licensee who is found to have violated the check cashing law be prohibited from doing business for a period of three years. It is felt that a fine is not a sufficient deterrent.

**RESPONSE:** The Commissioner is vested with discretion pursuant to N.J.S.A. 17:15A-48a, to revoke or suspend a license for the reasons set forth in N.J.S.A. 17:15A-48. It is therefore not necessary to repeat this authority in the rules.

**COMMENT:** It is requested that the Commissioner issue quarterly reports summarizing the status of all investigations and penalties.

**RESPONSE:** No rule is necessary to enable the Commissioner to issue a report or to provide public information, as appropriate to members of the general public. However, present limitations of staff and resources must be considered. It is not planned at this time for the Commissioner to routinely issue such reports. Items deemed newsworthy will continue to be reported by the press as is done at present, and the Department will continue to summarize all its activities in its annual, published report.

#### **Summary of Agency-Initiated Changes:**

N.J.A.C. 3:24-5.2(a)6 is added to the Summary of Business Records, "Any other checks cashed which do not fit into categories (a)1 through 5 above." The addition of N.J.A.C. 3:24-5.2(a)6 is only a bookkeeping clarification. A check casher may have a good customer who cashes two percent checks, but the check casher may decide to charge him a special rate, say 1.75 percent. If this is done but not properly accounted for it will confuse the records and not allow for a clear reconciliation. Therefore any deviations from the statutory fee scales need to be listed clearly.

N.J.A.C. 3:24-5.4(a)11 will be clarified to delete the words "in detail" and add the words "(disposition or resolution)" so as to make clear the nature of information sought.

N.J.A.C. 3:24-1.4(d) will be clarified by the addition of the words "in addition to the documents listed in (c) above."

#### **Executive Order No. 27 Statement**

An Executive Order No. 27 analysis is not required because N.J.S.A. 17:15A-30 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 (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]**):

#### **3:23-2.1 Licensees**

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

#### **STATUTORY**

....  
Check Casher \$2,000.00 \$1,200.00 \$600.00 (N.J.S.A. 17:15A-40)  
....

#### **CHAPTER 24 CHECK CASHING**

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **3:24-1.1 Purpose**

The purpose of this chapter is to implement and to augment the requirements of N.J.S.A. 17:15A-30 et seq., "The Check Cashers Regulatory Act of 1993."

##### **3:24-1.2 Scope**

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

##### **3:24-1.3 Definitions**

Words and terms, when used in this chapter, shall have the meanings as defined at N.J.S.A. 17:15A-31 unless defined below or the context clearly indicates otherwise.

"Act" means N.J.S.A. 17:15A-30 et seq., "The Check Cashers Regulatory Act of 1993."

"Appropriate documentation" means a corporate resolution filed with the Secretary of State, Federal taxpayer identification number, filed New Jersey Certificate of Authority, filed trade-name certificate or other readily verifiable official document.

"Cash" (cashing a check) includes both the exchange of money for the presentation of a check, and the acceptance of a replacement check for one which has been returned for insufficient funds.

"Consideration" means, but is not limited to, a requirement by the check casher that a person make a purchase or otherwise patronize a business operated by the check casher in order to cash a check at the check cashing establishment, or a returned check charge imposed by a bank.

"Disabled person" means, for the purpose of these rules, a person whose disability either temporarily or permanently prevents him from going into a check cashing establishment for the purpose of cashing a check.

"Essential records" includes all records listed in N.J.S.A. 17:15A-44l and m; N.J.A.C. 3:24-5.3(a); and all corporate resolutions.

"Insolvent" means that the check cashing licensee cannot or does not pay his or her debts as they become due in the normal course of business, or his or her financial statement indicates that the licensee has a negative net worth.

"Person" includes corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, unless the context clearly indicates otherwise.

##### **3:24-1.4 License fees; reporting fee**

(a) The Department shall charge the following biennial fees to apply for or renew a license pursuant to this chapter:

1. A licensing fee of \$1,200 for a principal office;
2. A licensing fee of \$1,200 for a full branch office; and
3. A licensing fee of \$1,200 for a mobile office.

##### **3:24-1.5 Application fees**

(a) The following application fees shall be charged:

1. Application for a principal office, \$250.00;
2. Application for a full branch office, \$250.00;
3. Application for a limited branch office, \$250.00;
4. Application for a mobile office, \$250.00, plus \$100.00 for each additional geographic location at which the mobile office will stop;
5. Application for change of control pursuant to N.J.S.A. 17:15A-42, \$100.00; and
6. Application for approval to change the address of an existing office, \$75.00.

##### **3:24-1.6 Application process; requirements**

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

(b) In addition to the information required to be furnished to the Department by N.J.S.A. 17:15A-33 through 39, the applicant shall supply the following as part of its application for each director, substantial stockholder, officer, owner, partner, manager and employee of the business to be licensed:

1. A Certificate of Certified Consent for criminal investigative purposes;
2. Photographs of the persons listed in (b) above;
3. A fingerprint card supplied with application (Form FD-258);
4. Application fee(s) as required by N.J.A.C. 3:24-1.3;
5. Any other information or supporting documentation relating to the operation of the proposed check cashing business which the Commissioner may require; and
6. A check in the amount of \$50.00 for each person for the costs of background investigations, including fingerprinting;

(c) Corporate applicants for a check cashing license shall submit a copy of the Certificate of Incorporation showing the filed or recording stamp of the New Jersey Secretary of State, and shall

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identify the registered agent for service of process. Foreign corporations shall submit a New Jersey Certificate of Authority in addition to corporate certificate.

(d) Individual or partnership applicants using a trade name shall submit a copy of the trade name as filed with the county clerk showing date of recording.

(e) Corporations using fictitious names shall file a copy of registration of such name, as recorded, as part of their applications\*, **in addition to the documents listed in (c) above\*.**

(f) A new employee, hired after a license has issued, may begin work pending receipt by the Department of fingerprint results provided all other information is complete and satisfactory.

**SUBCHAPTER 2. FINANCIAL RESPONSIBILITY****3:24-2.1 Proof of net worth; records**

(a) An applicant shall submit to the Department an unqualified, audited financial statement prepared by a Certified Public Accountant or a public accountant, sufficient to satisfy the capital and net worth requirements of N.J.S.A. 17:15A-37.

**\*(b) For each subsequent application, the applicant may use the initial unqualified, audited financial statement, provided that it is less than 12 months old and that it indicates that the applicant meets the higher net worth and liquid assets necessary for the additional offices sought to be approved.\***

**\*[ (b) ] \*\* (c) \*** In the event the accountant does not maintain an office in New Jersey, the licensee's records shall be examined at the licensee's main office.

**SUBCHAPTER 3. PLACE OF BUSINESS****3:24-3.1 Compliance with State and local law**

**\*(a) \*** The applicant shall supply necessary permits, variances or other documentation sufficient to demonstrate that the facility is in compliance with all applicable State, county and municipal laws, ordinances and traffic regulations.

**\*(b) In the event the applicant is unable to obtain sufficient documentation from a governmental entity, the applicant shall supply the department with a notarized written statement which identifies the measures taken and which certifies that it is in compliance.\***

**SUBCHAPTER 4. CHECK CASHING FEES; POSTING****3:24-4.1 Returned check fee; prohibition**

**\*(a) \*** No licensee shall impose any charge or fee for a returned check **\*on the customer who cashes the check\*.**

**\*(b) A licensee may charge a fee to the maker of the check, sufficient to reimburse the licensee for the charge imposed by the bank which returns the check unpaid.\***

**3:24-4.2 Posting of fees; signs**

(a) 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 Department shall determine the number of signs which shall be posted and shall designate those areas in the check cashing facility where these signs will be displayed, depending upon the size of the office and its physical layout. These signs shall be in both the English and Spanish language except where the Department deems it necessary that a different or additional language be used.

(b) Each sign shall be printed on heavy cardboard or other durable material, with printed information in a minimum of 22 point type with appropriate headings of at least 24 point bold type. These signs shall read as follows:

**STATE LICENSED CHECK CASHER  
MAXIMUM FEES YOU CAN BE CHARGED  
2% OF YOUR CHECK**

Example:

New Jersey check	\$300.00	
Maximum fee	6.00	2%
Cash to you	\$294.00	

**CHECKS PAYABLE TO PERSON UNDER AID TO FAMILIES  
WITH DEPENDENT CHILDREN (AFDC)  
1% OF YOUR CHECK**

Example:

AFDC check	\$300.00	
Maximum fee	3.00	1%
Cash to you	\$297.00	

**SUPPLEMENTAL SECURITY INCOME CHECKS (Sub XVI)  
1½% OF YOUR CHECK**

Example:

SSI check	\$300.00	
Maximum fee	4.50	1½%
Cash to you	\$295.50	

**SUBCHAPTER 5. CONDUCT OF BUSINESS****3:24-5.1 Check cashing procedure**

(a) In addition to the requirements of N.J.S.A. 17:15A-44c, e, and j, each licensee shall:

1. Pay to every customer tendering any check, draft or money order to be cashed, the entire face amount of such instrument in cash less any charges permitted by law, on the same date upon which such instrument is presented;

2. Indicate on every check, draft or money order cashed at the time of cashing, the date on which such item was cashed; and

3. Give each person presenting a check, draft or money order for cashing upon completion of each transaction an itemized receipt indicating the name of the check casher, the teller number indicating which teller completed the transaction, the amount of the check cashed, the amount of the fee charged to cash the check and the amount of cash given to the person cashing the check.

**3:24-5.2 Recordkeeping**

(a) In addition to the requirements of N.J.S.A. 17:15A-44l, a Summary of Business Record shall be maintained in which the number of checks, drafts, or money orders cashed, their total face amount, and the aggregate fees received, shall be shown for each business day and totaled for each calendar month. If this information is included in a horizontal form of daily cash reconciliation, such record will be acceptable in lieu of a separate summary of business. The summary record shall consist of \*[five]\* **\*six\*** categories:

1. All two percent checks cashed;
2. All one percent checks cashed, including AFDC checks;
3. All one and one-half percent checks cashed, including SSI checks;

4. All no-fee checks cashed; \*[and]\*

5. All check cashing customer receipts\*; **and\***

**\*6. Any other checks cashed which do not fit into categories (a)1 through 5 above\*.**

(b) A viewable photographic record of checks, drafts and money orders cashed, which sets forth all the information pertaining to said checks, drafts and money orders required by N.J.S.A. 17:15A-44d and l and (a) above will be acceptable in lieu of the records required by this section.

1. In such event, the photographic film must be processed promptly after each roll of film has been exposed, and the viewable records maintained by the licensee for at least three years after the date of the last photograph on the roll.

2. The licensee shall maintain a log indicating the beginning and ending business days covered by each individual roll of processed photographic records.

(c) Each licensee shall reconcile its bank statement at least monthly.

**3:24-5.3 Return items record**

(a) A return items record shall be maintained in which the following information shall be clearly recorded with respect to each check, draft or money order, returned unpaid:

1. The date on which each check, draft or money order was originally cashed by licensee;
2. The issuer of each check, draft or money order;

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3. The date of each check, draft or money order returned unpaid;
4. The name of the drawer of each check, draft or money order returned unpaid;
5. The name of the payee or last endorser of each check, draft or money order;
6. The amount of each check, draft or money order returned unpaid;
7. The name of the bank on which each check, draft or money order is drawn;
8. The reason for which each check, draft or money order was returned unpaid;
9. The date on which each check, draft or money order was redeposited;
10. The date and manner of payment of each check, draft or money order, with complete details of the disposition made of it, including a record of the specific check, draft or money order utilized in the payment of the original item; and
11. A current record, updated \*[weekly]\* **\*(monthly)\***, showing the efforts and progress being made to collect any unpaid checks, drafts, or money orders, including the receipt of partial payments.

### 3:24-5.4 Daily cash reconciliation

- (a) A daily cash reconciliation shall be maintained which shall contain the following information:
1. Cash on hand at opening of business;
  2. Checks, drafts or money orders cashed the previous day and on hand at opening of business;
  3. Cash received during the day showing in detail the source of funds;
  4. The total amount of fees received during the day;
  5. The sum of items (a)1 through 4 above;
  6. The total deposits made during the day;
  7. Other cash paid out during the day showing in detail the nature of the disbursement;
  8. The sum of items (a)6 and 7 above;
  9. Item(a)5 less item (a)8 above, representing the cash on hand and the total of undeposited checks, drafts or money orders, cashed during the day;
  10. The total of cash included in item (a)9 above; and
  11. Cash on hand at close of business day with shortages or overages explained \*[in detail]\* **\*(disposition or resolution)\***.

### 3:24-5.5 Deposits

- (a) \*[Except as hereinafter stated, all checks, drafts and money orders shall be deposited in the licensee's account in an institution in this State situated in the vicinity of the licensed location, not later than the first business day following the day on which they were cashed. Such items shall be deposited during regular business hours so as to enable credit for the deposits to the licensee's account on that business day.]\* **\*All checks, drafts and money orders shall be deposited no later than the next business day in the financial institution in this State which has been identified to the Department. Use of a bank's night deposit facility, if any, is permitted.\***
- (b) When the number of payroll checks cashed amount to 50 or more, the licensee may present such package of checks to the drawee bank or the maker of the checks and receive in exchange a single draft, provided full details of the transaction are recorded. Separate tapes of these transactions shall be maintained as set forth in N.J.A.C. 3:24-5.2.

(c) All checks, drafts, money orders cashed on any one day and deposited on the same day or next business day shall be deposited under a separate deposit total and not commingled with any other day's business.

(d) A violation of this section shall occur if a licensee instead of depositing all checks, drafts and money orders as required:

1. Cashes all or any of them at another check casher;
2. Exchanges all or any of them for another check or checks; or
3. Negotiates all or any of them in any manner or for any purpose other than that provided in this section.

### 3:24-5.6 Dual business deposit and record requirements

(a) The checks, drafts, money orders or cash of any other business in which the licensee is engaged shall not be commingled with other

funds in the licensee's bank account or with the cash or checks on hand.

(b) Separate records shall be kept for a check cashing business conducted on the same premises where another business is also operated. In such cases the licensee shall apportion to the check cashing business its share of expense. Reasonable estimates may be used.

### 3:24-5.7 Prohibitions

- (a) In addition to the prohibitions contained in N.J.S.A. 17:15A-30 et seq., no licensee or person acting on behalf of a licensee shall:
1. Cash a check made payable to "cash";
  2. Cash a check using any form of consideration other than cash; or
  3. Cash a check for anyone other than the payee named on the face of the check, except where the presenter of the check to be cashed has obtained a written, notarized authorization from a disabled payee specifically requesting the presenter to cash the check.

## SUBCHAPTER 6. ADDITIONAL REPORTS

### 3:24-6.1 Additional reports; fee

(a) In any case in which the Commissioner finds that reasonable grounds exist for requiring additional recordkeeping and reporting, the Commissioner may issue an order requiring any licensee or group of licensees in a geographic area to provide information regarding transactions that involve a total dollar amount or denomination of \$2,500 or more, including the names of the persons participating in those transactions.

\*[(b) The licensee shall supply to the Commissioner and the New Jersey Division of Taxation a copy of any Currency Transaction Report it is required to file with the Federal government.]\*

\*[(c)]\*\***(b)\*** Licensees filing a report pursuant to this section shall pay a fee of \$50.00 for each such report filed.

**\*(c) A licensee shall maintain in its files for five years a copy of any Currency Transaction Report it is required to file with the New Jersey Attorney General's office and the Federal government.\***

## HUMAN SERVICES

### (a)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Prosthetic And Orthotic Services

#### Adopted New Rules: N.J.A.C. 10:55-1 and 2

Proposed: December 19, 1994 at 26 N.J.R. 4979(a).

Adopted: March 6, 1995, by William Waldman, Commissioner, Department of Human Services.

Filed: March 6, 1995 as R.1995 d.185, **with substantive and technical changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6b(6); 30:4D-7, 7a, b and c; 30:4D-12.

Effective Date: April 3, 1995.

Expiration Date: April 3, 2000.

#### Summary of Public Comments and Agency Responses:

There were **no public comments** received by the Division. As N.J.A.C. 10:55 expired March 8, 1995 pursuant to Executive Order No. 66(1978), the repeal of the chapter is moot.

#### Summary of Changes upon Adoption:

N.J.A.C. 10:55-2, HCFA Common Procedure Coding System (HCPCS), is consistent with the codes published in Medicare's National Level II codes. Since the time of publication of the proposal, the Division has been advised of the changes made in these National codes effective January 1, 1995. In order to remain consistent with National standards, the Division is including these changes upon adoption.

#### Executive Order No. 27 Statement

The Federal regulations governing prosthetics and orthotic services may be found at 42 CFR 440.70 and 120. With respect to home health

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services (42 CFR 440.70(b)(3), medical supplies, equipment and appliances suitable for use in the home are a required component of home health services, when medically necessary. Prosthetic devices are defined as replacement, corrective or supportive devices (prescribed by a physician) to (1) artificially replace a missing portion of the body, (2) prevent or correct physical deformity or malfunction, or (3) support a weak or deformed portion of the body (42 CFR 440.120(c)).

The Federal definitions do not go into any detail as to the type of prosthetic or orthotic (P&O) supplies that can be issued, the cost of such items, etc.

Therefore, the Division had to use its administrative discretion to develop a program that enabled Medicaid beneficiaries to receive these types of services when medically necessary. The cost of providing P&O supplies was set forth in the Economic Impact statement of the proposal.

The Division is always revising the HCPCS codes to conform with current technology for the manufacture and/or fabrication of P&O equipment and to reflect National standards.

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

## CHAPTER 55

## PROSTHETIC AND ORTHOTIC SERVICES

## SUBCHAPTER 1. GENERAL PROVISIONS

## 10:55-1.1 Introduction

(a) This chapter of the manual N.J.A.C. 10:55 outlines the rules of the New Jersey Medicaid program relevant to the provision of prosthetic and orthotic services to Medicaid recipients. It also lists the specific requirements which must be followed in order to be approved and to participate as a New Jersey Medicaid provider of prosthetic and orthotic services.

(b) The Prosthetic and Orthotic Services Manual N.J.A.C. 10:55 does not include rules for the provision to Medicaid recipients of dentures, artificial eyes, or hearing aids. These services are covered in the New Jersey Medicaid program's Dental Services Manual N.J.A.C. 10:56, Vision Care Services Manual N.J.A.C. 10:62, and the Hearing Aid Services Manual N.J.A.C. 10:64, respectively.

## 10:55-1.2 Definitions

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

"Accredited" means those facilities that have met the standards of qualification as established by the American Board of Certification in Orthotics and Prosthetics, Incorporated, 1650 King Street, Suite 500, Alexandria, VA 22314-2747.

"Certified" means those individuals that have met the standards of qualification and the requirements as established by the American Board of Certification in Orthotics and Prosthetics, Incorporated (see address above).

"Custom-made" means a device or appliance fabricated (constructed and/or assembled) in an approved facility (see N.J.A.C. 10:55-1.3) and designed to fit and perform a useful function solely for that individual for whom it was ordered.

"Facility" means the work area of operation of the prosthetist, orthotist or pedorthist.

"Orthotic appliances" means a device or brace prescribed by a physician or other practitioner, within the scope of his or her practice as defined by State law, for the purpose of providing support, increased function, and overcoming physical impairment or defects.

1. A brace includes rigid and semi-rigid devices used for the purpose of supporting a weak or deformed body member or restricting or eliminating motion in a diseased or injured part of the body.

"Orthotist" means one certified by the American Board of Certification in Orthotics and Prosthetics, Incorporated in the profession of measuring, designing, fabricating and fitting of orthotic devices.

"Pedorthist" means one certified by the American Board of Certification in Orthotics and Prosthetics, Incorporated in the profession of designing, manufacturing, fitting and modification of footwear and related appliances.

"Practitioner" means a physician or other medical care individual licensed or certified under State law to practice his or her profession.

"Prosthetic appliances" means functional replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner within the scope of his or her practice as defined by State law to:

1. Artificially replace a missing portion of the body; or
2. Prevent or correct physical deformity or malfunction; or
3. Support a weak or deformed portion of the body.

"Prosthetist" means one certified by the American Board of Certification in Orthotics and Prosthetics, Incorporated in the profession of making of artificial parts to replace a missing body part or to augment the performance of a natural function externally.

## 10:55-1.3 Requirements for approval as a provider of prosthetic and orthotic services

(a) In order to be a fully approved New Jersey Medicaid provider of prosthetic and orthotic services, the applicant shall:

1. Submit a completed application (see N.J.A.C. 10:49-3.2) together with a copy of the facility and personnel accreditation/certification by the American Board for Certification in Orthotics and Prosthetics. (The applicant may be applying for either orthotics or prosthetics or both) and;
2. Meet the following criteria:

i. Appliances shall be fabricated in the facility and not sent out to another facility;

ii. The facility shall employ personnel (owner and/or employee(s)) certified in the field of speciality of the appliance(s) being produced by that facility.

(1) Exception: If the provider or facility limits the scope of practice to shoe orthotics, custom molded shoes, and shoe modifications, accreditation/certification by the Board for Certification in Pedorthics may be accepted in lieu of accreditation/certification by the American Board for Certification in Orthotics and Prosthetics.

iii. Facilities and their qualified personnel shall maintain current accreditation/certification by the American Board for Certification in Orthotics and Prosthetics, Incorporated.

(b) In order to be granted "provisional" approval by the New Jersey Medicaid program, facilities and/or personnel whose application for accreditation/certification is pending with the American Board for Certification in Orthotics and Prosthetics, Incorporated, the applicant shall:

1. Submit a letter requesting "provisional" provider status together with a copy of the American Board for Certification in Orthotics and Prosthetics, Incorporated accreditation/certification acceptance letter and;
2. Meet the following criteria:

i. Appliances shall be fabricated in the facility and not sent out to another facility;

ii. The facility may be noncertified and may employ certified or noncertified personnel (owner and/or employee(s)).

3. "Provisional" status shall be approved for a period of one year commencing with the date of the letter of acceptance by the American Board for Certification in Orthotics and Prosthetics, Incorporated and shall expire, without further notification, if certification has not been obtained.

(c) If a certified facility loses its certified prosthetist(s), orthotist(s) and/or pedorthist(s), the fiscal agent shall be notified within 5 working days of the loss. A grace period of 180 days from the date of such loss shall be granted for demonstrating recertification before provider eligibility is terminated. In the interval between the loss and recertification of personnel, the minimum requirement for continuing acceptable Medicaid provider eligibility is that fabricated appliances must be fabricated by personnel whose board eligibility is established.

## 10:55-1.4 Requirements for program participation as prosthetic and orthotic services provider

(a) An approved Medicaid provider of prosthetic and orthotic services, shall be responsible for the following:

1. Assuring that an appliance furnished by the approved facility conforms to the prescriber's prescription and the description of the

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appliance as set forth in the accepted nomenclature used by the American Board for Certification in Orthotics and Prosthetics, Incorporated; fitting the appliance properly to the extent that the recipient's condition(s) permits; and providing maximum efficiency and comfort consistent with the condition(s) of the recipient for whom the appliance is prescribed;

2. Assuming liability for defective materials over which the provider has (or should have had) control;

3. Agreeing to accept return of an appliance when the prescribing physician, after appropriate evaluation of the appliance(s), determines that the appliance(s) does not conform to the prescription and description of the appliance set forth in the accepted nomenclature by the American Board for Certification in Orthotics and Prosthetics, Incorporated; and/or does not fit properly, and/or is not of acceptable quality, and/or does not provide maximum efficiency and comfort consistent with the condition of the recipient for whom it is prescribed, and refabricating the appliance; and

4. Warranting against defective material and workmanship (except for parts normally worn from natural use) for a period of one year from date of delivery to and acceptance by the recipient. If it is found that either the material or the workmanship is defective, the provider shall be allowed a reasonable opportunity to make such adjustment and/or corrections or replacement without additional charge to the Medicaid program, or the recipient.

i. The warranty shall not apply to an appliance corrected/altered as a result of a change in the recipient's physical condition (anatomical change).

ii. The warranty shall not apply to a misused appliance or an appliance altered by other than the original provider.

#### 10:55-1.5 Prior authorization for prosthetic and orthotic appliances

(a) This section specifies the services that require prior authorization and the procedures to follow. Prior authorization shall be required for:

1. Any prosthetic appliance (except for preparatory (temporary) upper and lower prostheses) for which the provider's charge is \$1,000.00 or more;

2. Any orthotic appliance for which the provider's charge is \$500.00 or more; or

3. Replacement of parts of an appliance when the cost exceeds \$250, except in an emergency (see (d) below);

i. Prior authorization shall not be required for replacement of parts which involve solely the mechanical aspects of an appliance and for which the charge is \$250.00 or less.

4. Labor (hourly rate) charges for repair of items or appliances totalling more than \$250.00 shall be prior authorized by the Medicaid District Office (MDO). (See codes L4200 and L7500 (Repair), at N.J.A.C. 10:55-2.)

i. Total labor (hourly rate) charges for repair of items or appliances, not under warranty, are reimbursable for up to \$250.00.

5. Any foot and ankle orthotic appliance;

6. Any orthopedic footwear; or

7. Custom molded shoes.

(b) If prior authorization is required, the provider shall not provide those items or services until the authorization is received.

(c) To request prior authorization for prosthetic and orthotic services, the provider shall submit form FD-357 (Request for Prior Authorization for Prosthetic and Orthotic Services, see Appendix A), together with a prescription as specified in N.J.A.C. 10:55-1.6, to the appropriate Medicaid District Office (MDO) (see N.J.A.C. 10:49 Appendix-Form #17 for address) or to the Central Office of Medicaid, Office of Medical Affairs and Provider Relations, Division of Medical Assistance and Health Services, Mail Code #15, CN-712, Trenton, New Jersey, 08625-0712.

1. Prior authorization for all orthopedic footwear and foot orthotics shall be obtained from the Central Office of Medicaid, Office of Medical Affairs and Provider Relations, except for all components of orthopedic footwear attached to a bar or brace (including the bar, brace, and/or shoe), which must be obtained from the appropriate MDO.

i. When requesting prior authorization for custom molded shoes, the provider shall submit a FD-357 form together with a copy of

the prescription and a cost estimate which shall include a detailed cost breakdown of the basic shoe plus any additional charges for materials and/or services.

2. The fiscal agent will inform the provider that the authorization request is approved, denied, or suspended. If approved, the letter to the provider will indicate the authorization number that must be recorded at Item 23B on the 1500 N.J. claim form.

(d) The Medicaid District Office shall grant authorization by telephone when an emergency condition exists, as defined in (d)1, below, and N.J.A.C. 10:49-6.1.

1. When an orthotic or prosthetic appliance or device becomes non-functional due to mechanical failure and must be repaired immediately for the recipient to continue normal functional behavior, the situation shall be considered an emergency. Emergencies include, but are not limited to, mechanical breakdown, fitting problems due to anatomical change, skin breakdown, irritation and/or ulcer, pressure pain, or an ill-fitting socket.

#### 10:55-1.6 Prescription policies

(a) A personally signed and dated order (prescription) by the prescriber shall be required for the following:

1. Prosthetic and orthotic appliances;

2. Repair and replacement of parts for custom-made prosthetic and orthotic appliances; and

3. Orthopedic footwear.

(b) The prescription shall include the following:

1. Recipient's name, age, address, HSP (Medicaid) Case Number and Patient Person Number;

2. Relevant diagnosis supporting need for custom-made prosthetic and orthotic appliances; and

3. A detailed breakdown of the appliance ordered, written according to the accepted New Jersey prosthetic and orthotic nomenclature as set forth in the nomenclature accepted by the American Board for Certification in Orthotics and Prosthetics, Incorporated. A prescription written: "leg brace", "artificial limb", "orthopedic shoes", for example, shall not be acceptable.

#### 10:55-1.7 Policy on footwear

(a) For purposes of the New Jersey Medicaid program, "an orthopedic shoe" means footwear, with or without accompanying appliances, used to prevent or correct gross deformities of the feet, which is properly fitted as to length and width, and consists of the following basic parts:

1. Correct straight last line;

2. Heels with sufficient bearing surface;

3. Toe with ample room for function;

4. Sole of sufficient weight for foot protection;

5. Rigid shank;

6. Properly fitting upper;

7. Smooth and protective lining; and

8. Snug fitting heel counter.

(b) Orthopedic footwear shall be reimbursable under the following conditions:

1. When attached to a brace or bar; and/or

2. When part of the normal (customary, usual) postoperative or postfracture treatment program; and/or

3. When used to correct or adapt to gross foot deformities.

#### 10:55-1.8 Reimbursement for prosthetic and orthotic appliances

(a) This section outlines the Program's policy of reimbursement for prosthetic and orthotic services and specifies the procedure for submitting a claim to request payment.

(b) Providers of prosthetic and orthotic appliances shall be reimbursed on a fee-for-service basis not to exceed the maximum fee schedule allowance in N.J.A.C. 10:55-2. Generally, the reimbursement policy for the purchase or repair of any appliance or footwear is in accordance with the lower of the Medicaid maximum fee allowance or the provider's usual and customary charge. In certain instances, a maximum fee allowance can not easily be established because of the variety of items that can be provided under the same HCPCS code. In those instances, the notation "B.R.", by report,

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is listed in the fee schedule. In those cases, Medicaid reimbursement will be established by the Division after a review of the additional material submitted by the provider.

1. An additional labor charge shall only be paid for repair-related activities after warranty or prescription change. Such a charge shall not be reimbursed for a new item or appliance.

2. If it is necessary for the provider to visit the recipient at home or another setting to measure, fit or deliver an appliance, the following conditions shall apply:

i. The provider shall be reimbursed for travel time when the distance exceeds five miles one way. If more than one recipient is seen during the visit, travel time allowance shall only be billed for the initial recipient, in accordance with procedure code X3680, Travel time, N.J.A.C. 10:55-2.

ii. A maximum of three "home visits" shall be allowed, unless there is adequate documentation, including a prescription, justifying the need for additional visits.

(b) To request reimbursement for a service provided, the provider shall submit a 1500 N.J. claim form using HCPCS procedure code(s) to identify the item or service provided. Instructions for submitting claims for payment are provided in the Fiscal Agent Billing Supplement following this chapter N.J.A.C. 10:55.

1. HCPCS procedure codes are listed in N.J.A.C. 10:55-2—HCPCS, the HCFA (Health Care Financing Administration's) Common Procedure Coding System).

2. Instructions for the completion of claim forms and other forms are provided in the Fiscal Agent Billing Supplement following N.J.A.C. 10:55-2.

i. Requirements for the timely submission of claims are listed in the Administration Chapter of this manual (N.J.A.C. 10:49-7.2).

3. A provider shall submit a copy of the prescription along with the claim form to the fiscal agent, when the charge for repair and/or replacement of parts is less than \$250.00.

(c) The provider shall verify recipient eligibility, in accordance with N.J.A.C. 10:49-2. Payment shall not be made for services provided to an ineligible individual, even if the service was prior authorized, except under the following circumstances:

1. If fabrication of an appliance (including repair or replacement of parts on existing appliance) has commenced following authorization but has not been completed during the recipient's period of eligibility, reimbursement to the provider shall be allowed.

2. In circumstances involving the recipient over which no one may have control, such as moving out-of-state, or in case of death of the recipient, reimbursement will be made in an amount consistent with the stage of completion of the appliance consistent with the Program's Maximum Fee Allowance schedule.

i. The provider shall use the date fabrication of the appliance was begun as the date of service when the above situation(s) occur(s).

## **SUBCHAPTER 2. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)**

### **10:55-2.1 Introduction**

(a) The New Jersey Medicaid program has adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). The HCPCS procedure codes listed in this subchapter shall be used when filing a claim for prosthetic and/or orthotic services.

1. The responsibility of the prosthetic and orthotic services provider when rendering services and requesting reimbursement is listed in N.J.A.C. 10:55-1 of the Prosthetic and Orthotic Services Manual.

### **10:55-2.2 Elements of HCPCS coding system**

(a) The list of HCPCS procedure codes in N.J.A.C. 10:55-2.3 and N.J.A.C. 10:55-2.4 is arranged in tabular form with specific information for each code given under columns with the titles "HCPCS CODE," "DESCRIPTION," and "MAXIMUM FEE ALLOWANCE."

(b) The column titled "MAXIMUM FEE ALLOWANCE" indicates the maximum amount of reimbursement or the following symbol:

1. Where "B.R." (By Report) is listed instead of a dollar amount, it means that additional information will be required in order to properly evaluate the service. In such instances, the provider shall attach a copy of the report to the claim form.

(c) Services and procedures may be modified under certain circumstances. When applicable, the modifying circumstances should be identified by the addition of alphabetic and/or numeric characters at the end of the HCPCS procedure code. The New Jersey Medicaid program's recognized modifier codes for prosthetic and orthotic services are as follows:

1. "RP" (Repair and/or Replacement) is used to indicate repair and/or replacement of prosthetic and orthotic devices. The claim shows the HCPCS procedure code for the repairs and/or parts, followed by the "RP" modifier and the charge for the repairs and/or parts.

2. "XE" (Non-Medicare-covered Service) is used to indicate that a service provided to a Medicare/Medicaid recipient is not reimbursable by Medicare.

### **10:55-2.3 HCPCS Procedure Codes and Maximum Fee Allowance Schedule for Orthotic Services**

HCPCS Code	Description	Maximum Fee Allowance
<b>(a) ORTHOTIC DEVICES (L0100-L0999)</b>		
<b>SPINAL: CERVICAL</b>		
L0100	Cervical, craniostenosis, helmet molded to patient model	300.00
L0110	Cervical, craniostenosis, helmet nonmolded	72.00
L0120	Cervical, flexible, nonadjustable (foam collar)	13.04
L0130	Cervical, flexible, thermoplastic collar, molded to patient	54.40
L0140	Cervical, semi-rigid, adjustable (plastic collar)	24.40
L0150	Cervical, semi-rigid, adjustable molded chin up (plastic collar with mandibular/occipital piece)	75.20
L0160	Cervical, semi-rigid, wire frame occipital/mandibular support	100.00
L0170	Cervical collar, molded to patient model	300.00
L0172	Cervical collar, semi-rigid, thermoplastic foam, two piece	68.34
L0174	Cervical collar, semi-rigid, thermoplastic foam, two piece with thoracic extension	113.90
<b>MULTIPLE POST COLLAR</b>		
L0180	Cervical, multiple post collar occipital/mandibular supports, adjustable	163.80
L0190	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars (Somi, Guilford, Taylor types)	240.00
L0200	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars, and thoracic extension	175.00
<b>SPINAL: THORACIC</b>		
L0210	Thoracic rib belt, custom fitted	13.20
L0220	Thoracic rib belt, custom fabricated	24.40
<b>SPINAL: THORACIC—LUMBAR—SACRAL ORTHOSIS (TLSO)—FLEXIBLE</b>		
L0300	Thoracic-lumbar-sacral-orthoses (TLSO), flexible (dorso-lumbar surgical support) custom fitted	101.68
L0310	TLSO, flexible, (dorso-lumbar surgical support), custom fabricated	214.80
L0315	TLSO, flexible dorso-lumbar surgical support, elastic type, with rigid posterior panel	120.00
L0317	TLSO, flexible dorso-lumbar surgical support, hyperextension, elastic type, with rigid posterior panel	140.00

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<b>ANTERIOR—POSTERIOR CONTROL</b>			<b>SEMI-RIGID</b>		
L0320	TLSO, anterior-posterior control (Taylor type), with apron front	271.60	L0620	Sacroiliac, semi-rigid (Goldthwaite, Osgood types), with apron front	192.00
L0330	TLSO, anterior-posterior-lateral control (Knight-Taylor type), with apron front	304.10	<b>SPINAL: CERVICAL—THORACIC—LUMBAR—SACRAL ORTHOSIS (CTLSO)—HALO/ANTERIOR, POSTERIOR—LATERAL CONTROL</b>		
<b>ANTERIOR—POSTERIOR—LATERAL—ROTARY CONTROL</b>			L0700	Cervical-thoracic-lumbar-sacral-orthoses (CTLSO), anterior-posterior-lateral-control, molded to patient model (Minerva type)	1,160.00
L0340	TLSO, anterior-posterior-lateral-rotary control (Arnold, Magnuson, Steindler types), with apron front	428.57	L0710	CTLSO, anterior-posterior-lateral-control, molded to patient model, with interface material (Minerva type)	1,280.00
L0350	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, custom fitted	621.48	<b>HALO PROCEDURE</b>		
L0360	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket molded to patient model	800.00	L0810	Halo procedure, cervical halo incorporated into jacket vest	1,677.11
L0370	TLSO, anterior-posterior-lateral-rotary control, hyperextension (Jewett, Lennox, Baker, Cash types)	246.40	L0820	Halo procedure, cervical halo incorporated into plaster body jacket	1,200.00
L0380	TLSO, anterior-posterior-lateral-rotary control, with extensions	460.00	L0830	Halo procedure, cervical halo incorporated into Milwaukee type orthosis	2,053.61
L0390	TLSO, anterior-posterior-lateral control, molded to patient model	840.00	L0860	Addition to halo procedure, magnetic resonance image compatible system	500.00
L0400	TLSO, anterior-posterior-lateral control, molded to patient model, with interface material	952.56	<b>SPINAL: TORSO SUPPORTS—PTOSIS AND POSTSURGICAL SUPPORTS</b>		
L0410	TLSO, anterior-posterior-lateral control, two-piece construction, molded to patient model	917.48	L0900	Torso support, ptosis support, custom fitted	102.11
L0420	TLSO, anterior-posterior-lateral control, two-piece construction, molded to patient model, with interface material	982.15	L0910	Torso support, ptosis support, custom fabricated	220.33
L0430	TLSO, anterior-posterior-lateral control, with interface material, custom fitted	731.36	<b>PENDULOUS ABDOMEN SUPPORTS</b>		
L0440	TLSO, anterior-posterior-lateral control, with overlapping front section, spring steel front, custom fitted	651.20	L0920	Torso support, pendulous abdomen support, custom fitted	118.36
<b>SPINAL: LUMBAR—SACRAL—ORTHOSIS (LSO)—FLEXIBLE</b>			L0930	Torso support, pendulous abdomen support, custom fabricated	250.68
L0500	Lumbar-sacral-orthoses (LSO), flexible, (lumbo-sacral surgical supports), custom fitted	77.28	<b>POSTSURGICAL SUPPORTS</b>		
L0510	LSO, flexible (lumbo-sacral surgical support), custom fabricated	113.52	L0940	Torso support, postsurgical support, custom fitted	110.18
L0515	LSO, flexible (lumbo-sacral surgical support), elastic type, with rigid posterior panel	69.16	L0950	Torso support, postsurgical support, custom fabricated	240.00
<b>ANTERIOR—POSTERIOR—LATERAL CONTROL</b>			L0960	Torso support, postsurgical support, pads for postsurgical support	48.71
L0520	LSO, anterior-posterior lateral control (Knight, Wilcox types), with apron front	252.00	X4070	Apron front replacement	65.12
<b>ANTERIOR—POSTERIOR CONTROL</b>			<b>ADDITIONS TO SPINAL ORTHOSES</b>		
L0530	LSO, anterior-posterior control (MacAusland type), with apron front	192.00	L0970	TLSO, corset front	33.60
<b>LUMBAR FLEXION</b>			L0972	LSO, corset front	69.20
L0540	LSO, lumbar flexion (Williams flexion type)	320.00	L0974	TLSO, full corset	88.20
L0550	LSO, anterior-posterior-lateral control, molded to patient model	760.00	L0976	LSO, full corset	103.88
L0560	LSO, anterior-posterior-lateral control, molded to patient model, with interface material	880.00	L0978	Axillary crutch extension	35.00
L0565	LSO, anterior-posterior-lateral, custom fitted	427.14	L0980	Peroneal straps, pair	11.33
<b>SPINAL: SACROILIAC/FLEXIBLE</b>			L0982	Stocking supporter grips, set of four (4)	9.60
L0600	Sacroiliac, flexible (sacroiliac surgical support), custom fitted	40.72	L0984	Protective body sock, each	34.12
L0610	Sacroiliac, flexible (sacroiliac surgical support), custom fabricated	89.28	<b>(b) ORTHOTIC DEVICES—SCOLIOSIS PROCEDURES (L1000—L1499)</b>		

The orthotic care of scoliosis differs from other care in that the treatment is more dynamic in nature and uses ongoing continual modification of the orthosis to the patient's changing condition. This coding structure uses the proper names or eponyms of the procedures because they have historic and universal acceptance in the profession. It should be recognized that variations to the basic procedures described by the founders/developers are accepted in various medical and orthotic practices throughout the country. All procedures include model of patient when indicated.

## ADOPTIONS

## HUMAN SERVICES

SCOLIOSIS: CERVICAL—THORACIC—LUMBAR—SACRAL ORTHOSIS (CTLSO) (MILWAUKEE)		THORACIC—HIP—KNEE—ANKLE ORTHOSIS (THKAO)	
L1000	Cervical-thoracic-lumbar-sacral orthosis (CTLSO), inclusive of furnishing initial orthoses including model	1,134.00	L1500 Thoracic-hip-knee-ankle orthoses (THKAO), mobility frame (Newington, Parapodium types) 1,243.33
L1010	Additions to (CTLSO) or scoliosis orthosis, axilla sling	44.88	L1510 THKAO, standing frame 877.67
L1020	Addition to CTLSO or scoliosis orthosis, kyphosis pad	25.00	L1520 THKAO, swivel walker 1,487.44
L1025	Addition to CTLSO or scoliosis orthosis, kyphosis pad, floating	77.29	(c) ORTHOTIC DEVICES—LOWER LIMB (L1600—L2699)
L1030	Addition to CTLSO or scoliosis orthosis, lumbar bolster pad	40.83	The procedures in L1600—L2999 are considered as “base” or “basic procedures” and may be modified by listing procedures from the “additions” sections and adding them to the base procedures.
L1040	Addition to CTLSO or scoliosis orthosis, lumbar or lumbar rib pad	39.00	LOWER LIMB: HIP ORTHOSIS (HO)—FLEXIBLE
L1050	Addition to CTLSO or scoliosis orthosis, sternal pad	39.00	L1600 Hip ortoses (HO), abduction control of hip joints, flexible, Frejka type with cover 40.32
L1060	Addition to CTLSO or scoliosis orthosis, thoracic pad	39.00	L1610 HO, abduction control of hip joints, flexible, (Frejka cover only) 25.00
L1070	Addition to CTLSO or scoliosis orthosis, trapezius sling	51.00	L1620 HO, abduction control of hip joints, flexible, (Pavlik harness) 75.00
L1080	Addition to CTLSO or scoliosis orthosis, outrigger	35.42	L1630 HO, abduction control of hip joints, semi-flexible (Von Rosen type) 111.31
L1085	Addition to CTLSO or scoliosis orthosis, outrigger bilateral with vertical extensions	108.45	L1640 HO, abduction control of hip joints, static, pelvic band or spreader bar, thigh cuffs 250.00
L1090	Addition to CTLSO or scoliosis orthosis, lumbar sling	51.00	L1650 HO, abduction control of hip joints, static, adjustable, custom fitted (Ilfled type) 150.00
L1100	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather	66.00	L1660 HO, abduction control of hip joints, static, plastic, custom fitted 109.07
L1110	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather, molded to patient model	90.00	L1680 HO, abduction control of hip joints, dynamic, pelvic control, adjustable hip motion control, thigh cuffs (Rancho hip action type) 802.72
L1120	Addition to CTLSO or scoliosis orthosis, cover for upright, each	26.05	L1685 HO, abduction control of hip joints, postoperative hip adduction type, custom fabricated 610.20
SCOLIOSIS: THORACIC—LUMBAR—SACRAL ORTHOSIS (TLSO) (LOW PROFILE)			L1686 HO, abduction control of hip joint, postoperative hip abduction type, custom fitted 600.00
L1200	Thoracic-lumbar-sacral-orthosis (TLSO), inclusive of furnishing initial orthosis only	1,037.53	LOWER LIMB—LEGG PERTHES
L1210	Additions to TLSO, (low profile), lateral thoracic extension	175.00	L1700 Legg Perthes orthosis, (Toronto type) 996.07
L1220	Additions to TLSO, (low profile), anterior thoracic extension	175.00	L1710 Legg Perthes orthosis, (Newington type) 1,159.26
L1230	Additions to TLSO, (low profile), Milwaukee type superstructure	340.00	L1720 Legg Perthes orthosis, trilateral, (Tachdjian type) 852.85
L1240	Additions to TLSO, (low profile), lumbar derotation pad	44.75	L1730 Legg Perthes orthosis, (Scottish Rite type) 739.21
L1250	Addition to TLSO, (low profile), anterior asis pad	44.75	L1750 Legg Perthes orthosis, Legg Perthes sling (Sam Brown type) 80.00
L1260	Addition to TLSO, (low profile), anterior thoracic derotation pad	44.75	L1755 Legg Perthes orthosis, (Patten Bottom type) 854.40
L1270	Addition to TLSO, (low profile), abdominal pad	44.75	LOWER LIMB—KNEE ORTHOSIS (KO)
L1280	Addition to TLSO, (low profile), rib gusset (elastic), each	61.02	L1800 Knee orthosis (KO), elastic with stays 32.56
L1290	Addition to TLSO, (low profile), lateral trochanteric pad	40.68	L1810 KO, elastic with joints 61.04
OTHER SCOLIOSIS PROCEDURES			L1815 KO, elastic with condylar pads 63.19
L1300	Other scoliosis procedure, body jacket molded to patient model	1,200.00	L1820 KO, elastic with condyle pads and joints 72.40
L1310	Other scoliosis procedure, post-operative body jacket	1,200.00	L1825 KO, elastic knee cap 28.00
L1499	Unlisted procedure for spinal orthosis	B.R.	L1830 KO, immobilizer; canvas longitudinal 52.88
			L1832 KO, adjustable knee joints, positional orthosis, rigid support, custom fitted 320.00
			L1834 KO, without knee joint, rigid, molded to patient model 388.00
			L1840 KO, derotation, medial-lateral, anterior cruciate ligament, custom fabricated to patient model 520.00
			L1844 KO, single upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model 852.38
			L1845 KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, custom fitted 468.00

## HUMAN SERVICES

## ADOPTIONS

L1846	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model	528.80	L2010	KAFO, single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis), without knee joint	568.68
L1850	KO, Swedish type	148.00	L2020	KAFO, double upright, free knee, free ankle, solid stirrup, thigh and calf bands/cuffs (double bar "AK" orthosis)	786.13
L1855	KO, molded plastic, thigh and calf, sections, with double upright knee joints, molded to patient model	610.20	L2030	KAFO, double upright, free ankle, solid stirrup, thigh and calf bands/cuffs (double bar "AK" orthosis), without knee joint	571.20
L1858	KO, molded plastic, polycentric knee joints, pneumatic knee pads (CT1)	610.20	L2036	KAFO, full plastic, double upright, free knee, molded to patient model	1,000.00
L1860	KO, modification of supracondylar prosthetic socket, molded to patient model (SK)	555.68	L2037	KAFO, full plastic, single upright, free knee, molded to patient model	900.00
L1870	KO, double upright, thigh and calf lacers, molded to patient model with knee joints	488.16	L2038	KAFO, full plastic, without knee joint, multiaxis molded to patient model (lively orthosis or equal)	900.00
L1880	KO, double upright, nonmolded thigh and calf cuffs/lacers with knee joints	366.16		TORSION CONTROL: HIP—KNEE—ANKLE—FOOT ORTHOSIS (HKAFO)	
L1899	Unlisted procedure for lower limb knee	B.R.	L2040	Hip-knee-ankle-foot orthosis (HKAFO), torsion control, bilateral rotation straps, pelvic band/belt	131.05
	LOWER LIMB: ANKLE—FOOT ORTHOSIS (AFO)		L2050	HKAFO, torsion control, bilateral torsion cables, hip joint, pelvic band/belt	223.44
L1900	Ankle-foot orthoses (AFO), spring wire, dorsiflexion assist calf band	158.64	L2060	HKAFO, torsion control, bilateral torsion cables, ball bearing hip joint, pelvic band/belt	250.00
L1902	AFO, ankle gauntlet, custom fitted	48.81	L2070	HKAFO, torsion control, unilateral rotation straps, pelvic band/belt	90.76
L1904	AFO, molded ankle gauntlet, molded to patient model	284.76	L2080	HKAFO, torsion control, unilateral, torsion cable, hip joint, pelvic band/belt	200.00
L1906	AFO, multiligamentous ankle support	75.00	L2090	HKAFO, torsion control unilateral torsion cable, ball bearing hip joint, pelvic band/belt	200.00
L1910	AFO, posterior, single bar, clasp attachment to shoe counter	192.99		FRACTURE ORTHOSES: ANKLE—FOOT ORTHOSIS (AFO) AND KNEE—ANKLE—FOOT ORTHOSIS (KAFO)	
L1920	AFO, single upright with static or adjustable stop (Phelps or Perlstein type)	200.00	L2102	Ankle-foot-orthosis (AFO), fracture orthosis, tibial fracture cast orthosis, plaster type casting material molded to patient	162.40
L1930	AFO, custom fitted, plastic	156.80	L2104	AFO, fracture orthosis, tibial fracture cast orthosis, synthetic type casting material, molded to patient	203.20
L1940	AFO, molded to patient model, plastic	387.94	L2106	AFO, fracture orthosis, tibial fracture cast orthosis, thermoplastic type casting material, molded to patient	284.76
L1945	AFO, molded to patient model, plastic, rigid anterior tibial section (floor reaction)	540.00	L2108	AFO, fracture orthosis, tibial fracture cast orthosis, molded to patient model	569.60
L1950	AFO, spiral, molded to patient model (Irm type), plastic	593.22	L2112	AFO, fracture orthosis, tibial fracture orthosis, soft custom fitted	244.08
L1960	AFO, posterior solid ankle, molded to patient model, plastic	421.60	L2114	AFO, fracture orthosis, tibial fracture orthosis, semi-rigid custom fitted	321.37
L1970	AFO, plastic molded to patient model, with ankle joint	513.35	L2116	AFO, fracture orthosis, tibial fracture orthosis, rigid custom fitted	366.40
L1980	AFO, single upright free plantar dorsiflexion, solid stirrup, calf band/cuff (single bar "BK" orthosis)	229.60	L2122	Knee-ankle-foot-orthosis (KAFO), fracture orthosis, femoral fracture cast orthosis, plaster type casting material, molded to patient	508.50
L1990	AFO, double upright free plantar dorsiflexion, solid stirrup, calf band/cuff (double bar "BK" orthosis)	287.20	L2124	KAFO, fracture orthosis, femoral fracture cast orthosis, synthetic type casting material, molded to patient	569.60
X4004	Carbon composites at ankle of MAFO, plastic only, each	35.00	L2126	KAFO, fracture orthosis, femoral fracture cast orthosis, thermoplastic type casting material, molded to patient	651.20
X4005	Tone reducing orthoses knee high, custom molded, supply by orthotist, each	1,121.00	L2128	KAFO, fracture orthosis, femoral fracture cast orthosis, molded to patient model	895.20
X4006	Tone reducing orthoses ankle high, custom molded, supply by orthotist, each	350.00	L2132	KAFO, fracture orthosis, femoral fracture cast orthosis, soft custom fitted	488.16
X4007	Swedo ankle orthoses, each	90.00	L2134	KAFO, fracture orthosis, femoral fracture cast orthosis, semi-rigid custom fitted	528.81
X4450	AFO, posterior leaf spring molded to patient model (Tirr, Rancho) includes casting	386.40			
	LOWER LIMB: HIP-KNEE-ANKLE-FOOT ORTHOSIS (KAFO)—OR ANY COMBINATION				
L2000, L2020, and L2036 are base procedures which may be used with any knee joint; L2010 and L2030 shall only be used with no knee joint.					
L2000	Knee-ankle-foot-orthoses (KAFO), single upright, free knee, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis)	760.00			

**ADOPTIONS****HUMAN SERVICES**

L2136	KAFO, fracture orthosis, femoral fracture cast orthosis, rigid custom fitted	630.40	L2395	Addition to lower extremity, offset knee joint, heavy duty, each joint	73.60
	<b>ADDITIONS TO FRACTURE ORTHOSIS</b>		L2397	Addition to lower extremity orthosis, suspension sleeve	61.53
L2180	Addition to lower extremity fracture orthosis, plastic shoe insert with ankle joints	53.69		<b>ADDITIONS TO STRAIGHT KNEE OR OFFSET KNEE JOINTS</b>	
L2182	Addition to lower extremity fracture orthosis, drop lock knee joint	48.80	L2405	Addition to knee joint, drop lock, each joint	24.80
L2184	Addition to lower extremity fracture orthosis, limited motion knee joint	69.16	L2415	Addition to knee joint, cam lock (Swiss, French Bail types), each joint	101.60
L2186	Addition to lower extremity fracture orthosis, adjustable motion knee joint, lerman type	101.70	L2425	Addition to knee joint, disc or dial lock for adjustable knee flexion, each joint	142.00
L2188	Addition to lower extremity fracture orthosis, quadrilateral brim	203.40	L2435	Addition to knee joint, polycentric joint, each joint	97.63
L2190	Addition to lower extremity fracture orthosis, waist belt	48.81	L2492	Addition to knee joint, lift loop for drop lock ring	68.80
L2192	Addition to lower extremity fracture orthosis, hip joint pelvic band, thigh flange, and pelvic belt	203.40	X4350	Knee pad, standard cap, each	45.00
X4008	Graphite bands, each	100.00	X4355	Knee pad, pull cap, each	65.00
	<b>ADDITIONS TO LOWER EXTREMITY ORTHOSIS; SHOE—ANKLE—SHIN—KNEE</b>			<b>ADDITIONS—THIGH/WEIGHT BEARING—GLUTEAL/ISCHIAL WEIGHT BEARING</b>	
L2200	Addition to lower extremity, limited ankle motion, each joint	30.80	L2500	Addition to lower extremity, thigh/weight bearing, gluteal/ischial weight bearing, ring	117.60
L2210	Addition to lower extremity, dorsiflexion assist (plantar flexion resist), each joint	48.00	L2510	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, molded to patient model	508.81
L2220	Addition to lower extremity, dorsiflexion and plantar flexion assist/resist, each joint	59.65	L2520	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, custom fitted	336.00
L2230	Addition to lower extremity, split flat caliper stirrups and plate attachment	49.95	L2525	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim molded to patient model	660.00
L2240	Addition to lower extremity, round caliper and plate attachment	54.10	L2526	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, custom fitted	380.00
L2250	Addition to lower extremity, foot plate, molded to patient model, stirrup attachment	234.08	L2530	Addition to lower extremity, thigh/weight bearing, lacer, nonmolded	146.48
L2260	Addition to lower extremity, reinforced solid stirrup (Scott-Craig type)	169.83	L2540	Addition to lower extremity, thigh/weight bearing, lacer, molded to patient model	196.00
L2265	Addition to lower extremity, long tongue stirrup	32.00	L2550	Addition to lower extremity, thigh/weight bearing, high roll cuff	61.04
L2270	Addition to lower extremity, varus/valgus correction ("T") strap, padded/lined or malleolus pad	35.03		<b>ADDITIONS: PELVIC AND THORACIC CONTROL</b>	
L2275	Addition to lower extremity, varus/valgus corrections, plastic modification, padded/lined	65.71	L2570	Addition to lower extremity, pelvic control, hip joint, clevis type two position joint, each	280.00
L2280	Addition to lower extremity, molded inner boot	105.76	L2580	Addition to lower extremity, pelvic control, pelvic sling	240.00
L2300	Addition to lower extremity, abduction bar (bilateral hip involvement), jointed, adjustable	175.00	L2600	Addition to lower extremity, pelvic control, hip joint, clevis type, or thrust bearing, free, each	108.00
L2310	Addition to lower extremity, abduction bar, straight	80.01	L2610	Addition to lower extremity, pelvic control, hip joint, clevis or thrust bearing, lock, each	132.00
L2320	Addition to lower extremity, nonmolded lacer	96.00	L2620	Addition to lower extremity, pelvic control, hip joint, heavy-duty, each	160.00
L2330	Addition to lower extremity, lacer molded to patient model	190.00	L2622	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, each	170.85
L2335	Addition to lower extremity, anterior swing band	122.04	L2624	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, extension, abduction control, each	102.40
L2340	Addition to lower extremity, pretibial shell, molded to patient model	284.80	L2627	Addition to lower extremity, pelvic control, plastic, molded to patient model, reciprocating hip joint and cables	840.00
L2350	Addition to lower extremity, prosthetic type, (BK) socket, molded to patient model (used for "PTB" "AFO" orthoses)	447.52	L2628	Addition to lower extremity, pelvic control, metal frame, reciprocating hip joint and cables	840.00
L2360	Addition to lower extremity, extended steel shank	41.16	L2630	Addition to lower extremity, pelvic control, band and belt, unilateral	166.88
L2370	Addition to lower extremity, patten bottom	164.00	L2640	Addition to lower extremity, pelvic control, band and belt, bilateral	201.60
L2375	Addition to lower extremity, torsion control, ankle joint and half solid stirrup	75.80	L2650	Addition to lower extremity, pelvic and thoracic control, gluteal pad, each	86.80
L2380	Addition to lower extremity, torsion control, straight knee joint, each joint	32.00	L2660	Addition to lower extremity, thoracic control, thoracic band	18.00
L2385	Addition to lower extremity, straight knee joint, heavy duty, each joint	52.88			
L2390	Addition to lower extremity, offset knee joint, each joint	52.88			

**HUMAN SERVICES****ADOPTIONS**

L2670	Addition to lower extremity, thoracic control, paraspinal uprights	32.00	X4804	Arch support, foot plate: (plaster cast taken by vendor) leather—whitman combination	75.00
L2680	Addition to lower extremity, thoracic control, lateral support uprights	32.00	X4805	Arch support, foot plate: (plaster cast taken by vendor) leather—rohadrur plastic	75.00
(d) ADDITIONS—GENERAL (L2750-L2999)					
L2750	Addition to lower extremity orthosis, plating chrome or nickel, per bar	52.00	X4810	Velcro straps, attached to a pair of shoes, per pair	14.00
L2760	Addition to lower extremity orthosis, extension, per extension, per bar (for lineal adjustment for growth)	32.00	L3040	Foot, arch support, removable, premolded, longitudinal, each	29.60
L2770	Addition to lower extremity orthosis, any material, per bar or joint	45.67	L3050	Foot, arch support, removable, premolded, metatarsal, each	32.00
L2780	Addition to lower extremity orthosis, noncorrosive finish, per bar	40.00	L3060	Foot, arch support, removable, premolded, longitudinal/metatarsal, each	48.00
L2785	Addition to lower extremity orthosis, drop lock retainer, each	16.27	ARCH SUPPORT, NON-REMOVABLE, ATTACHED TO SHOE		
L2795	Addition to lower extremity orthosis, knee control, full kneecap	62.21	L3070	Foot, arch support, nonremovable, attached to shoe, longitudinal, each	16.00
L2800	Addition to lower extremity orthosis, knee control, kneecap, medical or lateral pull	64.80	L3080	Foot, arch support, nonremovable, attached to shoe, metatarsal, each	20.00
L2810	Addition to lower extremity orthosis, knee control, condylar pad	54.57	L3090	Foot, arch support, nonremovable, attached to shoe longitudinal/metatarsal, each	24.00
L2820	Addition to lower extremity orthosis, soft interface for molded plastic, below knee section	40.68	L3100	Hallus-Valgus night dynamic splint	20.00
L2830	Addition to lower extremity orthosis, soft interface for molded plastic, above knee section	40.68	ABDUCTION AND ROTATION BARS		
L2840	Addition to lower extremity orthosis, tibial length sock, fracture or equal, each	28.00	L3140	Foot, rotation positioning device, including shoe(s)	56.00
L2850	Addition to lower extremity orthosis, femoral length sock, fracture or equal, each	33.60	L3150	Foot, rotation positioning device, without shoe(s)	60.00
L2999	Unlisted procedures for lower extremity orthoses	B.R.	L3170	Foot, plastic heel stabilizer	112.00
X3610	"D" rings	12.24	SPACE SHOES		
X3620	Bullet (spring loaded) retentions	23.60	X4850	Space shoe rubber raise for shoe: ¼" raise	8.00
X4003	"T" strap medial or lateral with velcro foam padded lined with horse hide	75.00	X4851	Space shoe rubber raise for shoe: ½" raise	9.00
(e) ORTHOPEDIC SHOES (L3000-L3649)					
INSERTS					
L3000	Foot insert, removable, molded to patient model, "UCB" type, Berkeley shell, each	140.00	X4852	Space shoe rubber raise for shoe: ¾" raise	13.00
L3001	Foot insert, removable, molded to patient model, Spenco, each	76.00	X4853	Space shoe rubber raise for shoe: 1" raise	20.00
L3002	Foot insert, removable, molded to patient model, Plastazote or equal, each	76.00	X4854	Space shoe rubber raise for shoe: Each addition ½" raise	8.00
L3003	Foot insert, removable, molded to patient model, silicone gel, each	76.00	CASTING		
L3010	Foot insert, removable, molded to patient model, longitudinal arch support, each	76.00	X4890	Foot	50.00
L3020	Foot insert, removable, molded to patient model, longitudinal/metatarsal support, each	88.00	X4891	Foot, ankle	65.00
L3030	Foot insert, removable, formed to patient foot, each	48.00	X4892	Foot, ankle, shin	70.00
X4290	Filler for amputee toes	16.00	X4893	KAFO castings	125.00
ARCH SUPPORTS, REMOVABLE, PREMOLDED					
X4800	Arch support, foot plates: (plaster cast taken by vendor) leather—whitman ordinary	50.00	ORTHOPEDIC FOOTWEAR		
X4801	Arch support, foot plate: (plaster cast taken by vendor) leather—mayer	45.00	L3201	Orthopedic shoe, oxford with supinator or pronator, infant	48.00
X4802	Arch support, foot plate: (plaster cast taken by vendor) leather—schaffer	45.00	L3202	Orthopedic shoe, oxford with supinator or pronator, child	48.00
X4803	Arch support, foot plate: (plaster cast taken by vendor) leather—schaffer with metatarsal pad	75.00	L3203	Orthopedic shoe, oxford with supinator or pronator, junior	48.00
			L3204	Orthopedic shoe, hightop with supinator or pronator, infant	48.00
			L3206	Orthopedic shoe, hightop with supinator or pronator, child	48.00
			L3207	Orthopedic shoe, hightop with supinator or pronator, junior	48.00
			L3208	Surgical boot, each infant	24.00
			L3209	Surgical boot, each child	24.00
			L3211	Surgical boot, each junior	24.00
			L3212	Benesch boot, pair, infant	48.00
			L3213	Benesch boot, pair, child	48.00
			L3214	Benesch boot, pair, junior	48.00
			L3215	Orthopedic footwear, *[woman's]* *ladies* shoes, oxford	76.00
			L3216	Orthopedic footwear, *[woman's]* *ladies* shoes, depth inlay	100.00

**ADOPTIONS****HUMAN SERVICES**

L3217	Orthopedic footwear, *[woman's]* <b>*ladies*</b> shoes, hightop, depth inlay	116.00
L3218	Orthopedic footwear, *[woman's]* <b>*ladies*</b> surgical boot, each	64.00
L3219	Orthopedic footwear, *[man's]* <b>*men's*</b> shoes, oxford	76.00
L3221	Orthopedic footwear, *[man's]* <b>*men's*</b> shoes, depth inlay	100.00
L3222	Orthopedic footwear, *[man's]* <b>*men's*</b> shoes, hightop, depth inlay	116.00
L3223	Orthopedic footwear, *[man's]* <b>*men's*</b> surgical boot, each	64.00
L3230	Orthopedic footwear, custom shoes, depth inlay	380.00
L3250	Orthopedic footwear, custom molded shoe, removable inner mold, prosthetic shoe, each	250.00
L3251	Foot, shoe molded to patient model, silicone shoe, each	280.00
L3252	Foot, shoe molded to patient model, Plastazote (or similar), custom fabricated, each	256.00
L3253	Foot, molded shoe Plastazote (or similar), custom fitted, each	112.00
L3254	Nonstandard size or width	20.00
L3255	Nonstandard size or length	20.00
L3257	Orthopedic footwear, additional charge for split size	50.00
L3260	Ambulatory surgical boot, each	88.00
L3265	Plastazote sandal, each	56.00

**SHOE MODIFICATION—LIFTS**

L3300	Lift, elevation, heel, tapered to metatarsals, per inch	64.00
L3310	Lift, elevation, heel and sole, neoprene, per inch	64.00
L3320	Lift, elevation, heel and sole, cork, per inch	100.00
L3330	Lift, elevation, metal extension (skate)	316.00
L3332	Lift, elevation, inside shoe, tapered, up to one-half inch	44.00
L3334	Lift, elevation, heel, per inch	36.00
X4894	Orthopedic shoe, articulated (Bebax type)	72.00

**WEDGES**

L3340	Heel wedge, Sach	10.40
L3350	Heel wedge	12.00
L3360	Sole wedge, outside sole	12.00
L3370	Sole wedge, between sole	14.40
L3380	Clubfoot wedge	12.00
L3390	Outflare wedge	16.00
L3400	Metatarsal bar wedge, rocker	16.00
L3410	Metatarsal bar wedge, between sole	16.00
L3420	Full sole and heel wedge, between sole	24.00
L3430	Heel, counter, plastic reinforced	24.00
L3440	Heel, counter, leather reinforced	24.00
L3450	Heel, Sach cushion type	64.00
L3455	Heel, new leather, standard	8.00
L3460	Heel, new rubber, standard	8.00
L3465	Heel, Thomas with wedge	20.00
L3470	Heel, Thomas extended to ball	24.00
L3480	Heel, pad and depression for spur	16.00
L3485	Heel, pad, removable for spur	32.00

**MISCELLANEOUS SHOE ADDITIONS**

L3500	Miscellaneous shoe addition, insole, leather	4.00
L3510	Miscellaneous shoe addition, insole, rubber	8.00

L3520	Miscellaneous shoe additions, insole, felt covered with leather	8.00
L3530	Miscellaneous shoe addition, sole, half	12.00
L3540	Miscellaneous shoe addition, sole, full	36.00
L3550	Miscellaneous shoe addition, toe tap, standard	4.00
L3560	Miscellaneous shoe addition, toe tap, horseshoe	6.40
L3570	Miscellaneous shoe addition, special extension to instep (leather with eyelets)	152.00
L3580	Miscellaneous shoe addition, convert instep to velcro closure	13.60
L3590	Miscellaneous shoe addition, convert firm shoe counter to soft counter	28.00
L3595	Miscellaneous shoe addition, March bar	12.00

**TRANSFER OR REPLACEMENT**

L3600	Transfer of an orthosis from one shoe to another, caliper plate, existing	48.00
L3610	Transfer of an orthosis from one shoe to another, caliper plate, new	76.00
L3620	Transfer of an orthosis from one shoe to another, solid stirrup, existing	39.04
L3630	Transfer of an orthosis from one shoe to another, solid stirrup, new	76.00
L3640	Transfer of an orthosis from one shoe to another, Dennis Browne splint (Riveton), both shoes	28.00
L3649	Unlisted procedures for foot orthopedic shoes, shoe modifications and transfers	B.R.
X4280	Velcro strap used with orthoses, for each strap	18.00

**(f) ORTHOTIC DEVICES—UPPER LIMB (L3650-L3999)**

Note: The procedures in this section are considered as "base" or "basic procedures" and may be modified by listing procedures from the "additions" sections and adding them to the base procedure.

**UPPER LIMB: SHOULDER ORTHOSIS (SO)**

L3650	Shoulder orthosis, (SO), figure of "8" design abduction restrainer	32.00
L3660	SO, figure of "8" design abduction restrainer, canvas and webbing	60.00
L3670	SO, acromion/clavicular (canvas and webbing type)	88.62

**UPPER LIMB: ELBOW ORTHOSIS (EO)**

L3700	Elbow orthoses (EO), elastic with stays	36.00
L3710	EO, elastic with metal joints	60.00
L3720	EO, double upright with forearm/arm cuffs, free motion	520.00
L3730	EO, double upright with forearm/arm cuffs, extension/flexion assist	617.71
L3740	EO, double upright with forearm/arm cuffs, adjustable position with lock with active control	692.08

**UPPER LIMB: WRIST-HAND-FINGER ORTHOSIS (WHFO)**

L3800	Wrist-hand-finger-orthoses (WHFO), short opposens, no attachments	124.28
L3805	WHFO, long opposens, no attachment	240.00

**ADDITIONS**

L3810	WHFO, addition to short and long opposens, thumb abduction ("C") bar	28.00
L3815	WHFO, addition to short and long opposens, second M.P. abduction assist	28.00
L3820	WHFO, addition to short and long opposens, I.P. extension assist, with M.P. extension stop	60.00
L3825	WHFO, addition to short and long opposens, M.P. extension stop	28.00

**HUMAN SERVICES****ADOPTIONS**

L3830	WHFO, addition to short and long opponens, M.P. extension assist	44.00		UPPER LIMB: SHOULDER—ELBOW—WRIST—HAND ORTHOSIS (SEWHO)—ABDUCTION POSITIONING—CUSTOM FITTED	
L3835	WHFO, addition to short and long opponens, M.P. spring extension assist	60.00			
L3840	WHFO, addition to short and long opponens, spring swivel thumb	32.00	L3960	Shoulder-elbow-wrist-hand orthosis (SEWHO), abduction positioning, airplane design	460.00
L3845	WHFO, addition to short and long opponens, thumb I.P. extension assist, with N.P. stop	36.00	L3962	SEWHO, abduction positioning, Erbs Palsey design	420.00
L3850	WHFO, addition to short and long opponens, action wrist, with dorsiflexion assist	64.00	L3963	SEWHO, molded shoulder, arm, forearm, and wrist, with articulating elbow joint	847.70
L3855	WHFO, addition to short and long opponens, adjustable M.P. flexion control	75.81	L3964	SEWHO, mobil arm support attached to wheel-chair, balanced and fitted to patient, adjustable	520.00
L3860	WHFO, addition to short and long opponens, adjustable M.P. flexion control and I.P.	103.17	L3965	SEWHO, radial arm support attached to wheel-chair, balanced and fitted to patient, adjustable rancho type	759.66
	DYNAMIC FLEXOR HINGE, RECIPROCAL WRIST EXTENSION/FLEXION, FINGER FLEXION/EXTENSION		L3966	SEWHO, mobil arm support attached to wheel-chair, balanced and fitted to patient, reclining	488.00
L3900	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, wrist or finger driven	800.00	L3968	SEWHO, mobil arm support attached to wheel-chair, balanced and fitted to patient, friction arm support (friction dampening to proximal and distal joints)	680.00
L3901	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, cable driven	884.00	L3969	SEWHO, mobil arm support, monosuspension arm and hand support, overhead elbow forearm hand sling support, yoke type arm suspension support	417.06
	EXTERNAL POWER			ADDITIONS TO MOBILE ARM SUPPORTS	
L3902	WHFO, external powered, compressed gas	369.00	L3970	SEWHO, addition to mobil arm support, elevating proximal arm	200.00
L3904	WHFO, external powered, electric	369.00	L3972	SEWHO, addition to mobil arm support, offset or lateral rocker arm with elastic balance control	112.00
	OTHER WHFO'S—CUSTOM FITTED		L3974	SEWHO, addition to mobil arm support, supinator	112.00
L3906	WHFO, wrist gauntlet, molded to patient model	267.41		UPPER LIMB—FRACTURE ORTHOSIS	
L3907	WHFO, wrist gauntlet with thumb spica, molded to patient model	B.R.	L3980	Upper extremity fracture orthosis, humeral	163.17
L3908	WHFO, wrist extension control cock-up, non-molded	50.13	L3982	Upper extremity fracture orthosis, radius/ulnar	172.00
L3910	WHFO, Swanson design	216.00	L3984	Upper extremity fracture orthosis, wrist	122.40
L3912	WHFO, flexion glove with elastic finger control	67.25	L3985	Upper extremity fracture orthosis, forearm, hand with wrist hinge	366.12
L3914	WHFO, wrist extension cock-up	60.00	L3986	Upper extremity fracture orthosis, combination of humeral, radius/ulnar, wrist, (example: Colles fracture)	391.85
L3916	WHFO, wrist extension cock-up, with outrigger	72.00	L3995	Addition to upper extremity orthosis, sock, fracture or equal, each	14.80
L3918	WHFO, knuckle bender	50.45	L3999	Unlisted procedures for upper limb orthosis	B.R.
L3920	WHFO, knuckle bender, with outrigger	60.00		(g) SPECIFIC REPAIR (L4000-L4199)	
L3922	WHFO, knuckle bender, two segment to flex joints	63.54	L4000	Replace girdle for Milwaukee orthosis	696.00
L3924	WHFO, Oppenheimer	60.00	L4010	Replace trilateral socket brim	444.59
L3926	WHFO, Thomas suspension	64.00	L4020	Replace quadrilateral socket brim, molded to patient model	532.00
L3928	WHFO, finger extension, with clock spring	40.00	L4030	Replace quadrilateral socket brim, custom fitted	373.06
L3930	WHFO, finger extension, with wrist support	44.79	L4040	Replace molded thigh lacer	272.53
L3932	WHFO, safety pin, spring wire	29.94	L4045	Replace nonmolded thigh lacer	140.00
L3934	WHFO, safety pin, modified	31.24	L4050	Replace molded calf lacer	331.80
L3936	WHFO, Palmer	48.00	L4055	Replace nonmolded calf lacer	61.02
L3938	WHFO, dorsal wrist	48.00	L4060	Replace high roll cuff	136.00
L3940	WHFO, dorsal wrist, with outrigger attachment	60.00	L4070	Replace proximal and distal upright for KAFO	168.00
L3942	WHFO, reverse knuckle bender	48.40	L4080	Replace metal bands KAFO, proximal thigh	72.00
L3944	WHFO, reverse knuckle bender, with outrigger	60.00	L4090	Replace metal bands KAFO-AFO, calf or distal thigh	60.00
L3946	WHFO, composite elastic	57.63	L4100	Replace leather cuff KAFO, proximal thigh	80.00
L3948	WHFO, finger knuckle bender	36.00	L4110	Replace leather cuff KAFO-AFO, calf or distal thigh	52.00
L3950	WHFO, combination Oppenheimer, with knuckle bender and two attachments	96.00			
L3952	WHFO, combination Oppenheimer, with reverse knuckle and two attachments	96.00			
L3954	WHFO, spreading hand	52.00			

**ADOPTIONS****HUMAN SERVICES**

L4130	Replace pretibial shell	331.45
X4370	Calf cuff	52.00
X4375	Calf band	34.00

**(h) REPAIRS (L4200—L4299)**

L4200	Repair of orthotic device, hourly rate	42.40
L4210	Repair of orthotic device, repair or replace minor parts	69.00

**(i) ANCILLARY ORTHOTIC SERVICES (L4300—L4399)**

L4310	Multipodus or equal orthotic preparatory management system for lower extremities	200.00
L4320	Addition to AFO, multipodus (or equal) orthotic preparatory management system for lower extremities flexible foot positioner with soft interface for AFO, with velcro closure, custom fitted	72.00
L4350	Pneumatic ankle control splint (for example, aircast)	52.00
L4360	Pneumatic walking splint (for example, aircast)	160.00
L4370	Pneumatic full leg splint (for example, aircast)	88.00
L4380	Pneumatic knee splint (for example, aircast)	56.00
X3680	Travel time per hour (specify time involved)	40.72

**10:55-2.4 HCPCS Procedure Codes and Maximum Fee Allowance Schedule for Prosthetic Services****(a) PROSTHETIC PROCEDURES****LOWER LIMB (L5000—L5999)**

The procedures in this section are considered as “base” or “basic procedures” and may be modified by listing items/procedures or special material from the “additions” section and adding them to the base procedure.

**PARTIAL FOOT**

L5000	Partial foot, shoe insert with longitudinal arch, toe filler	339.53
L5010	Partial foot, molded socket, ankle height, with toe filler	680.00
L5020	Partial foot, molded socket, tibial tubercle height, with toe filler	1,040.00

**ANKLE**

L5050	Ankle, Syme, molded socket, Sach foot	1,360.00
L5060	Ankle, Syme, metal frame, molded leather socket, articulated ankle/foot	2,000.00

**BELOW KNEE**

L5100	Below knee, molded socket, shin, Sach foot	1,036.56
L5105	Below knee, plastic socket, joints and thigh lacer, Sach foot	2,000.00

**KNEE DISARTICULATION**

L5150	Knee disarticulation (or through knee), molded socket, external knee joints, shin, Sach foot	2,500.00
L5160	Knee disarticulation (or through knee), molded socket, bent knee configuration, external knee joints, shin, Sach foot	2,683.30

**ABOVE KNEE**

L5200	Above knee, molded socket, single axis constant friction knee, shin, Sach foot	1,301.76
L5210	Above knee, short prosthesis, no knee joint (“stubbies”), with foot blocks, no ankle joints, each	1,360.00
L5220	Above knee, short prosthesis, no knee joint (“stubbies”), with articulated ankle/foot, dynamically aligned, each	1,680.00
L5230	Above knee, for proximal femoral focal deficiency, constant friction knee, shin, Sach foot	1,607.20

**HIP DISARTICULATION**

L5250	Hip disarticulation, Canadian type; molded socket, hip joint, single axis constant friction knee, shin, Sach foot	3,040.00
L5270	Hip disarticulation, tilt table type, molded socket, locking hip joint, single axis constant friction knee, shin, Sach foot	3,040.00

**HEMIPELVECTOMY**

L5280	Hemipelvectomy, Canadian type; molded socket, hip joint, single axis constant friction knee, shin, Sach foot	3,440.00
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**ENDOSKELETAL: BELOW KNEE**

L5300	Below knee, molded socket, Sach foot, endoskeletal system, including soft cover and finishing	1,379.04
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**ENDOSKELETAL: KNEE DISARTICULATION**

L5310	Knee disarticulation (or through knee), molded socket, Sach foot endoskeletal system, including soft cover and finishing	2,800.00
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**ENDOSKELETAL: ABOVE KNEE**

L5320	Above knee, molded socket, open end, Sach foot, endoskeletal system, single axis knee, including soft cover and finishing	1,610.96
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**ENDOSKELETAL: HIP DISARTICULATION**

L5330	Hip disarticulation, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	2,800.00
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**ENDOSKELETAL: HEMIPELVECTOMY**

L5340	Hemipelvectomy, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	4,000.00
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**IMMEDIATE POSTSURGICAL OR EARLY FITTING PROCEDURES**

L5400	Immediate postsurgical or early fitting, application of initial rigid dressing, including fitting, alignment, suspension, and one cast change, below knee	844.78
L5410	Immediate postsurgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, below knee, each additional cast change and realignment	328.42
L5420	Immediate postsurgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension and one cast change “AK” or knee disarticulation	1,070.47
L5430	Immediate postsurgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, “AK” or knee disarticulation, each additional cast change and realignment	461.40
L5450	Immediate postsurgical or early fitting, application of nonweight bearing rigid dressing, below knee	200.00
L5460	Immediate postsurgical or early fitting, application of nonweight bearing rigid dressing, above knee	240.00
<b>INITIAL PROSTHESIS</b>		
L5500	Initial, below knee “PTB” type socket, “USMC” or equal pylon, no cover, Sach foot, plaster socket, direct formed	726.60
L5505	Initial, above knee—knee disarticulation, ischial level socket, “USMC” or equal pylon, no cover, Sach foot plaster socket, direct formed	980.00

# HUMAN SERVICES

# ADOPTIONS

PREPARATORY PROSTHESIS			L5628	Addition to lower extremity, test socket, hemipelvectomy	340.00
L5510	Preparatory, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model	726.60	L5629	Addition to lower extremity, below knee, acrylic socket	289.07
L5520	Preparatory, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	960.00	ADDITIONS: SOCKET VARIATIONS		
L5530	Preparatory, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,120.00	L5630	Addition to lower extremity, Symes type, expandable wall socket	280.00
L5535	Preparatory, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated, adjustable open end socket	1,000.00	L5631	Addition to lower extremity, above knee or knee disarticulation, acrylic socket	320.00
L5540	Preparatory, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,146.60	L5632	Addition to lower extremity, Symes type, "PTB" brim design socket	180.02
L5560	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model	1,120.00	L5634	Addition to lower extremity, Symes type, posterior opening (Canadian) socket	231.74
L5570	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,200.00	L5636	Addition to lower extremity, Symes type, medial opening socket	196.85
L5580	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover Sach foot, thermoplastic or equal, molded to model	1,320.00	L5637	Addition to lower extremity, below knee, total contact	160.00
L5585	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated adjustable open end socket	1,248.88	L5638	Addition to lower extremity, below knee, leather socket	320.00
L5590	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,499.40	L5639	Addition to lower extremity, below knee, wood socket	600.00
L5595	Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, thermoplastic or equal, molded to patient model	2,120.00	L5640	Addition to lower extremity, knee disarticulation, leather socket	400.00
ADDITIONS TO LOWER EXTREMITY			L5642	Addition to lower extremity, above knee, leather socket	400.00
L5600	Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, laminated socket, molded to patient model	2,240.00	L5643	Addition to lower extremity, hip disarticulation, flexible inner socket, external frame	691.20
L5610	Addition to lower extremity, above knee, hydracadence system	1,454.31	L5644	Addition to lower extremity, above knee, wood socket	400.00
L5611	Addition to lower extremity, above knee—knee disarticulation, 4-bar linkage, with friction swing phase control	768.00	L5645	Addition to lower extremity, below knee, flexible inner socket, external frame	325.44
L5613	Addition to lower extremity, above knee—knee disarticulation, 4-bar linkage, with hydraulic swing phase control	1,240.00	L5646	Addition to lower extremity, below knee, air cushion socket	260.00
L5614	Addition to lower extremity, above knee—knee disarticulation, 4-bar linkage, with pneumatic swing phase control	2,307.16	L5647	Addition to lower extremity, below knee, suction socket	223.74
L5616	Additions to lower extremity, above knee, universal multiplex system, friction swing phase control	720.00	L5648	Addition to lower extremity, above knee, air cushion socket	300.00
ADDITIONS: TEST SOCKETS			L5649	Addition to lower extremity, ischial containment/narrow M-L socket	1,354.99
L5618	Addition to lower extremity, test socket, Symes	160.00	L5650	Addition to lower extremity, total contact, above knee or knee disarticulation socket	354.91
L5620	Addition to lower extremity, test socket, below knee	208.63	L5651	Addition to lower extremity, above knee, flexible inner socket, external frame	528.84
L5622	Addition to lower extremity, test socket, knee disarticulation	264.00	L5652	Addition to lower extremity, suction suspension, above knee or knee disarticulation socket	310.53
L5624	Addition to lower extremity, test socket, above knee	240.00	L5653	Addition to lower extremity, knee disarticulation, expandable wall socket	408.96
L5626	Addition to lower extremity, test socket, hip disarticulation	300.00	X3435	Socket-thigh component, total contact above knee	607.00
			ADDITIONS: SOCKET INSERT AND SUSPENSION		
			L5654	Addition to lower extremity, socket insert, Symes (Kemblo, Pelite, Aliplast, Plastazote or equal)	231.71
			L5655	Addition to lower extremity, socket insert, below knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	184.80
			L5656	Addition to lower extremity, socket insert, knee disarticulation (Kemblo, Pelite, Aliplast, Plastazote or equal)	273.00
			L5658	Addition to lower extremity, socket insert, above knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	259.38
			L5660	Addition to lower extremity, socket insert, Symes, silicone gel or equal	320.00

## ADOPTIONS

L5661	Addition to lower extremity, socket insert, multi-durometer, Symes	438.84
L5662	Addition to lower extremity, socket insert, below knee, silicone gel or equal	300.00
L5663	Addition to lower extremity, socket insert, knee disarticulation, silicone gel or equal	380.00
L5664	Addition to lower extremity, socket insert, above knee, silicone gel or equal	380.00
L5665	Addition to lower extremity, socket insert, multidurometer, below knee	223.74
L5666	Addition to lower extremity, below knee, cuff suspension	40.72
L5667	Addition to lower extremity, below knee*/above knee*, socket insert, suction suspension, with locking mechanism	909.03
L5668	Addition to lower extremity, below knee, molded distal cushion	77.53
L5669	Addition to lower extremity, below knee*/above knee*, socket insert, suction suspension, without locking mechanism	697.05
L5670	Addition to lower extremity, below knee, molded supracondylar suspension ("PTS" or similar)	199.00
L5672	Addition to lower extremity, below knee, removable medial brim suspension	220.00
X3540	Suction socket valve	79.76
L5674	Addition to lower extremity, below knee, latex sleeve suspension or equal, each	44.28
L5675	Addition to lower extremity, below knee, latex sleeve suspension or equal, heavy duty, each	40.68
L5676	Addition to lower extremity, below knee, knee joints, single axis, pair	178.96
L5677	Addition to lower extremity, below knee, knee joints, polycentric, pair	203.40
L5678	Addition to lower extremity, below knee joint covers, pair	20.00
L5680	Addition to lower extremity, below knee, thigh lacer, nonmolded	172.88
L5682	Addition to lower extremity, below knee, thigh lacer, gluteal/ischial, molded	420.00
L5684	Addition to lower extremity, below knee, fork strap	32.56
L5686	Addition to lower extremity, below knee, back check (extension control)	32.00
L5688	Addition to lower extremity, below knee, waist belt, webbing	40.72
L5690	Addition to lower extremity, below knee, waist belt, padded and lined	71.62
L5692	Addition to lower extremity, above knee, pelvic control belt, light	69.20
L5694	Addition to lower extremity, above knee, pelvic control belt, padded and lined	125.53
L5695	Addition to lower extremity, below knee, pelvic control, sleeve suspension, neoprene or equal, sach	100.00
L5696	Addition to lower extremity, above knee or knee disarticulation, pelvic joint	140.00
L5697	Addition to lower extremity, above knee or knee disarticulation, pelvic band	32.56
L5698	Addition to lower extremity, above knee or knee disarticulation, silesian bandage	72.40
L5699	All lower extremity prostheses, shoulder harness	113.40
X3001	Tees pelvic suspensory	125.00

## HUMAN SERVICES

REPLACEMENTS/ADDITIONS: EXOSKELETAL KNEE-SHIN SYSTEM		
L5700	Replacement, socket, below knee, molded to patient model	1,549.30
L5701	Replacement, socket, above knee-knee disarticulation, including attachment plate, molded to patient model	1,922.04
L5702	Replacement, socket, hip disarticulation, including hip joint, molded to patient model	2,422.44
L5704	Replacement, custom shaped protective cover, below knee	315.89
L5705	Replacement, custom shaped protective cover, above knee	579.14
L5706	Replacement, custom shaped protective cover, knee disarticulation	564.88
L5707	Replacement, custom shaped protective cover, hip disarticulation	758.92
L5710	Addition, exoskeletal knee-shin system, single axis, manual lock	174.96
L5711	Addition, exoskeletal knee-shin system, single axis, manual lock, ultra-light material	284.80
L5712	Addition, exoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	252.00
L5714	Addition, exoskeletal knee-shin system, single axis, variable friction swing phase control (safety knee)	280.00
L5716	Addition, exoskeletal knee-shin system, polycentric, mechanical stance phase lock	420.00
L5718	Addition, exoskeletal knee-shin system, polycentric, friction swing and stance phase control	420.00
L5722	Addition, exoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	633.19
X3002	Quarting foot	700.00
X3610	“D” Rings	12.24
L5724	Addition, exoskeletal knee-shin system, single axis, fluid swing phase control	880.00
L5726	Addition, exoskeletal knee-shin system, single axis, external joints fluid swing phase control	1,000.00
L5728	Addition, exoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,540.00
L5780	Addition, exoskeletal knee-shin system, single axis, pneumatic/hydra pneumatic swing phase control	600.00
COMPONENT MODIFICATION		
L5785	Addition, exoskeletal system, below knee, ultra-light material (titanium, carbon fiber or equal)	203.40
L5790	Addition, exoskeletal system, above knee, ultra-light material (titanium, carbon fiber or equal)	305.10
L5795	Addition, exoskeletal system, hip disarticulation, ultra-light material (titanium, carbon fiber or equal)	406.80
ENDOSKELETAL		
L5810	Addition, endoskeletal knee-shin system, single axis, manual lock	264.62
L5811	Addition, endoskeletal knee-shin system, single axis, manual lock, ultra-light material	325.44
L5812	Addition, endoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	284.80
L5816	Addition, endoskeletal knee-shin system, polycentric, mechanical stance phase lock	386.46

**HUMAN SERVICES****ADOPTIONS**

L5818	Addition, endoskeletal knee-shin system, polycentric, friction swing and stance phase control	552.00
L5822	Addition, endoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	1,120.00
L5824	Addition, endoskeletal knee-shin system, single axis, fluid swing phase control	610.20
L5828	Addition, endoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,440.00
L5830	Addition, endoskeletal knee-shin system, single axis, pneumatic/swing phase control	1,076.00
L5840	Addition, endoskeletal knee-shin system, multi-axial, pneumatic/swing phase control	1,262.80
L5850	Addition, endoskeletal system, above knee or hip disarticulation, knee extension assist	64.80
L5855	Addition, endoskeletal system, hip disarticulation, mechanical hip extension assist	171.52
L5910	Addition, endoskeletal system, below knee, alignable system	280.25
L5920	Addition, endoskeletal system, above knee or hip disarticulation, alignable system	252.00
L5925	Addition, endoskeletal system, above knee, knee disarticulation or hip disarticulation, manual lock	186.61
L5940	Addition, endoskeletal system, below knee, ultra-light material (titanium, carbon fiber or equal)	224.00
L5950	Addition, endoskeletal system, above knee, ultra-light material (titanium, carbon fiber or equal)	500.00
L5960	Addition, endoskeletal system, hip disarticulation, ultra-light material (titanium, carbon fiber or equal)	467.82
L5962	Addition, endoskeletal system, below knee, flexible protective outer surface covering system	326.45
L5964	Addition, endoskeletal system, above knee, flexible protective outer surface covering system	566.20
L5966	Addition, endoskeletal system, hip disarticulation, flexible protective outer surface covering system	729.36
L5970	All lower extremity prostheses, foot, external keel, Sach foot	78.40
L5972	All lower extremity prostheses, flexible keel foot (Safe, Sten, Bock Dynamic or equal)	122.40
L5974	All lower extremity prostheses, foot, single axis ankle/foot	109.60
L5976	All lower extremity prostheses, energy storing foot (Seattle Carbon Copy II or equal)	284.80
L5978	All lower extremity prostheses, foot, multi-axial ankle/foot	135.20
L5979	All lower extremity prostheses, multi-axial ankle/foot, dynamic response	1,267.27
L5980	All lower extremity prostheses, flex-foot system	2,033.60
L5981	All lower extremity prostheses, flex-walk system or equal	1,723.48
L5982	All exoskeletal lower extremity prostheses, axial rotation unit	406.40
L5984	All endoskeletal lower extremity prostheses, axial rotation unit	304.80
L5986	All lower extremity prostheses, multi-axial rotation unit ("MCP" or equal)	304.80
L5999	Unlisted procedures for lower extremity prosthesis	B.R.

**(b) UPPER LIMB (L6000—L6699)**

The procedures in L6000—L6599 are base procedures which may be modified by listing procedures from the "additions" sections. The

base procedures include only standard friction wrist and control cable system, unless otherwise specified.

**PARTIAL HAND**

L6000	Partial hand, Robin-aids, thumb remaining (or equal)	924.32
L6010	Partial hand, Robin-aids, little and/or ring finger remaining (or equal)	1,000.00
L6020	Partial hand, Robin-aids, no finger remaining (or equal)	953.27

**WRIST DISARTICULATION**

L6050	Wrist disarticulation, molded socket, flexible elbow hinges, triceps pad	1,120.00
L6055	Wrist disarticulation, molded socket with expandable interface, flexible elbow hinges, triceps pad	1,287.00

**BELOW ELBOW**

L6100	Below elbow, molded socket, flexible elbow hinge, triceps pad	1,120.00
L6110	Below elbow, molded socket, (Muenster or Northwestern suspension types)	1,420.00
L6120	Below elbow, molded double wall split socket, step-up hinges, half cuff	1,520.00
L6130	Below elbow, molded double wall split socket, stump activated locking hinge, half cuff	1,975.33

**ELBOW DISARTICULATION**

L6200	Elbow disarticulation, molded socket, outside locking hinge, forearm	1,504.00
L6205	Elbow disarticulation, molded socket with expandable interface, outside locking hinges, forearm	2,522.40

**ABOVE ELBOW**

L6250	Above elbow, molded double wall socket, internal locking elbow, forearm	1,760.00
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**SHOULDER DISARTICULATION**

L6300	Shoulder disarticulation, molded socket, shoulder bulkhead, humeral section, internal locking elbow forearm	2,120.00
L6310	Shoulder disarticulation, passive restoration (complete prosthesis)	1,840.00
L6320	Shoulder disarticulation, passive restoration (shoulder cap only)	1,200.00

**INTERSCAPULAR THORACIC**

L6350	Interscapular thoracic, molded socket, shoulder bulkhead, humeral section, internal locking elbow, forearm	2,380.00
L6360	Interscapular thoracic, passive restoration (complete prosthesis)	1,545.84
L6370	Interscapular thoracic, passive restoration (shoulder cap only)	1,400.00

**IMMEDIATE AND EARLY POST SURGICAL PROCEDURES**

L6380	Immediate postsurgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components, and one cast change, wrist disarticulation or below elbow	691.56
L6382	Immediate postsurgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components, and one cast change, elbow disarticulation or above elbow	813.60

**ADOPTIONS****HUMAN SERVICES**

L6384	Immediate postsurgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components, and one cast change, shoulder disarticulation or interscapular thoracic	976.00	L6600	Upper extremity additions, polycentric hinge, pair	52.00
L6386	Immediate postsurgical or early fitting, each additional cast change and realignment	223.74	L6605	Upper extremity additions, single pivot hinge, pair	116.00
L6388	Immediate postsurgical or early fitting, application of rigid dressing only	203.40	L6610	Upper extremity additions, flexible metal hinge, pair	46.00
	<b>ENDOSKELETAL: BELOW ELBOW</b>		L6615	Upper extremity addition, disconnect locking wrist unit	60.00
L6400	Below elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,204.00	L6616	Upper extremity addition, additional disconnect insert for locking wrist unit, each	59.89
	<b>ENDOSKELETAL: ELBOW DISARTICULATION</b>		L6620	Upper extremity addition, flexion-friction wrist unit	211.56
L6450	Elbow disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,301.60	L6623	Upper extremity addition, spring assisted rotational wrist unit with latch release	386.40
	<b>ENDOSKELETAL: ABOVE ELBOW</b>		L6625	Upper extremity addition, rotation wrist unit with cable lock	160.00
L6500	Above elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,512.00	L6628	Upper extremity addition, quick disconnect hook adapter, Otto Bock or equal	284.76
	<b>ENDOSKELETAL: SHOULDER DISARTICULATION</b>		L6629	Upper extremity addition, quick disconnect lamination collar with coupling piece, Otto Bock or equal	73.22
L6550	Shoulder disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,760.00	L6630	Upper extremity addition, stainless steel, any wrist	68.00
	<b>ENDOSKELETAL: INTERSCAPULAR THORACIC</b>		L6632	Upper extremity addition, latex suspension sleeve, each	32.54
L6570	Interscapular thoracic, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,160.00	L6635	Upper extremity addition, lift assist for elbow	152.48
L6580	Preparatory, wrist disarticulation or below elbow, single wall plastic socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowen cable control, "USMC" or equal pylon, no cover, molded to patient model	813.60	L6637	Upper extremity addition, nudge control elbow lock	251.68
L6582	Preparatory, wrist disarticulation or below elbow, single wall socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowen cable control, "USMC" or equal pylon, no cover, direct formed	691.56	L6640	Upper extremity additions, shoulder abduction joint, pair	130.40
L6584	Preparatory, elbow disarticulation or above elbow, single wall plastic socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, "USMC" or equal pylon, no cover, molded to patient model	1,159.38	L6641	Upper extremity addition, excursion amplifier, pulley type	97.60
L6586	Preparatory, elbow disarticulation or below elbow, single wall socket, friction wrist, locking elbow, figure of eight harness, humeral cuff, fair lead cable control, "USMC" or equal pylon, no cover, direct formed	996.66	L6642	Upper extremity addition, excursion amplifier, lever type	138.40
L6588	Preparatory, shoulder disarticulation or interscapular thoracic, single wall plastic socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, "USMC" or equal pylon, no cover, molded to patient model	1,732.80	L6645	Upper extremity addition, shoulder flexion-abduction joint, each	65.00
L6590	Preparatory, shoulder disarticulation or interscapular thoracic, single wall socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, "USMC" or equal pylon, no cover, direct formed	1,586.40	L6650	Upper extremity addition, shoulder universal joint, each	200.00
	<b>ADDITIONS: UPPER LIMB</b>		L6655	Upper extremity addition, standard control cable, extra	35.00
	The following procedures/modifications/components may be added to other base procedures. The items in this section should reflect the additional complexity of each modification procedure, in addition to base procedure, at the time of the original order.		L6660	Upper extremity addition, heavy duty control cable	56.00
			L6665	Upper extremity addition, Teflon, or equal, cable lining	24.00
			L6670	Upper extremity addition, hook to hand, cable adapter	43.40
			L6672	Upper extremity addition, harness, chest or shoulder, saddle type	108.00
			L6675	Upper extremity addition, harness, figure of ("8") eight type, for single control	80.42
			L6676	Upper extremity addition, harness, figure of ("8") eight type, for dual control	86.32
			L6680	Upper extremity addition, test socket, wrist disarticulation or below elbow	160.00
			L6682	Upper extremity addition, test socket, elbow disarticulation or above elbow	180.00
			L6684	Upper extremity addition, test socket, shoulder disarticulation or interscapular thoracic	148.00
			L6686	Upper extremity addition, suction socket	406.80
			L6687	Upper extremity addition, frame type socket, below elbow or wrist disarticulation	244.08
			L6688	Upper extremity addition, frame type socket, above elbow or elbow disarticulation	284.76
			L6689	Upper extremity addition, frame type socket, shoulder disarticulation	325.60

**HUMAN SERVICES****ADOPTIONS**

L6690	Upper extremity addition, frame type socket, interscapular-thoracic	366.40	L6870	Terminal device, hand, child mitt	140.00
L6691	Upper extremity addition, removable insert, each	244.08	L6872	Terminal device, hand, NYU child hand	615.38
L6692	Upper extremity addition, silicone gel insert or equal, each	240.00	L6873	Terminal device, hand, mechanical infant hand, Steeper or equal	257.50
(c) TERMINAL DEVICES—HOOKS (L6700—L6899)			L6875	Terminal device, hand, Bock, VC	540.00
L6700	Terminal device, hook, Dorrance or equal, model #3	265.00	L6880	Terminal device, hand, Bock, VO	320.00
L6705	Terminal device, hook, Dorrance or equal, model #5	211.67	<b>GLOVES FOR ABOVE HANDS</b>		
L6710	Terminal device, hook, Dorrance or equal, model #5X	240.00	L6890	Terminal device, glove for above hands, production glove	84.00
L6715	Terminal device, hook, Dorrance or equal, model #5XA	226.00	L6895	Terminal device, glove for above hands, custom glove	296.00
L6720	Terminal device, hook, Dorrance or equal, model #6	591.22	(d) HAND RESTORATION (L6900-L6999)		
L6725	Terminal device, hook, Dorrance or equal, model #7	288.69	L6900	Hand restoration (casts, shading and measurements included), partial hand, with glove, thumb or one finger remaining	1,000.00
L6730	Terminal device, hook, Dorrance or equal, model #7LO	350.00	L6905	Hand restoration (casts, shading and measurements included), partial hand, with glove, multiple fingers remaining	1,000.00
L6735	Terminal device, hook, Dorrance or equal, model #8	208.02	L6910	Hand restoration (casts, shading and measurements included), partial hand, with glove, no fingers remaining	1,000.00
L6740	Terminal device, hook, Dorrance or equal, model #8X	215.69	L6915	Hand restoration (shading and measurements included), replacement glove for above	320.00
L6745	Terminal device, hook, Dorrance or equal, model #88X	220.00	<b>EXTERNAL POWER—BASE DEVICES</b>		
L6750	Terminal device, hook, Dorrance or equal, model #10P	195.58	L6920	Wrist disarticulation, external power, self-suspended inner socket, removable forearm shell, Otto Bock or equal, switch, cables, two batteries and one charger, switch control of terminal device	3,789.90
L6755	Terminal device, hook, Dorrance or equal, model #10X	270.00	L6925	Wrist disarticulation, external power, self-suspended inner socket, removable forearm shell, Otto Bock or equal, electrodes, cables, two batteries and one charger, myoelectronic control of terminal device	4,350.58
L6765	Terminal device, hook, Dorrance or equal, model #12P	203.81	L6930	Below elbow, external power, self-suspended inner socket, removable forearm shell, Otto Bock or equal, switch, cables, two batteries and one charger, switch control of terminal device	3,807.50
L6770	Terminal device, hook, Dorrance or equal, model #99X	245.45	L6935	Below elbow, external power, self-suspended inner socket, removable forearm shell, Otto Bock or equal, electrodes, cables, two batteries and one charger, myoelectronic control of terminal device	4,384.65
L6775	Terminal device, hook, Dorrance or equal, model #555	288.51	L6940	Elbow disarticulation, external power, molded inner socket, removable humeral shell, outside locking hinges, forearm, Otto Bock or equal, switch, cables, two batteries and one charger, switch control of terminal device	5,210.69
L6780	Terminal device, hook, Dorrance or equal, model #SS555	243.20	L6945	Elbow disarticulation, external power, molded inner socket, removable humeral shell, outside locking hinges, forearm, Otto Bock or equal, electrodes, cables, two batteries and one charger, myoelectronic control of terminal device	5,780.01
L6790	Terminal device, hook, Accu hook or equal	300.80	L6950	Above elbow, external power, molded inner socket, removable humeral shell, internal locking elbow forearm, Otto Bock or equal, switch, cables, two batteries and one charger, switch control of terminal device	5,761.18
L6795	Terminal device, hook, 2 load or equal	750.00	L6955	Above elbow, external power, molded inner socket, removable humeral shell, internal locking elbow, forearm, Otto Bock or equal, electrodes, cables, two batteries and one charger, myoelectronic control of terminal device	6,850.89
L6800	Terminal device, hook, APRL VC or equal	700.00			
L6805	Terminal device, modifier wrist flexion unit	248.00			
L6806	Terminal device, hook, TRS Grip, VC	915.81			
L6807	Terminal device, hook, TRS Adept, child, VC	696.18			
L6808	Terminal device, hook, TRS adept, infant, VC	581.43			
L6809	Terminal device, hook, TRS Super Sport, passive	253.74			
L6810	Terminal device, pincher tool, Otto Bock or equal	104.24			
<b>HANDS</b>					
L6825	Terminal device, hand, Dorrance, VO	700.00			
L6830	Terminal device, hand, APRL, VC	780.00			
L6835	Terminal device, hand, Sierra, VO	680.00			
L6840	Terminal device, hand, Becker Imperial	525.00			
L6845	Terminal device, hand, Becker Lock Grip	460.00			
L6850	Terminal device, hand, Becker Plylite	460.00			
L6855	Terminal device, hand, Robin-aids, VO	480.00			
L6860	Terminal device, hand, Robin-aids, VO soft	400.00			
L6865	Terminal device, hand, Passive Hand	168.00			
L6867	Terminal device, hand, Detroit Infant Hand (mechanical)	618.06			
L6868	Terminal device, hand, Passive Infant Hand, Steeper, Hosmer or equal	136.97			

**ADOPTIONS****HUMAN SERVICES**

L6960	Shoulder disarticulation, external power, molded inner socket, removable shoulder shell, shoulder bulkhead, humeral section, mechanical elbow forearm, Otto Bock or equal, switch, cables, two batteries and one charger, switch control of terminal device	6,950.69
L6965	Shoulder disarticulation, external power, molded inner socket, removable shoulder shell, shoulder bulkhead, humeral section, mechanical elbow, forearm, Otto Bock or equal, electrodes, cables, two batteries and one charger myoelectronic control of terminal device	7,934.50
L6970	Interscapular-thoracic, external power, molded inner socket, removable shoulder shell, shoulder bulkhead, humeral section, mechanical elbow, forearm, Otto Bock or equal, switch, cables, two batteries and one charger, switch control of terminal device	8,475.55
L6975	Interscapular-thoracic, external power, molded inner socket, removable shoulder shell, shoulder bulkhead, humeral section, mechanical elbow, forearm, Otto Bock or equal, electrodes, cables, two batteries and one charger, myoelectronic control of terminal device	9,418.54
(e) EXTERNAL POWER—TERMINAL DEVICES (L7000—L7499)		
L7010	Electronic hand, Otto Bock, Steeper or equal, switch controlled	1,982.40
L7015	Electronic hand, System Teknik, Variety Village or equal, switch controlled	3,307.05
L7020	Electronic greifer, Otto Bock or equal, switch controlled	2,071.86
L7025	Electronic hand, Otto Bock or equal, myoelectronically controlled	2,076.36
L7030	Electronic hand, System Teknik, Variety Village or equal, myoelectronically controlled	3,443.55
L7035	Electronic greifer, Otto Bock or equal, myoelectronically controlled	2,014.85
L7040	Prehensile actuator, Hosmer or equal, switch controlled	1,616.36
L7045	Electronic hook, child, Michigan or equal, switch controlled	854.01
EXTERNAL POWER—ELBOW		
L7160	Electronic elbow, Boston or equal, switch controlled	8,938.22
L7165	Electronic elbow, Boston or equal, myoelectronically controlled	10,015.91
L7170	Electronic elbow, Hosmer or equal, switch controlled	3,238.90
L7180	Electronic elbow, Utah or equal, myoelectronically controlled	19,382.46
L7185	Electronic elbow, adolescent, Variety Village or equal, switch controlled	3,625.58
L7186	Electronic elbow, child, Variety Village or equal, switch controlled	4,800.00
L7190	Electronic elbow, adolescent, Variety Village or equal, myoelectronically controlled	5,177.71
L7191	Electronic elbow, child, Variety Village or equal, myoelectronically controlled	5,072.00
L7260	Electronic wrist rotator, Otto Bock or equal	1,342.44
L7261	Electronic wrist rotator, for Utah arm	2,000.62
L7266	Servo control, Steeper or equal	554.90
L7272	Analogue control, UNB or equal	1,216.24
L7274	Proportional control, 12 volt, Utah or equal	3,666.11

**EXTERNAL POWER—BATTERY COMPONENTS**

L7360	Six volt battery, Otto Bock or equal, each	167.90
L7362	Battery charger, six volt, Otto Bock or equal	150.23
L7364	Twelve volt battery, Utah or equal, each	296.74
L7366	Battery charger, twelve volt, Utah or equal	398.67
L7499	Unlisted procedures for upper extremity prosthesis	B.R.

**(f) REPAIRS (L7500—L7599)**

L7500	Repair of prosthetic device, hourly rate	40.72
L7510	Repair prosthetic device, repair or replace minor parts	B.R.
X3680	Travel time per hour (specify time involved)	40.72
X3690	Consultation without provision of an appliance (prosthetics or orthotics)	30.00

**(g) GENERAL (L8000—L8399)****BREAST PROSTHESES**

L8000	Breast prosthesis, mastectomy bra	16.00
L8010	Breast prosthesis, mastectomy sleeve	40.56
L8020	Breast prosthesis, mastectomy form	132.00
L8030	Breast prosthesis, silicone or equal	125.60
X3650	Breast prosthesis, insert type	63.20

**ELASTIC SUPPORTS**

L8100	Elastic support, elastic stocking, below knee, medium weight, each	24.00
L8110	Elastic support, elastic stocking, below knee, heavy weight, each	30.40
L8120	Elastic support, elastic stocking, below knee, surgical weight, (Linton type or equal), each	32.00
L8130	Elastic support, elastic stocking, above knee, medium weight, each	33.60
L8140	Elastic support, elastic stocking, above knee, heavy weight, each	36.00
L8150	Elastic support, elastic stocking, above knee, surgical weight, (Linton type or equal), each	44.00
L8160	Elastic support, elastic stocking, full-length, medium weight, each	40.00
L8170	Elastic support, elastic stocking, full-length, heavy weight, each	48.00
L8180	Elastic support, elastic stocking, full-length, heavy surgical weight, (Linton type or equal), each	52.00
L8190	Elastic support, elastic stocking, leotards, medium weight, each	108.00
L8200	Elastic support, elastic stocking, leotards, surgical weight, (Linton type), each	120.00
L8210	Elastic support, elastic stocking, custom-made	B.R.
L8220	Elastic support, elastic stocking, lymphedema	B.R.
L8230	Elastic support, elastic stocking, garter belt	B.R.

**TRUSSES**

L8300	Truss, single with standard pad	51.28
L8310	Truss, double with standard pads	101.68
L8320	Truss, addition to standard pad, water pad	24.00
L8330	Truss, addition to standard pad, scrotal pad	33.65

**(h) PROSTHETIC SOCKS (L8400—L8499)**

L8400	Prosthetic sheath, below knee, each	12.00
L8410	Prosthetic sheath, above knee, each	12.00
L8415	Prosthetic sheath, upper limb, each	11.20
L8420	Prosthetic sock, wool, below knee, each	14.94
L8430	Prosthetic sock, wool, above knee, each	18.40

**HUMAN SERVICES****ADOPTIONS**

L8435	Prosthetic sock, wool, upper limb, each	8.14
L8440	Prosthetic shrinker, below knee, each	33.60
L8460	Prosthetic shrinker, above knee, each	41.60
L8465	Prosthetic shrinker, upper limb, each	33.60
L8470	Stump sock, single ply, fitting, below knee, each	2.52
L8480	Stump sock, single ply, fitting, above knee, each	2.52
L8485	Stump sock, single ply, fitting, upper limb, each	6.21
L8490	Addition to prosthetic sheath/sock, air seal suction retention system	88.68
L8499	Unlisted procedure for miscellaneous prosthetic services	B.R.

**APPENDIX A****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 will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the Fiscal Agent Billing Supplement, write to:

UNISYS

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Trenton, New Jersey 08619-4801

or contact:

Office of Administrative Law

Quakerbridge Plaza, Building 9

CN-049

Trenton, New Jersey 08625-0049

**(a)****DIVISION OF YOUTH AND FAMILY SERVICES****Initial Response****Adopted Amendments: N.J.A.C. 10:133A-1.7 and 1.10****Adopted Repeal and New Rule: N.J.A.C. 10:133A-1.9**

Proposed: August 15, 1994 at 26 N.J.R. 3355(a).

Adopted: March 7, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: March 8, 1995 as R.1995 d.188, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4C-4(h) and 9:6-8.15.

Effective Date: April 3, 1995.

Expiration Date: January 4, 1998.

**Summary of Public Comments and Agency Responses:**

Comments on the proposed amendments and new rule were submitted by Ewan C. MacQueen, Jr., Christian Science Committee on Publication, and Joseph F. Suozzo, Deputy Public Defender, Camden, New Jersey.

COMMENT: This proposal (N.J.A.C. 10:133A-1.7 and 1.10) is the Division's response to pressure from the Federal Department of Health and Human Services to change New Jersey's religious exemption provision in the State's child abuse statute as a condition for continued receipt of Federal funding under the Child Abuse Prevention and Treatment Act (CAPTA).

We (the Christian Science Committee on Publication) feel that this attempt by HHS to coerce New Jersey into changing its rule is contrary to law for the following three reasons:

1. It violates Congress' clear and consistent intent in reenacting and reauthorizing CAPTA. The Congress has recently recognized this wrong action as CAPTA went through the initial stages of reauthorization this past June. In HR 4606, the House appropriations bill which includes funding for CAPTA, the House provided that:

"None of these funds made available by this Act may be used to require states as a condition of receiving funding under the Child Abuse Prevention and Treatment Act to restrict, condition, or otherwise qualify a State's authority to determine (i) whether and under what circumstances a parent's decisions to provided non-medical health care for a

child may constitute negligent treatment or maltreatment, and (ii) the circumstances under which it is appropriate for a child who is receiving non-medical health care."

2. Although this current HHS policy represents a substantial change in the agency's rules interpreting CAPTA, HHS has failed to provide public notice and an opportunity for public comment regarding this change, as required by law. The US Senate has recognized this, and feels that the matter needed to be reviewed in public. Consequently, their appropriations bill, passed this past July established a moratorium on HHS' ability to withhold funding from states until the reauthorization process is completed in September 1995.

3. We would also underscore the fact that HHS has failed to meet its burden of showing that its policy complies with the Religious Freedom Restoration Act (RFRA). RFRA requires HHS to demonstrate that its policy of suppressing religion is in "furtherance" of a "compelling governmental interest" and is the "least restrictive means" of furthering that interest.

We recommend, therefore, that the Division **not** adopt the changes proposed in the form of N.J.A.C. 10:133A-1.7(b) and 1.10(a)9 until such time as the US Congress reauthorizes CAPTA in September 1995. New Jersey will not lose its funding, and our needs will continue to be met.

RESPONSE: The Division affirms that the rules adopted at N.J.A.C. 10:133A-1.7(b) and 1.10(a)9 do not reflect any change in policy or procedures. State law, N.J.S.A. 9:6-1.1 and 9:6-8.21(c), has not changed regarding children under treatment by spiritual means alone. The Division wishes to use the New Jersey Administrative Code as an additional means of notifying the affected public that the Division will screen and investigate such referrals pursuant to State law, N.J.S.A. 30:4C-1 et seq. and 6:6-8.8 et seq. In these situations, it is the court's responsibility to determine if a child under treatment by spiritual means alone shall be ordered to have medical treatment.

COMMENT: The Division recognizes at N.J.A.C. 10:133A-1.7(b) that, although a child not receiving medical treatment because he or she is being treated by spiritual means alone may not be considered abused or neglected by operation of law, the Division shall conduct a protective services investigation. N.J.A.C. 10:133A-1.7(b) should be clarified by adding the phrase "by operation of law."

RESPONSE: The Division agrees with the comment and has added the phrase "by operation of law" to N.J.A.C. 10:133A-1.7(b).

COMMENT: The Office of the Public Defender supports the new rule at N.J.A.C. 10:133A-1.9 and suggests that the Division clarify that "in person" means face-to-face.

RESPONSE: The Division agrees with the comment and has added "face-to-face" to N.J.A.C. 10:133-1.9.

COMMENT: N.J.A.C. 10:133A-1.7(a)3 states that the Division shall "provide the applicant with information and referral to another resource." The Division should amend this section to state that: the information provided to the applicant be confirmed in writing, referrals to another agency be made in writing and the termination of the Division's involvement be stated in writing.

RESPONSE: The Division has adopted rules about information and referral at N.J.A.C. 10:133B. The Division has added a reference to N.J.A.C. 10:133B to N.J.A.C. 10:133A-1.7(a)3. The Division does not consider it necessary to require that every communication regarding a referral or application be in writing.

COMMENT: At N.J.A.C. 10:133A-1.10(a)1, the Division should clarify that when a child has died, possibly due to abuse or neglect, the Division shall respond immediately when there may be other children at risk in the home or otherwise.

RESPONSE: The Division agrees with the comment and has added "at risk" to N.J.A.C. 10:133A-1.10(a)1, since it is implicit in the rule that **any** children remaining in the home would be at risk, under such circumstances. The Division is adding the phrase "at risk" to clarify, or make explicit, the need for immediate response.

COMMENT: N.J.A.C. 10:133A-1.11(a)3 and 4 should reference the corresponding paragraphs under N.J.A.C. 10:133A-1.10 which indicate the differentiation between the need for an immediate response and situations in which a longer response time is appropriate.

RESPONSE: The Division agrees with the comment and has added the phrase "that does not present a substantial risk of harm to the child requiring an immediate response" to both N.J.A.C. 10:133A-1.11(a)3 and 4.

## ADOPTIONS

## LABOR/HEALTH

### Executive Order No. 27 Statement

The requirements of the adopted rules are not in excess of those imposed by Federal law, 42 U.S.C.A. §5106a(b)(2) and Federal regulations, 45 CFR 1340.2(d)(2)(ii).

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

#### 10:133A-1.7 Screening of referrals and applications

(a) The Division representative shall screen each referral or application and determine, with supervisory approval, the most appropriate response. The most appropriate response shall be to:

1. Conduct a child welfare services assessment to determine how or if the Division can provide child welfare services;

2. Conduct a child protective services investigation in order to determine whether a child is an abused or neglected child; or

3. Provide the applicant with information and referral to another resource and end the Division's involvement **\*in accordance with N.J.A.C. 10:133B\***.

(b) The Division shall screen each referral which alleges that a child is or may be at risk because he or she is not receiving necessary medical attention because he or she in good faith is under treatment by spiritual means alone. While a child in this situation may not be considered to be abused or neglected **\*by operation of law\***, the Division shall conduct a protective services investigation.

(c) Screening shall be completed within three working days of receiving the referral unless the referral requires a more prompt response as stipulated in N.J.A.C. 10:133A-1.10 and 1.11.

#### 10:133A-1.9 Responding in person

When the Division determines that the Division will conduct a child welfare services assessment or a child protective services investigation, a Division representative shall respond in person<sup>\*</sup>, **face-to-face\***.

#### 10:133A-1.10 Situations requiring immediate response

(a) The Division shall respond immediately upon receipt of the referral when the screening indicates that:

1. A child has died under circumstances that give the Division reason to believe that the child may have died due to abuse or neglect and there may be other children **\*at risk\*** in the home;

2. A child has suffered physical harm or sexual trauma and physical evidence may be lost if not immediately and properly documented;

3. A child may need immediate medical treatment and there is no one willing or able to take the necessary action;

4. A child is without adult supervision and may not be competent to provide for his or her own care;

5. A child is in the hospital and in protective custody pursuant to N.J.S.A. 9:6-8.16;

6. A child or family is in severe crisis or actively calling for help which cannot be resolved over the telephone or by referral to another appropriate community resource;

7. The severity of a referral situation is in doubt;

8. A foundling is discovered and the child is not receiving necessary medical attention and the police are not actively investigating;

9. A child needs immediate medical treatment, but he or she is under treatment by spiritual means alone; or

10. A child has suffered serious physical harm or sexual trauma and there is reason to believe that a parent or guardian may have been responsible and the child's immediate safety needs to be assured.

#### 10:133A-1.11 Situations which indicate a response within 24 to 72 hours

(a) The Division may respond within 24 to 72 hours to referrals or applications which indicate the following situations:

1. A child has been physically abused in the past, evidence of the physical abuse is no longer present, and there is evidence that no abuse is likely to occur within 72 hours because the perpetrator has no access to the victim;

2. A foundling is already receiving appropriate medical care and the police are involved;

3. The referral indicates present or past physical neglect **\*that does not present a substantial risk of harm to the child requiring an immediate response\***;

4. The referral indicates emotional abuse or neglect **\*that does not present a substantial risk of harm to the child requiring an immediate response\***;

5. The referral is from the Family Court, Crisis Intervention Unit or Court Intake;

6. The referral alleges domestic violence which is not threatening the immediate safety of the child;

7. The referral of sexual abuse does not indicate current abuse or physical trauma, as stated in N.J.A.C. 10:133A-1.10 or does not require an extension as described in N.J.A.C. 10:133A-1.12; or

8. Other situations of a similarly serious nature.

#### 10:133A-1.12 Situations requiring response within 10 days of referral

(a) The Division may begin a response more than 72 hours after receiving a referral when a credible source, for example, the child's mental health practitioner, indicates that the child is not at risk and extending the time frame for response allows the Division representative to plan his or her response without compromising the child or the investigation. The Division representative shall document the reason for the extension of the time frame for response and obtain office manager approval. The response shall begin within 10 working days of the referral.

(b) In situations requiring child welfare services, the Division representative shall make personal contact with the client within 10 working days of receiving an application. If there is an urgent need for a service because the child or family is in crisis, the Division representative shall respond immediately in person.

(c) The Division shall respond to all situations listed in (b) above within 10 working days.

## LABOR/HEALTH

### (a)

### ENVIRONMENTAL HEALTH SERVICES DIVISION OF WORKPLACE STANDARDS

#### Asbestos Licenses and Permits

#### Joint Readoption with Amendments: N.J.A.C. 12:120 and 8:60

Proposed: January 3, 1995 at 27 N.J.R. 71(a).

Adopted: March 13, 1995 by Peter J. Calderone, Commissioner, Department of Labor, and Len Fishman, Commissioner, Department of Health.

Filed: March 13, 1995 as R.1995 d.193, **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. 34:5A-39.

Effective Date: March 13, 1995, Readoption;  
April 3, 1995, Amendments.

Expiration Date: March 13, 2000.

#### Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed readoption with amendments was held on January 26, 1995 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, Department of Labor and Joseph Eldridge, Research Scientist, Department of Health were available to preside at the hearing and receive testimony. They responded to certain statements made during the course of testimony and recommended that the proposed readoption with amendments be adopted with changes not in violation of N.J.A.C. 1:30-4.3 described in the Summary below. The public hearing record may be reviewed by

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contacting Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, NJ 08625-0110.

### Summary of Public Comments and Agency Responses:

Written comments were received from Charles Marcianite, President, New Jersey State AFL-CIO; Martin Dubno, President, Kingston Contracting and Management Corporation; Joseph P. Miller, President, Finishing Touch Asbestos Abatement Corporation; George V. Corwell, Associate Director for Education, New Jersey Catholic Conference; Tim Rasmussen, Project Manager/Lab Director; P.T. & L. Environmental Consultants, Inc.; and Walter D. Anderson, Resilient Floor Covering Institute.

**COMMENT:** In N.J.A.C. 12:120-4.2/8:60-4.2 and N.J.A.C. 12:120-5.2/8:60-5.2, the Departments should clarify that exemptions are available for activities involving non-friable asbestos containing material (ACM) that is not rendered friable by the activity and where such activities result in exposure below the Federal Occupational Safety and Health Administration (OSHA) required limits.

**RESPONSE:** The exempted activities were erroneously omitted from the proposal. The Department is revising these rules upon adoption to clarify what activities could be exempted from licensing and permit requirements in accordance with the amendments to the Asbestos Control and Licensing Act at P.L. 1994, c.21. This is not a substantive change since the industry recognizes which asbestos containing materials could cause significant exposure and is meant only for clarification.

**COMMENT:** Under N.J.A.C. 12:120-4.2/8:60-4.2 and 12:120-5.2/8:60-5.2, the Departments should clarify that exemptions for designated activities are allowed based upon industry generated data.

**RESPONSE:** As proposed these rules allow for exemption of an asbestos activity provided sufficient data is presented which indicates that no significant exposure exists to perform the activity. Industry generated data may be considered as sufficient data when referenced.

**COMMENT:** The exemption under N.J.A.C. 12:120-4.2/8:60-4.2 and 12:120-5.2/8:60-5.2 would be appropriate for removal of resilient floor covering materials using the Resilient Floor Covering Institute (RFCI) recommended work practices.

**RESPONSE:** License and permit requirements for the removal of asbestos-containing resilient floor coverings may be exempted under these rules provided the July 1990 edition of recommended work practices of the RFCI are followed.

**COMMENT:** Where the definition of Phase Contrast Microscopy (PCM) under N.J.A.C. 12:120-2.1/8:60-2.1 states that the method "only detects fibers . . . wider than one quarter of one millionth of a meter," it should also state that "fibers greater than three millionths of a meter in width are not counted." This addition would be more consistent with the detail contained in the definition. Furthermore, the definition of PCM should refer to the NIOSH method 7400 for asbestos and other fibers by PCM, revised August 15, 1994.

**RESPONSE:** The Departments acknowledge the many interpretations of the definitions for not only PCM but also Transmission Electron Microscopy (TEM). Accordingly, the Departments are revising the definitions of current NIOSH method 7400 and 7402 respectively in publication as intended by the amendment to the Act. The definition thus revised does not identify detection limits not counting exclusions, as this detail is duplicative of the referenced scientific analytical method.

**COMMENT:** N.J.A.C. 12:120-4.7/8:60-4.7 should include compliance with OSHA's revised standard, 29 C.F.R. 1926.1101, which gives specific guidance for ACM procedures and engineering controls.

**RESPONSE:** Initially, it is noted that worker protection is specifically regulated by OSHA and that contractors are already required to comply with OSHA revised standard, 29 C.F.R. 1926.1101. In addition, while OSHA's regulations focus on worker protection, the Departments' rules additionally focus on public health and safety.

**COMMENT:** The criteria for topics in asbestos abatement worker training courses under N.J.A.C. 12:120-6.6(p)/8:60-6.6(p) should include discussion and instruction on working in a "confined space" as covered by OSHA, since a significant portion of ACM work is conducted in such spaces.

**RESPONSE:** The Departments agree that discussion on confined spaces is important in the training of workers and supervisors and therefore it will be addressed in the current course outline under "additional safety hazards" (see N.J.A.C. 12:120-6.6(r)/12:8:60-6.6(r)12).

**COMMENT:** Does the waiver of 10 day notification required in emergency situations under N.J.A.C. 12:120-7.2(d)/8:60-7.2(d)2 have to be submitted to and approved by both the Department of Health and

the Department of Labor? If the interpretations of the particular emergency by the two Departments vary significantly, which Department has precedence?

**RESPONSE:** Both the Departments of Health and Labor must be notified 10 days prior to beginning asbestos abatement work referenced in N.J.A.C. 12:120-7 and 8:60-7. The Department of Health is the lead agency with respect to health matters. However, any waiver of the 10 day notification is approved in consultation with the Department of Labor.

**COMMENT:** The term limited repair as defined in N.J.A.C. 12:120-2.1/8:60-2.1 and used in N.J.A.C. 12:120-1.4(b)2 and 3/8:60-1.4(b)2 and 3 limits the repair, removal or stripping of three linear or three square feet or less of asbestos containing material. This creates an undue hardship on building owners and also far exceeds Federal standards.

**RESPONSE:** The EPA Model Accreditation Plan requires contractors, supervisors and workers to be accredited when stripping, removing or repairing three linear or three square feet of asbestos containing materials. As a result, the term limited repairs as used in these rules are consistent with Federal standards. Any undue hardship on building owners is outweighed by the need to protect public health and safety.

**COMMENT:** It is unreasonable to eliminate the term "experience asbestos worker" under N.J.A.C. 12:120-2.1 definitions.

**RESPONSE:** The term "experienced asbestos worker" is being eliminated because it is obsolete. Since 1989 all previously experienced asbestos workers have been required to complete annual refresher courses in order to qualify for renewal of a performance permit.

**COMMENT:** The non-transferability of licenses under N.J.A.C. 12:120-4.5/8:60-4.5 is unreasonable.

**RESPONSE:** This rule is consistent with the amendments to the Asbestos Control and Licensing Act, P.L. 1994, c.21 which prohibits the transfer of licenses.

**COMMENT:** The increase in the amount of penalty or violation in N.J.A.C. 12:120-3.5/8:60-3.5 is overly excessive.

**RESPONSE:** This rule is consistent with the amendments to the Asbestos Control and Licensing Act, P.L. 1994, c.21 which raises the civil administrative and criminal penalties imposed for violations of the Act.

**COMMENT:** The proposed alternative license and permit fee structures in N.J.A.C. 12:120-4.3(h)/8:60-4.3(h) and 12:120-5.5/8:60-5.5 are unreasonable due to the excessive amounts and annual renewal requirements.

**RESPONSE:** The amendments to the Asbestos Control and Licensing Act, P.L. 1994, c.21 authorize the Department of Labor to charge reasonable fees for licenses and permits annually. The Department has proposed three alternative fee structures for consideration by interested parties. These alternatives would allow the Department to recoup anticipated program costs. They were also commensurate with fees for licenses and permits charged by other states. In addition, the alternatives provided a waiver of fees if the applicant can demonstrate economic hardship. The Department indicated that it would adopt its amendment to fees for licenses and permits based on comments received on the proposed alternatives from interested parties indicating which is least burdensome to the industry. Based on a fiscal review of the costs of the asbestos control and licensing program, fees charged by other states and comments received on the proposed alternatives from interested parties, the Department is adopting Alternative A which will establish annual fees for employer licenses and employee performance permits and increased fee for employer duplicates and employee performance permit. A detailed analysis of the basis for adopting Alternative A is contained in the Summary of Agency-Initiated Changes.

**COMMENT:** The fee for a duplicate license found at N.J.A.C. 12:120-4.3(h) is unreasonable. The Department should allow a contractor to duplicate his own license on a copy machine at no charge and save the Department time and trouble.

**RESPONSE:** Initially, it is noted that photocopied licenses are not authorized by law. Specifically, the Asbestos Control and Licensing Act requires that the Commissioner of Labor issue asbestos licenses. In addition, to ensure the authenticity of licenses issued by the Department of Labor, a photocopy is not acceptable.

**COMMENT:** Contractors should not have to obtain permission before starting emergency work as required by N.J.A.C. 12:120-7.2(d)/8:60-7.2(d)2.

**RESPONSE:** This rule simply clarifies a Departmental practice which has been in existence since May 1990. The rule is necessary to protect public health, safety and welfare.

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COMMENT: N.J.A.C. 12:120-6.3(g)/8:60-6.3(g) gives the Commissioner of Labor discretion to waive fees for annual certification. However, N.J.A.C. 12:120-6.10(c)/8:60-6.10(c) imposes a mandatory fee collection obligation on the Commissioner of Health.

RESPONSE: Initially, it is noted that N.J.A.C. 12:120-6.3(g)/8:60-6.3(g) should authorize the Commissioner of Health and not the Commissioner of Labor to waive the fee for certification. Accordingly, this correction is being made to the rule upon adoption. Also, under N.J.A.C. 12:120-6.10/8:60-6.10 the Departments are adding a new subsection (d) to provide for the waiver of fees for renewal of certification of training agencies by the Commissioner of Health. This addition will result in the recodification of the current subsections (d) and (e).

#### Summary of Agency-Initiated Changes:

The Departments have noted that using "directly" or "indirectly" to define the scope of employers and employees who are covered by N.J.A.C. 12:120-3.2/8:60-3.2 is ambiguous. Because the Departments interpret the law as applying to any employer or employee who performs the functions of asbestos application, enclosure, repair, removal or encapsulation, the Departments are deleting the words directly or indirectly from the rule upon adoption.

The Department of Labor proposed three alternative annual rather than biennial fee structures at N.J.A.C. 12:120-4.3(h), for employer licenses, and at N.J.A.C. 12:120-5.5(e) and (f), for employee performance permits. Alternative A would establish annual fees for both employer licenses and employee performance permits. Specifically, Alternative A provides for increased fees for an employer license and for duplicates of an employer license and provides for increased fees for employee worker and supervisor performance permits. Alternative B would combine increased annual fees for employee performance permits with increasing employer license fees based on the number of asbestos work projects performed in a single year. Alternative C would establish annual fees for employer licenses which are lower than Alternative A, and would establish increased fees for employer license duplicates which are higher than Alternative A. When compared to Alternative A, Alternative C would establish a 10 percent higher annual fee for employee worker performance permits and provide for a 13 percent reduced annual fee for employee supervisor performance permits. Under each alternative an increased fee would be charged for duplicates or replacements of an employer license; however, under each alternative a reduced fee would be charged for duplicates or replacements of an employee performance permit. The Department explained that it would adopt its amendment to fees for licenses and permits based on the comments received on the proposed alternatives from interested parties.

A review of the comments received indicates that there was no opposition to any specific alternative. Rather, the comments, as noted above, generally oppose any increase in fees. Despite this opposition, the Department of Labor's proposal to increase fees is consistent with the recent amendments to the Asbestos Control and Licensing Act, P.L. 1994, c.21, which requires that it recoup anticipated program costs. The Department's Controller has conducted a fiscal review of the costs of the asbestos control and licensing program and has estimated that the program costs for fiscal year 1996 will be \$445,000. This figure reflects the costs of processing and issuing licenses and permits, on site inspections, penalty actions, collections and staff salaries and benefits. Under any of the alternative fee proposals, approximately \$400,000 revenues is expected to be generated in the first year to recoup anticipated program costs. The alternative fee proposals represent the first increase in license and permit fees imposed by the Department since 1989.

With the requirement to recoup anticipated program costs as imposed by the amendments to the Asbestos Control and Licensing Act, the Department of Labor has found it necessary and most reasonable to adopt the flat fee schedule proposed under Alternative A. Alternative A will establish an annual fee of \$1,000 for employer licenses, a \$100.00 fee for each duplicate of an employer license, an annual fee of \$50.00 for an employee worker performance permit and an annual fee of \$75.00 for an employee supervisor performance permit. By demonstrating significant economic or financial hardship, asbestos employers and asbestos employees under this alternative may request the Department of Labor to waive the respective application fee.

It is important to note that the fees proposed by Alternative A are commensurate with fees charged by other Northeastern states, and in some cases, are more reasonable and moderate to the Industry. In particular, the Department reviewed similar programs in New York, Pennsylvania, Delaware, Massachusetts, Rhode Island and Vermont. Many of these states not only impose training certification, employer

license and/or employee permit fees, but also charge notification and late fees. In some states, the amount of fee is based on the number of job sites. The combination of such charges by these other states, in fact, often results in greater overall expenses to the industry than that which would result from adoption of Alternative A.

Since the fees under Alternative A were developed and based upon anticipated program costs after fiscal review by the Department's Controller, the Department will periodically review program fees and strive to reduce adopted fees by cutting program costs. Should program costs go down, the Department of Labor would similarly reduce, through rulemaking, the fees for licenses and permits. The Department would provide contractors and employees with a general notice of any reduction in fees. Such notice would also be indicated on both initial and renewal applications for licenses and permits. Additionally, the Department will establish an industry advisory board to the Department of Labor to work on program efficiency and removal of unnecessary regulations and costs for the program.

The Departments have been advised that OSHA has recodified its General Industry Standards and Construction Standards dealing with occupational exposure to asbestos. Accordingly, the Departments are revising the reference to the Federal documents referred to in this chapter noted at N.J.A.C. 12:120-8.1/8:60-8.1.

#### Executive Order No. 27 Statement

The proposed readoption with amendments does not exceed standards or requirements imposed by Federal law and therefore a Federal exceedance analysis is not required. The rules set forth at N.J.A.C. 12:120 and 8:60 which provide standards for the licensing of contractors, the training and permitting of asbestos workers and supervisors and the certification of asbestos training agencies are required by State law codified at N.J.S.A. 34:5A-39 et seq. These standards are necessary to protect the general public health, safety and welfare.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:120 and 8:60.

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]\***):

#### 12:120-1.4 (8:60-1.4) Scope

(a) This chapter shall apply to:

1. (No change.)
2. Training, examination and issuance of permits to workers;
3. Training, examination and issuance of permits to supervisors;
- 4.-6. (No change.)

(b) This chapter shall not apply to:

1. (No change.)
2. The stripping, limited repair, or removal of three feet or less of asbestos-containing material from piping;
3. The stripping, limited repair or removal of three square feet or less of asbestos-containing material from any duct, boiler, tank, structural member, or similar equipment;
4. (No change.)
5. The application, enclosure, encapsulation, repair, or removal of asbestos-containing roofing and exterior siding materials in all but demolition projects;
6. The licensure of private employers subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., using their own employees to apply, enclose, encapsulate, repair or remove asbestos-containing material in their own facility; or
7. The permitting of employees subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., who apply, enclose, encapsulate, repair or remove asbestos-containing materials in their employer's own facility.

#### 12:120-1.5 (8:60-1.5) Documents referred to by reference

The availability of standards and publications referred to in this chapter is set forth at N.J.A.C. 12:120-9 and 8:60-9.

#### 12:120-2.1 (8:60-2.1) Definitions

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

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"Accepted engineering practices" means those practices which conform to accepted principles, tests, or standards of nationally recognized technical or scientific authorities.

"Applicant" means any person seeking to obtain either an asbestos abatement worker permit, an asbestos abatement supervisor permit or an employer license, or an agency seeking certification to conduct asbestos abatement training.

"Asbestos-containing material" (ACM) means any material containing more than one percent asbestos which has been applied on any ceiling, wall, duct, boiler, tank, pipe, structural member, or on any other part of a building or equipment.

"Commissioner" means the Commissioner of Labor or his or her authorized designee.

"Commissioner of Health" means the Commissioner of Health or his or her authorized designee.

"Department of Health" means the Environmental Health Services of the New Jersey Department of Health, CN 360, Trenton, N.J. 08625-0360.

"Employer" means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work or directly performing the asbestos work. In the case of a corporation, the officers of the corporation and any agents having the management of the corporation shall be deemed to be employers of the employees of the corporation for the purposes of this Act. This term shall apply to private employers and to the State, its political subdivisions and any boards, commissions, schools, institutions or authorities created or recognized thereby. This term also includes contractors and sub-contractors.

"f/cc" means fibers per cubic centimeter.

"Friable" means asbestos-containing material that when dry may be crumbled, pulverized or reduced to powder by hand pressure, and includes previously non-friable asbestos-containing material after that material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Instructor" means any person(s) hired by a training agency and approved by the Department of Health for the purpose of instructing a Department of Health approved asbestos training course.

"Interactive/participatory teaching method" means instruction which consists of active participation of the trainees, such as brainstorming, hands-on training, demonstration and practice, small group problem solving, discussions, problem posing, group work assignments, question and answer periods and role-playing sessions. Lecture is not considered an interactive participatory teaching method.

"Limited repair" means the utilization of accepted engineering practices to minimize fiber release to return three linear feet or less or to return three square feet or less of damaged asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment to an undamaged condition or to an intact state by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released.

"May" indicates a discretionary action.

"PCM" or "phase contrast microscopy" means the scientific method of air sampling analysis which enhances contrast between fibers (trapped on a filter) and the background at a magnification of approximately 400x. This method cannot distinguish asbestos fibers from other fiber types and only detects those fibers longer than five millionths of a meter and wider than one quarter of one millionth of a meter.\* **\*for the purpose of determining airborne asbestos fiber concentrations in fibers per cubic centimeter of air**

**(f/cc). This analytical method is to be consistent with the National Institute of Occupational Safety and Health (NIOSH) method 7400 as referenced in the 4th Edition, August 15, 1995 with addenda of the NIOSH Manual of Analytical Methods.\***

"Public or private building" means any building, including commercial buildings as defined in 40 C.F.R. Part 763, Appendix C to Subpart E, or as defined in N.J.A.C. 5:23-8.

"Repair" means the utilization of recommended work practices to minimize fiber release to return more than three linear feet or more than three square feet of damaged asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment to an undamaged condition or to an intact state by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released.

"Shall" indicates a mandatory requirement.

"Supervisor" means any person who has completed an asbestos supervisor training course approved by the Department of Health and who has successfully passed a written asbestos supervisor examination devised and administered under the approval of the Department of Health for the position of supervisor and who possesses a valid asbestos supervisor permit issued by the Department of Labor.

"TEM" or "transmission electron microscopy" means the scientific method of air sampling analysis whereby an electron beam is focused onto and through a sample collected on a filter, then projected onto a fluorescent screen. The changing projected images which result from the varying densities of the sample can detect the smallest diameter asbestos fibers. The images are basically shadows of the particles being examined. Typically, the sensitivity of TEM analysis is between 100 to 1,000 times greater than that of PCM analysis. When used to its fullest capabilities, TEM analysis is definitive for asbestos fibers and can provide information into the crystalline structures of individual fibers.]\* **\*for the purpose of definitively determining airborne asbestos fiber concentrations structures per cubic centimeter (s/cc) of air as well as the type of asbestos identified. This analytical method is to be consistent with the National Institute of Occupational Safety and Health (NIOSH) method 7402 as referenced in the 4th Edition, August 15, 1994 with addenda of the NIOSH Manual of Analytical Methods.\***

"Training agency" means a training provider approved or certified by the Department of Health to conduct asbestos training courses.

"Training course" means any asbestos training course approved by the Department of Health in accordance with the requirements of N.J.A.C. 12:120 and 8:60.

"U.S.E.P.A." means the United States Environmental Protection Agency.

### 12:120-3.2 (8:60-3.2) Compliance

(a) Every employer falling within the scope of this chapter, who \***[directly or indirectly]**\* performs any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or who enters into any contract with the owner or owner's representative for the employer to perform such work or services, shall comply with the provisions of this chapter and shall be issued a nontransferable license by the Commissioner of Labor.

(b) Every employee falling within the scope of this chapter who performs the functions of application, enclosure, repair, removal or encapsulation of asbestos shall procure a performance permit issued by the Commissioner of Labor pursuant to this chapter.

(c) Every employer and employee shall take all prudent measures to comply with written recommendations made by the Commissioner of Labor or the Commissioner of Health, as the case may be.

### 12:120-3.3 (8:60-3.3) Interface of State agencies

(a) (No change.)

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(b) The Department of Health, under the provisions of this chapter, shall:

1. (No change.)
2. Certify the course of training for workers and supervisors;
3. Have the authority to develop, approve and administer examinations for workers and supervisors;
4. Collect fees for the certification of training courses and the administration of examinations;

Recodify existing 3.-4. as 5.-6. (No change in text.)

### 12:120-3.4 (8:60-3.4) Enforcement

(a) In accordance with N.J.S.A. 34:5A-41, any person who violates a provision of this chapter shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.A. 2C:43-3, shall be subject to a fine of not more than \$25,000 in addition to any other appropriate disposition authorized by subsection b of N.J.S.A. 2C:43-2.

(b) The Commissioner of Labor or the Commissioner of Health, as the case may be, as an alternative to or in addition to the fines and imprisonment authorized in (a) above, may employ the following powers and remedies in enforcing their respective responsibilities under the Act:

1. Whenever either the Commissioner of Labor or Health find that a person has violated any provision of the Act for which that Commissioner has the responsibility to enforce, that Commissioner may issue an administrative order to abate the violation. The administrative order must:

- i. Specify the provisions of the Act which the person has violated;
- ii. Give notice of the person's right to an informal conference or hearing pursuant to N.J.A.C. 12:120-8 and 8:60-8, on the matters contained in the order. Upon a request for an informal conference or formal hearing, the Commissioner of Labor or Health may grant a stay of the administrative order following review of a written request which includes a factual basis and clearly supports the appropriateness of the stay.

2. Either the Commissioner of Labor or Health may institute an action or proceeding in the Superior Court for injunctive or other relief for any violation of this Act for which that Commissioner has the responsibility to enforce and the court may proceed in the action in a summary manner.

(c) Either the Commissioner of Labor or the Commissioner of Health may assess a civil administrative penalty in accordance with N.J.A.C. 12:120-3.5 and 8:60-3.5, not to exceed \$25,000 for each violation of this Act for which that Commissioner has the responsibility to enforce.

1. Each day during which the violation continues shall constitute an additional, separate and distinct offense.

2. The assessment of a civil administrative penalty shall not be levied until after the alleged violator has been notified by certified mail or personal service. The notice of assessment shall include:

- i. A reference to the section of the statute violated;
- ii. A concise statement of the facts alleged to constitute a violation;
- iii. A statement of the amount of civil administrative penalties to be imposed; and

iv. A statement of the alleged violator's right to an informal conference or formal hearing pursuant to N.J.A.C. 12:120-8 et seq. and 8:60-8 et seq.

3. Either Department may negotiate the amount of a civil administrative penalty as it deems appropriate.

4. Payment of the assessment of a civil administrative penalty is due upon issuance of a final order by the Commissioner of Labor or the Commissioner of Health.

5. The Commissioner of Labor or the Commissioner of Health may file a civil action to recover a civil administrative penalty with costs pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(d) A person who violates an administrative order issued pursuant to subsection (b)1 above, or who violates a court order issued pursuant to subsection (b)2 above, or who fails to pay in full an

administrative assessment pursuant to subsection (c) above, shall be subject, upon court order, to a civil penalty not to exceed \$50,000 per day for such violation.

(e) The pursuit of any of the remedies specified in this section shall not preclude either Commissioner from seeking any other remedy.

### 12:120-3.5 (8:60-3.5) Civil administrative penalties

(a) Employers, training agencies and instructors may be assessed civil administrative penalties not to exceed \$25,000 for each violation of the Act or this chapter, including, but not limited to:

1. Performing as an employer without a license;
2. Allowing an employee to work without a permit;
3. Submitting false information on the application for a license;
4. Submitting false information on the application for a course certification or instructor approval;
5. Performing as a training agency without certification;
6. Failure to meet license performance standards when performing asbestos abatement work;
7. Failure to perform quality asbestos training;
8. Submitting false information on training records;
9. Failure to fulfill notification requirements pursuant to N.J.A.C.

12:120-7 and 8:60-7;

10. Other violations of the Act or this chapter.

(b) Workers, supervisors, and trainees may be assessed civil administrative penalties not to exceed \$25,000 for each violation of the Act or this chapter, including, but not limited to:

1. Working as an employee without a permit;
2. Submitting false information on the application for a permit;
3. Submitting false information on the application for an examination;
4. Submitting false information to gain entrance into an examination;
5. Using fraudulent means during the taking of an examination;
6. Using fraudulent means to pass an examination;
7. Tampering with, altering, or defacing a permit;
8. Submitting false information on training records;
9. Other violations of the Act or this chapter;

(c) In assessing a civil administrative penalty pursuant to this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, may consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

- 1.-4. (No change.)
5. Economic benefit which the violator accrues as a result of the violation; and
6. (No change.)

(d) In addition to other sanctions in the Act or this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall have the authority to require:

- 1.-2. (No change.)
3. The removal of any worker from the job site within the meaning and purposes of the Act;
4. The removal of any supervisor from the job site within the meaning and purposes of the Act; and
5. The removal of any instructor from the training course within the meaning and purposes of the Act.

### 12:120-4.2 (8:60-4.2) Exempted activities

**\*(a)\*** The Commissioner of Health may exempt from the license requirements those designated asbestos-related activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work.

**\*(b) These exempted activities involve non-friable asbestos containing material that is not rendered friable by the activity.\***

### 12:120-4.3 (8:60-4.3) Application for license

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

(d) Where applicable, applicants shall furnish evidence of applicable full time asbestos work experience as an employer. This ex-

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perience shall have been completed within five years of the filing of the application. This experience shall be listed by job name, location, time involved, and cost of the contract.

(e) No license shall be granted to an employer:

1. If the employer is less than 21 years of age;
2. If the employer has been found to be in non-compliance with N.J.A.C. 12:120-3.2 and 8:60-3.2; or
3. If the employer is unable or unwilling to comply with N.J.A.C. 12:120-4.4 and 8:60-4.4 within one year of the date of receipt of the application by the Division of Workplace Standards.

(f) (No change.)

(g) The Division of Workplace Standards shall be notified by the employer of any change of business and/or home residence. When writing, the license number shall be specified.

**\*[ALTERNATIVE A]\***

(h) The application fee for an annual license shall be \$1,000. The fee for the issuance of a duplicate license shall be \$100.00. **\*The Commissioner may, by amendment to this section, reduce these fees based on a decrease in program costs.\***

**\*[ALTERNATIVE B**

(h) The application fee for an annual license shall be:

1. \$750.00 for employers that perform between 0 and 40 asbestos work projects in a single year;
2. \$1,000 for employers that perform between 41 and 80 asbestos work projects in a single year; and
3. \$1,250 for employers that perform over 80 asbestos work projects in a single year.

4. The fee for the issuance of a duplicate license shall be \$100.00.

(i) Applicants for initial licenses shall project the number of asbestos work projects to be performed in the next year. Applicants for renewal licenses shall base their calculation on the number of asbestos work projects performed in the 12 month period immediately preceding submission of the application.

### ALTERNATIVE C

The application fee for an annual license shall be \$500.00. The fee for the issuance of a duplicate license shall be \$250.00.]\*

(i) The application fee for an annual license shall accompany the application and is nonrefundable.

(j)-(l) (No change.)

(m) Upon written request from the applicant, the Commissioner of Labor may, at his or her discretion, waive the fees for licensing identified in (h) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for licensing shall have no bearing on the applicant's eligibility for a license.

### 12:120-4.4 (8:60-4.4) Eligibility for employer license

(a) The applicant, to be eligible for a license as an employer, shall:

1. Provide evidence of having successfully completed the training course and pass the written examination for asbestos abatement supervisors devised and administered under the approval of the Department of Health as set forth at N.J.A.C. 12:120-6.2 and 8:60-6.2;

2. Have employed with the firm a job supervisor who holds a valid New Jersey asbestos supervisor permit; and

3. Disclose in and attach to the application form all information including, but not limited to, (a)4i through x below and such other information as shall demonstrate the applicant's reliability, responsibility, capability, competence, and knowledge to perform asbestos work safely and to minimize unnecessary health hazards to citizens:

i. A copy of the employer's certificate of insurance specifying the name of the insurance carrier, policy number, policy period under

which the entire New Jersey Workers' Compensation obligation is insured, and which specifies both the New Jersey Department of Labor, Office of Asbestos Control and Licensing, and the New Jersey Department of Health, Environmental Health Services, as certificate holders of the insured;

ii-vii. (No change.)

viii. Any previous and pending litigation pertaining to other State, Federal, local laws or regulations or both;

ix. A list of all public and private asbestos abatement projects performed within the past five years; and

x. A copy of the employer's standard operating procedures which demonstrate capability, competence and knowledge. Such policies and procedures should include, but are not limited to, respiratory protection and usage, personal protective equipment, engineering methods and controls, waste handling and disposal, decontamination, safety considerations and emergency procedures, and detailed abatement procedures for specific asbestos-containing materials.

### 12:120-4.5 (8:60-4.5) Granting of employer license

(a) A license shall be granted in accordance with (b) below, when an employer can comply with N.J.A.C. 12:120-4.4 and 8:60-4.4.

(b) The license for an employer shall:

1-4. (No change.)

5. Be valid for one year from the date of issuance;

6. (No change.)

7. Be nontransferable.

i. A transfer includes, but is not limited to, the sale of stock in the form of a statutory merger or consolidation, the sale of the controlling shares of the assets, the conveyance of real property, the dissolution of corporate identity, and the financial reorganization and initiation of bankruptcy proceedings.

ii. The Commissioner shall reasonably have the right to examine and review all pertinent employer records relating to ownership to facilitate determinations on transfers.

(c) The license shall be issued by the Commissioner as:

1. An "A" license granting approval to the employer to perform any type of asbestos work.

2. A "B" license granting approval to the employer to remove asbestos-containing material from mechanical systems, such as pipes, boilers, ducts, flues, or breeching.

(d) The Commissioner may issue employer licenses with such conditions as the Commissioner deems necessary, and as adopted by regulation, specifying the scope of work authorized by such licenses.

(e) The Commissioner shall not grant a license unless the employer has certified that the employer's supervisor has completed a training course and examination certified and approved by the Department of Health.

### 12:120-4.6 (8:60-4.6) Identification of licensee

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

(c) All vehicles in use commercially by an employer performing the functions of application, enclosure, encapsulation, repair, or removal of asbestos-containing material shall be visibly marked with the employer's New Jersey Department of Labor-issued license number.

(d) The employer shall have a New Jersey Department of Labor-issued duplicate of the original license available at each job site.

(e) (No change.)

### 12:120-4.7 (8:60-4.7) License performance standards

(a) Every licensee shall ensure that all asbestos work performed conforms to those license performance standards as identified at N.J.A.C. 12:120-4.4(a)3 and 8:60-4.4(a)3, including, but not limited to, the following:

1. Accepted engineering practices which protect human health and the environment;

2. Compliance with 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A and M;

3. Compliance with N.J.A.C. 7:26, Non-Hazardous Waste Regulations; and

4. Compliance with N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code in educational facilities and public buildings as defined at N.J.A.C. 5:23-8.2.

(b) (No change.)

(c) Every licensee shall provide for a final inspection upon completion of the project.

1. This final inspection shall include a thorough visual inspection of the work site and clearance air monitoring. A sufficient number of air samples shall be taken to be representative of the work area.

i. For abatement actions less than or equal to 160 square feet, or less than or equal to 260 linear feet, clearance air samples may be analyzed by PCM. The clearance air samples shall be considered acceptable when each of the samples analyzed indicates a fiber concentration of less than or equal to 0.01 f/cc of air.

ii. For abatement actions greater than or equal to 160 square feet, or greater than or equal to 260 linear feet, clearance air sampling shall be conducted by TEM in accordance with 40 C.F.R. 763.90(i)(3) and (4).

(d) Every licensee shall be responsible for immediately having corrected at no additional charge to the customer, any violation of the standards of (a) above discovered in the work performed by the licensee.

12:120-4.8 (8:60-4.8) Suspension or revocation of employer license

(a) (No change.)

(b) Any employer shall have his or her license suspended or revoked for:

1.-4. (No change.)

5. Any violation of N.J.A.C. 12:120 and 8:60 found to be of an extreme nature, taking into account the considerations, where appropriate, specified at N.J.A.C. 8:60-3.5(c) and 12:120-3.5(c); or

6. (No change.)

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

(e) All employer licenses shall expire one year from the date of issuance.

(f)-(g) (No change.)

(h) In all cases where the Commissioner of Labor proposes to revoke or suspend a license, or denies an application for a license, the employer shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8.

12:120-4.9 (8:60-4.9) Renewal of employer license

(a) (No change.)

(b) The license shall be renewed annually.

(c) The application fee for renewal of a license shall be the same as the application fee charged for an initial license under N.J.A.C. 12:120-4.3(h) and 8:60-4.3(h).

(d)-(h) (No change.)

(i) The replacement cost of a license which has been altered, defaced, mutilated, or lost shall be the same as the fee charged for the issuance of a duplicate license under N.J.A.C. 12:120-4.3(h) and 8:60-4.3(h). Replacement shall be made only after review by the Commissioner.

Recodify existing (k) as (j) (No change in text.)

(k) In all cases where the Commissioner refuses to renew a license, the employer shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8.

12:120-5.2 (8:60-5.2) Exempted activities

**\*(a)\*** The Commissioner of Health may exempt from the permit requirements those designated asbestos-activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work.

**\*(b) These exempted activities shall involve non-friable asbestos containing material that is not rendered friable by the activity.\***

12:120-5.3 (8:60-5.3) Requirements for obtaining an asbestos worker or an asbestos supervisor permit

(a) The Commissioner shall issue a permit to each applicant who satisfies the requirements listed below. The applicant shall:

1. (No change.)

2. Successfully complete either the asbestos abatement worker or asbestos abatement supervisor training course approved by the Department of Health and pass a written examination devised and administered under the approval of the Department of Health for each respective position; and

i. Proof of passing the written examination shall be submitted with the permit application.

3. (No change.)

12:120-5.4 (8:60-5.4) Procedures for completing training course and examination

(a) Each applicant required by this subchapter to complete asbestos training shall register at a training agency which has been certified by the New Jersey Department of Health to offer such training. A list of certified training agencies is available from the Department of Health.

1. The topics for worker training are set forth at N.J.A.C. 12:120-6.2 and 6.6 and N.J.A.C. 8:60-6.2 and 6.6;

2. The topics for supervisor training are set forth at N.J.A.C. 12:120-6.2 and 6.7 and N.J.A.C. 8:60-6.2 and 6.7; and

3. Upon successful completion of the training course, all applicants shall complete an "Asbestos Trainee Evaluation" form (ASB-24).

(b) Upon successful completion of the training course, each applicant shall register to take a written examination administered under the approval of the Department of Health.

1. Each applicant shall bring the following to the examination:

i. The trainee's copy of the "Asbestos Trainee Evaluation" form (ASB-24);

ii.-iii. (No change.)

(c) Each applicant who receives a score of at least 70 percent on the worker examination shall pass the examination for the worker permit.

1. If an applicant fails to pass the worker examination within one year of completion of training and still desires to obtain a worker permit, such applicant shall retake the entire worker training course.

(d) Each applicant for a supervisor permit who achieves a score of at least 70 percent on the supervisor examination shall pass the examination for the supervisor permit.

1. If an applicant fails to pass the supervisor examination within one year of completion of training and still desires to obtain a supervisor permit, such applicant shall retake the entire supervisor training course.

(e) Applicants who receive a permit as a supervisor may perform the duties of a worker without possessing a separate work permit.

(f)-(g) (No change.)

(h) Applicants who do not take or pass the examination within one year of completion of their training shall retake the complete training prior to being examined.

(i) Applicants who have met the requirements as set forth in this section, but have failed to submit an application or obtain a permit within one year of completion of initial training, shall provide evidence of having successfully completed an annual refresher training course pursuant to N.J.A.C. 12:120-6.8 and 8:60-6.8 in order to qualify for an asbestos permit.

(j) Each applicant who holds a valid New Jersey worker permit and wishes to upgrade to a supervisor permit must complete all training as set forth at N.J.A.C. 12:120-6.2(b) and 6.7 and N.J.A.C. 8:60-6.2(b) and 6.7 and the requirements of this section.

12:120-5.5 (8:60-5.5) Procedures for completing permit application

(a) (No change.)

(b) Each applicant shall provide the following to the Division of Workplace Standards:

1. Name, address, date of birth, age, sex, height, weight, eye color, driver's license number, and telephone number;

3. The name and location of the course where the applicant has successfully completed asbestos training, the date of completion, and number of hours of training;

i. (No change.)

ii. The applicant shall submit proof of passing the written examination.

3. Two recent, identical passport-size color photographs taken against a white background or backdrop with the applicant's face being not less than three quarters of an inch in width. The applicant shall not wear a hat, glasses or any other item which may alter or disguise the overall features of the face in the photographs; and

i. The applicant shall legibly print his or her name on the back of both photographs submitted.

ii. (No change.)

4. (No change.)

(c) Each applicant is requested to voluntarily provide his or her social security number in his or her permit application to assist the Commissioner in the enforcement of the provisions of N.J.S.A. 34:5A-32 et seq.

1. Each social security number collected may be used as an identifier in the Commissioner's computerized recordkeeping system to aid in the processing of permit applications.

2. Each social security number collected shall remain confidential to the Department of Labor.

(d) The applicant shall sign and date a statement certifying that the information contained in the application is accurate, true, and complete to the best of his or her knowledge.

**\*[ALTERNATIVE A]\***

(e) The applicant for a worker permit shall submit a \$50.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application. **\*The Commissioner may, by amendment to this section, reduce this fee based on a decrease in program costs.\***

**\*[ALTERNATIVES B AND C**

(e) The applicant for a worker permit shall submit a \$55.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.]\*

**\*[ALTERNATIVE A]\***

(f) The applicant for a supervisor permit shall submit a \$75.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application. **\*The Commissioner may, by amendment to this section, reduce this fee based on a decrease in program costs.\***

**\*[ALTERNATIVES B AND C**

(f) The applicant for a supervisor permit shall submit a \$65.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application.]\*

(g) Upon written request from the applicant, the Commissioner of Labor may, at his or her discretion, waive the fees for permit identified in subsections (e) and (f) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for permit shall have no bearing on the applicant's eligibility for a permit, waive the fees for permits identified in subsections (e) and (f) above.

#### 12:120-5.6 (8:60-5.6) Length of permit

(a) Each permit issued by the Commissioner shall be valid for one year from the date of issuance.

(b) A permit shall be automatically cancelled on the date of its expiration.

(c) Any person performing asbestos work requiring a permit under the Act or this chapter who performs such work while holding an expired permit shall be subject to the penalty provisions of the Act.

#### 12:120-5.7 (8:60-5.7) Contents of permit

(a) Each permit for an asbestos worker or asbestos supervisor shall be issued in writing, signed by the Commissioner of Labor, and shall contain:

1.-3. (No change.)

4. The worker's or supervisor's unique identification number supplied by the Department of Labor.

#### 12:120-5.8 (8:60-5.8) Identification of permit holder

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

(e) An altered, defaced, mutilated, lost, or stolen permit may be replaced upon written request and a review of the circumstances by the Commissioner.

(f) A request for a replacement or duplicate permit shall be notarized and include:

1. The name, address and date of birth of the permit holder;

2. The worker's or supervisor's unique identification number;

3. The circumstances surrounding the loss of the permit, including when, where and how the permit was altered, defaced or mutilated, lost or stolen; and

4. The altered, defaced, or mutilated permit, if applicable.

(g) The cost for a replacement or duplicate permit shall be \$5.00 for a worker permit and \$7.50 for a supervisor permit.

#### 12:120-5.9 (8:60-5.9) Suspension and revocation of permit

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

(c) Prior to suspending or revoking a permit, the Commissioner shall provide the worker or supervisor with written notice of the violations. This subsection shall not apply to situations set forth at (b) above.

1. (No change.)

(d) (No change.)

(e) Any applicant using fraudulent means to obtain an asbestos worker or an asbestos supervisor permit shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

1. The use of fraudulent means to obtain an asbestos supervisor permit shall invalidate any other New Jersey asbestos permit which the applicant may possess.

(f) In all cases where the Commissioner proposes to revoke or suspend a permit, or denies an application for a permit, the worker or supervisor shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

#### 12:120-5.10 (8:60-5.10) Renewal of permit

(a) (No change.)

(b) The Commissioner shall renew a worker or supervisor permit if the renewal application has:

1. Completed an application as set forth at N.J.A.C. 12:120-5.5 and 8:60-5.5 within one year of the expiration date of the expired permit;

Recodify existing 3. and 4. as 2. and 3. (No change in text.)

(c) The Commissioner shall treat an application for renewal of a permit which has expired more than one year as an original application.

(d) In all cases where the Commissioner refuses to renew a permit, the worker or supervisor shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

#### 12:120-6.1 (8:60-6.1) Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain and maintain or renew certification from the Commissioner of Health to conduct training courses on asbestos abatement as provided for in the Act. At a minimum, training courses shall meet the following requirements as set forth in this subchapter or 40 CFR 763, "Asbestos Model Accreditation Plan; Interim Final Rule," whichever is more stringent.

#### 12:120-6.2 (8:60-6.2) Types of courses

(a) The asbestos abatement worker training course shall be presented over four days and shall include a minimum of 28 hours of training, of which a minimum of 14 hours shall be dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 12:120-6.6 and 8:60-6.6.

(b) The asbestos abatement contractor/supervisor training course shall be presented over five days and shall include a minimum of 35 hours of training, of which a minimum of 14 hours shall be

dedicated to the conduct of hands-on training. The topics which shall be presented are set forth at N.J.A.C. 12:120-6.7 and 8:60-6.7.

(c) Annual refresher training for asbestos workers shall be at least seven hours. Annual refresher training for asbestos supervisors shall be at least eight hours. The items required to be presented during refresher training are set forth at N.J.A.C. 12:120-6.8 and 8:60-6.8.

(d) The hour requirements listed in (a) through (c) above shall be exclusive of lunch and break times.

(e) Demonstrations not involving individual participation shall not be considered hands-on training.

(f) Initial and refresher training courses for both disciplines shall be specific to a single discipline and shall not be combined with training for other disciplines.

#### 12:120-6.3 (8:60-6.3) Application for certification of training courses

(a) An applicant for certification of an asbestos abatement training course shall submit an application and a proposal on forms provided by the Department of Health, specifying the following:

1. The name and address of the agency, institution or private firm which plans to conduct the training course, the name of the responsible individual and his or her telephone number, a list of any other states in which asbestos training certification is presently or has been held, and a statement of ownership;

2. A description of the course location, including dimensions and location of hands-on training, and course fees;

3. (No change.)

4. Detailed outlines of the course curricula, as set forth at N.J.A.C. 12:120-6.6 through 6.8 and 8:60-6.6 through 6.8 the amount of time allotted for each topic, and a list of the instructors for each topic;

5. A description of the interactive/participatory teaching methods to be used to present each topic, including, where appropriate, discussions, demonstrations, hands-on training, and audio-visual materials. Lecture is not considered an interactive/participatory teaching method. When applicable, the name, producer, and date of production of audio-visual materials to be used shall be included;

6. (No change.)

7. Evidence demonstrating that the applicant has employed or contracted to employ a minimum of three instructors, either on a full time or temporary basis, to satisfy the education, experience and qualifications criteria as set forth at N.J.A.C. 12:120-6.5 and 8:60-6.5. Resumes describing special training and education and/or prior experience shall be submitted as documentation of compliance with the instructor criteria;

8.-9. (No change.)

10. A description and the quantities of the materials to be used for hands-on practice exercises and demonstrations including, but not limited to, hand tools, ladders, scaffolding, plastic sheeting, and other barrier construction supplies, air filtration units, water spray devices, decontamination facilities, simulated asbestos material and Material Safety Data Sheets (where applicable);

11. Any restrictions on attendance such as literacy requirements, English language only or other language to be used;

12. For any non-English language training course, all course materials, examinations and related course literature shall be translated into that language, with a written certification that the translation is accurate and valid;

13. Instructor-to-student ratio for the hands-on practice exercises and demonstrations shall be a maximum of 10 students per one instructor;

14. Evidence that a no-smoking policy will be established, maintained and enforced during all aspects of training;

15. A copy of the applicant's valid training agency certification previously issued by the Department of Health pursuant to this subchapter where applicable; and

16. A copy of the written examinations to be administered to the trainees by the training agency.

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

(e) A non-refundable application fee for annual certification in the amount of \$500.00 per discipline shall be forwarded with the application. The application fee shall be paid by certified check or

money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department for the loss in the transmission of the application.

(f) Certification of refresher training courses is expressly conditioned upon maintaining a certification in good standing for that discipline which the applicant is applying.

(g) Upon written request from the applicant, the Commissioner of \*Labor\* \*Health\* may, at his or her discretion, waive the fees for certification of training agencies identified in (e) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for certification of training agencies shall have no bearing on the applicant's eligibility for certification.

#### 12:120-6.4 (8:60-6.4) Training agency operating requirements

(a) Certified training agencies shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.

(b) Certified training agencies shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials and instructors to ensure that adequate training courses meeting the requirements of this subchapter can be conducted.

(c) Certified training agencies shall use any training materials, examinations, forms, questionnaires, surveys, informational or audiovisual aids which may be required by the Department of Health.

(d) Certified training agencies shall ensure that at least one course instructor represents them at any meeting sponsored by the Department of Health for the purpose of maintaining uniform and high quality training courses among certificants.

(e) Certified training agencies shall limit class size to 25 students for initial training courses.

(f) Certified training agencies shall limit class size to 30 students for refresher training courses.

(g) All certified training agencies shall notify the Department of Health at least two weeks in advance of the beginning of any training course. All notifications shall be in writing and shall be submitted on forms provided by the Department of Health. If any course information changes, the training agency shall notify the Department of Health as soon as that agency becomes aware of such changes.

(h) Certified training agencies shall ensure that all refresher trainees have met the requirements for obtaining a New Jersey permit as outlined at N.J.A.C. 12:120-5.3 and 8:60-5.3. Certificates of completion shall be issued only to those individuals who have met these requirements and have successfully completed the refresher course.

(i) Certified training agencies shall submit instructor documentation meeting the requirements of N.J.A.C. 12:120-6.5 and 8:60-6.5 to the Department of Health for approval prior to allowing that instructor to conduct any training course.

(j) Certified training agencies shall issue a certificate of completion to trainees upon their successful completion of an initial or a refresher training course. The certificate shall specify the following:

1. A unique certificate number;
2. The full name of the trainee;
3. Discipline;
4. The expiration date of the certificate;
5. The course completion date;
6. The name, address and telephone number of training agency;
7. The language in which the training course was given; and
8. Shall bear the signature of the course instructor.

(k) Certified training agencies shall permit entry to all training courses by representatives of the Department of Health for the purposes of course evaluation and determination of compliance with this subchapter.

(l) Certified training agencies shall limit individual classes to one language.

(m) Certified training agencies shall maintain the following records:

1. All documents specified in N.J.A.C. 12:120-6.5 and 8:60-6.5 that demonstrate the qualifications of the course instructors;
2. Student training records;
3. Daily class attendance records bearing the signature of the course instructor;
4. Copies of examinations administered by the training agency; and
5. Copies of instructor performance review records.

(n) Certified training agencies shall permit representatives of the Department to inspect and evaluate these records. Upon request by the Department of Health, training agencies shall provide copies of all training records for the purpose of inspection, evaluation and compliance.

(o) Certified training agencies shall maintain training records for a minimum of five years. The Department of Health shall be notified and be given the opportunity to take possession of all training records should an agency cease to conduct training.

(p) Certified training agencies shall notify the Department of Health, in writing, in advance of any changes in information submitted on its agency and course applications. Any course modifications made subsequently to certification shall require 10 days prior notification and shall be subject to Department of Health approval.

(q) Notwithstanding (g) above, certified training agencies shall notify the Department of Health in writing at least four weeks advance of any changes in their hands-on training site. Any changes in location and/or renovations to the site shall require a reinspection of the facility before training can be conducted at that site.

(r) Certified training agencies shall maintain a quality control plan which shall include, at a minimum, the following:

1. Procedures for periodic revision of training materials to reflect innovations in the field;
2. Procedures for annual review of instructor competency;
3. Procedures for administering the course examination to ensure the validity and integrity of the examination; and
4. Procedures for ensuring the adequacy of facilities and equipment.

(s) Certified training agencies shall cooperate fully with the Department of Health in all matters relating to the conduct of certified training courses, the administration of examinations, and the permitting of individuals pursuant to this chapter.

#### 12:120-6.5 (8:60-6.5) Criteria for training course instructors

(a) To be eligible for certification of any training course, three or more course instructors shall be employed. A sufficient number of instructors shall be hired to ensure that all of the education and experience criteria for instructors set forth below are met:

1. At least one instructor shall have experience in both the design, field performance and evaluation of air monitoring programs, and in the design and implementation of respiratory protection programs.
2. All applicants applying for instructor approval after \*[the effective date of this rule]\* **\*April 3, 1995\*** must take the New Jersey asbestos supervisor course and successfully complete the examination approved by the Department of Health.

3. To teach the sections of the course concerning the health effects of asbestos, the instructor shall be a qualified health professional.

4. To qualify to teach the hands-on training sessions, an instructor shall have at least one year of experience as a New Jersey asbestos abatement contractor or as a supervisor of asbestos abatement workers. This person shall have had direct experience in all phases of asbestos abatement work.

5. At least one instructor shall have experience in designing, implementing, and evaluating either employee educational programs in occupational health and safety or vocational education programs.

6. To qualify to teach the smoking cessation topics, instructors shall have successfully completed a course in smoking cessation approved by the Department of Health.

#### 12:120-6.6 (8:60-6.6) Criteria for topics in asbestos abatement worker training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. Background information on asbestos:
  - i. History of asbestos use; and
  - ii. Physical characteristics of asbestos.
2. Relevant Federal, State, and local regulatory requirements, procedures and standards;
3. Health effects related to asbestos exposure:
  - i. Effects of smoking; and
  - ii. Effects of smoking cessation, various smoking cessation methodologies and resources available to aid in smoking cessation;
4. Purposes and methods of asbestos monitoring and testing;
5. Case studies;
6. Personal protection of the worker (hands-on training required);
7. Preparation of the work area (hands-on training required);
8. Asbestos abatement and hazard reduction methods (hands-on training required);
9. Proper clean-up and disposal (hands-on training required);
10. Personal hygiene;
11. Decontamination (hands-on training required);
12. Additional safety hazards; and
13. Course review and course examination.

#### 12:120-6.7 (8:60-6.7) Criteria for topics in the asbestos abatement contractors/supervisor training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 12:120-6.6 and 8:60-6.6;
2. Respiratory protection programs and medical monitoring programs (hands-on training required);
3. Insurance and liability issues;
4. Recordkeeping for asbestos abatement projects;
5. Supervisory techniques for asbestos abatement activities;
6. Contract specifications; and
7. Course review and course examination.

#### 12:120-6.8 (8:60-6.8) Criteria for topics in refresher training courses

(a) Refresher training for asbestos worker and contractor/supervisor courses shall consist of the topics designed to increase or enhance an individual's skills and knowledge necessary to perform the job tasks and job functions associated with the respective certification.

(b) Refresher training shall include, but not be limited to:

1. An overview of key health and safety practices;
2. An update on any relevant Federal, State or local regulatory changes;
3. Any new developments in applicable state-of-the-art technologies and abatement procedures;
4. Respiratory protection programs and medical surveillance; and
5. Course review.

(c) The Department of Health reserves the right to require additional refresher training course topics within one month of a certified training agency's receipt of written notice.

#### 12:120-6.9 (8:60-6.9) Granting of certification

(a) (No change.)

(b) An annual certification shall be granted to a training agency which has demonstrated the ability to meet the requirements of this subchapter including course content, teaching methods, and instructor qualification based upon the application submission required by N.J.A.C. 12:120-6.3 and 8:60-6.3, and such investigation as the Commissioner of the Department of Health should deem necessary.

(c) (No change.)

(d) An annual letter of certification shall:

- 1.-6. (No change.)

#### 12:120-6.10 (8:60-6.10) Renewal of training agency certification

(a) In order to approve a training agency certification renewal application, the Commissioner of Health shall determine, based upon the application, that:

- 1.-2. (No change.)

3. The certificant has exhibited competence, integrity, and responsibility; and

4. (No change.)

(b) (No change.)

(c) The annual application fee for renewal shall be \$500.00 per discipline. The application fee shall be submitted with the application and shall be non-refundable. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department of Health for the loss or delay in the transmission of the application fee.

**\*(d) Upon written request from the applicant, the Commissioner of Health may, at his or her discretion, waive the fees for renewal of certification of training agencies identified to (c) above.**

**1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.**

**i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.**

**2. The granting of a waiver from the fees for certification of training agencies shall have no bearing on the applicant's eligibility for renewal of certification.\***

**\*[(d)]\*\*\*(e)\* Any application not complying with (b) above shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.**

**\*[(e)]\*\*\*(f)\* Any application from a certified training agency whose certification has lapsed shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.**

12:120-6.11 (8:60-6.11) Suspension or revocation of training agency certification or instructor approval

(a) Any certified training agency may have its application denied, certification suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 12:120-3.5 and 8:60-3.5 for each violation listed below:

1.-3. (No change.)

4. Submitting false information on an initial or renewal application, trainee evaluation form, or course notification form;

5. Failure to submit information or notification within the required time periods specified in this subchapter;

6. Falsification of training records, instructor qualifications, or other certification information;

7. Failure to maintain required records;

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

(b) Any instructor may have his or her application denied, approval suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 12:120-3.5 and 8:60-3.5 for each violation listed below:

1. Submitting false information on an application for approval as an asbestos training instructor;

2. Falsification of training records;

3. Failure to perform quality training;

4. Any violation of this subchapter; or

5. Any good cause within the meaning and purpose of the law.

(c) In all cases where the Commissioner of Health proposes to revoke or suspend certification or instructor approval, or denies an application for certification or instructor approval, the applicant shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

12:120-7.1 (8:60-7.1) Purpose and scope of subchapter

(a) (No change.)

(b) This subchapter shall be applicable to all employers who are required to possess an asbestos license pursuant to N.J.A.C. 12:120-4 and 8:60-4 and who enter into a contract to perform asbestos work in New Jersey.

12:120-7.2 (8:60-7.2) Notification requirements

(a) Every employer under the scope of this subchapter who plans to perform asbestos work in New Jersey shall submit a written notification of intent to perform asbestos work at least 10 calendar

days prior to beginning such work on forms specified by the Department of Health except where such work is exempted at N.J.A.C. 12:120-1.4(b) (8:60-1.4(b)).

1. The date of submission of the notice is determined to be the date as postmarked by the United States Postal Service on the transmittal envelope.

2. If the postmark is not legible, or if metered mail is used, the date of submission of the notice is determined to be the date of receipt by either the Commissioner of Labor or Health.

3. If an earlier mailing date is established by proof of mailing with a recognized United States Postal Service receipt, the date of submission of the notice is determined to be the established date.

4. The pick-up date of a recognized overnight delivery or courier service shall be deemed equivalent to a United States Postal Service postmark.

5. Facsimile transmissions of written notifications of intent to perform asbestos work are only accepted as submissions where emergency circumstances are warranted pursuant to this subchapter.

(b) The written notification required by (a) above shall include: 1.-5. (No change.)

6. The starting and scheduled completion dates of the asbestos work;

7. The name and address of the waste disposal site where the asbestos-containing material will be disposed;

8. The name, address and New Jersey Waste Hauler identification number of the registered waste hauler; and

Recodify existing 8. as 9. (No change in text.)

(c) Amended written notifications shall be submitted in accordance with and pursuant to N.J.A.C. 12:120-7.2(a) and (b) and 8:60-7.2(a) and (b). Amended notifications to the Commissioner of Labor and the Commissioner of Health are required when:

1. The starting date is delayed beyond the scheduled completion date as submitted on the initial notification;

2. The scheduled completion date will extend beyond the scheduled completion date as submitted on the initial notification;

3. The scope or description of the asbestos work to be performed for the facility changes; or

4. Any other items as required pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b) that may change.

(d) The Commissioner of Labor or the Commissioner of Health, as the case may be, may allow less than 10 calendar days prior notification where emergency circumstances warrant less than a 10 calendar day prior notification.

1. To enable the Commissioner of Labor or the Commissioner of Health to determine whether a waiver of the 10 calendar day prior notification may be granted, the notifying party shall:

i. Submit a written explanation from the facility owner or from the third party environmental engineer representing the facility owner to both the Commissioner of Labor and the Commissioner of Health which details:

(1) The unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action; and

(2) The impact upon the facility owner should a waiver of the 10 calendar day prior notification not be granted.

ii. By facsimile transmission or express delivery, submit a written notice for the emergency circumstance pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b).

2. A request for a waiver of the 10 calendar days prior notification may be reviewed for approval by the Commissioner of Labor or Health when received by facsimile transmission or express delivery. Only after the Commissioner of Labor or Health has determined and has authorized that the emergency circumstance warrants a waiver, may the asbestos work proceed as notified.

(e) Written notifications required pursuant to this subchapter shall be submitted to:

New Jersey Department of Labor  
Asbestos Control and Licensing Section  
28 Yard Avenue, Station Plaza 4  
CN 054  
Trenton, NJ 08625-0054  
and

New Jersey Department of Health  
Environmental Health Services  
CN 360  
Trenton, NJ 08625-0360

## SUBCHAPTER 8. APPEALS AND COMPLAINTS

### 12:120-8.1(8:60-8.1) Scope of subchapter

This subchapter shall apply to the procedures for appealing any action or inaction by the Commissioner of Labor or the Commissioner of Health, under the Act, including, the revocation, suspension or refusal to renew a license or permit, or denial of an application for a license or permit; the denial, revocation or suspension of a training agency certification or instructor approval; and the assessment of a civil administrative penalty. It shall also apply to the procedures for filing a citizen complaint alleging a violation of the Act.

### 12:120-8.2(8:60-8.2) Appeals

(a) Any individual who is aggrieved by any action or inaction of the Commissioner of Labor or the Commissioner of Health or his or her designee, under this chapter, shall have the right to an informal conference under (c) below or a formal hearing under (d) below or both upon receipt by the Commissioner of Labor or Health, as the case may be, of a written request within 10 calendar days of receipt of notice of the proposed agency action.

(b) In the interest of protecting employee or public health and safety, the Commissioner of Labor or the Commissioner of Health may suspend a license, permit, instructor approval or training agency certification prior to a hearing. When the license, permit, training agency certification or instructor approval has been suspended, the aggrieved person shall have the right to a hearing within 10 calendar days of the notice of suspension.

(c) Upon receipt of the written request, an informal conference shall be held before a designee of the Commissioner of Labor or Health, as the case may be, within 30 calendar days. The designee of the Commissioner of Labor or Health as the case may be, shall render a decision within 45 calendar days of the conference. Such decision shall state the findings and conclusions and shall be transmitted to the aggrieved person.

(d) Any party who disagrees with the decision of the Commissioner of Labor or Health's designee may submit a written request for a formal hearing in accordance with subsection (d) below.

(e) Upon receipt of the written request, a formal hearing shall be held 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.

(f) For purposes of this section, due notice shall mean written notice mailed to the aggrieved person's last filed address which specifies:

1. The intended agency action;
2. The legal basis for such action;
3. The facts supporting such legal basis; and
4. Notice of the right to an informal conference or formal hearing;
  - i. The 10 calendar day period to request such informal conference or formal hearing; and
  - ii. The address to which such requests shall be sent.

(g) When an aggrieved person fails to request an informal conference or formal hearing within the 10 calendar day period, his or her right to an informal conference or formal hearing pursuant to this section shall be deemed waived and the proposed agency action shall become final.

### 12:120-8.3(8:60-8.3) Citizen complaints

(a) Any person who believes a violation of the provisions of the Act has occurred may file a citizen complaint petitioning the Commissioner of Labor or Health to bring an enforcement action. The citizen complaint shall specify:

1. The alleged violation;

2. The facts constituting the alleged violation; and
  3. The name and address of the citizen filing the complaint.
- (b) Upon receipt of a citizen complaint, the Commissioner responsible for enforcement of the provision allegedly violated shall:
1. Give notice of the citizen complaint to the alleged violator within 10 calendar days;

2. Give notice to the complaining citizen and the alleged violator of the scheduling of an enforcement investigation inspection within 30 calendar days of the date of the complaint filing;

3. Afford the complaining citizen or his or her representative an opportunity to be present during the enforcement investigation inspection, provided the complaining citizen shall hold the State harmless from all legal liabilities arising out of the enforcement investigation including, but not limited to, litigation resulting from any potential exposure to asbestos;

4. Afford the complaining citizen access to all public records regarding the Commissioner's investigation; and

5. After investigation, the Commissioner shall render a final decision on the appropriate disposition of the complaint within 90 calendar days of the date of receipt of the citizen complaint.

(c) A public employee who files a citizen complaint pursuant to this section shall:

1. Have the right to accompany the Commissioner on an enforcement investigation inspection;

2. Receive payment of normal wages for the time spent during normal working hours on the inspection; and

3. Have all protections and rights as set forth under N.J.S.A. 34:6A-45.

## SUBCHAPTER 9. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

### 12:120-9.1 (8:60-9.1) Documents referred to by reference

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

- 1.-6. (No change.)
7. \*[40]\* **\*29\*** C.F.R. 1910.134—Respiratory Protection;
8. 29 C.F.R. 1926.\*[58]\***\*1101\*(h)**—Respiratory Protection; and
9. 40 C.F.R. Part 763—Asbestos Model Accreditation Plan; Interim Final Rule.

### 12:120-9.2 (8:60-9.2) (No change in text.)

### 12:120-9.3 (8:60-9.3) Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:120-9.1 and 8:60-9.1.

CFR—Code of Federal Regulations

Copies available from:

Superintendent of Documents  
Government Printing Office  
Washington, D.C. 20402

N.J.A.C.—New Jersey Administrative Code

Copies available from:

Division of Workplace Standards  
New Jersey Department of Labor  
CN 386  
Trenton, NJ 08625-0386

N.J.S.A.—New Jersey Statutes Annotated

Copies available from:

Division of Workplace Standards  
New Jersey Department of Labor  
CN 386  
Trenton, NJ 08625-0386

# PUBLIC NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

#### Notice of Action on Landing Fee for Oyster Cultch Program

##### N.J.A.C. 7:25A-4.3

Take notice that, in accordance with N.J.A.C. 7:25A-4.3 and the recommendation of the Delaware Bay Shellfish Council (Council), Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection, has set the landing fee for oysters taken from Delaware Bay, other than seed oysters, at \$.70 per bushel. The landing fee program was reviewed by the Council during its meeting held on January 31, 1995 at Rutgers University's Haskin Shellfish Research Laboratory. At that meeting the Council voted in favor of raising the landing fee from \$.35 per bushel to \$.70 per bushel.

As required under N.J.A.C. 7:25A-4.3(a)4, notice of the revised fee has been mailed to each (oyster) dealer, the Bridgeton Evening News and the Daily Journal (formerly the Millville Daily).

(b)

### OFFICE OF ENVIRONMENTAL PLANNING

#### Amendment to the Atlantic County Water Quality Management Plan

##### Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan. This amendment proposal, to modify the Egg Harbor Township Wastewater Management Plan, was submitted on behalf of the Scullville Volunteer Fire House (Block 79E, Lot 12 in Egg Harbor Township), which is currently experiencing a failing septic system. The proposal will include the fire house in the sewer service area of the Egg Harbor Township Municipal Utilities Authority (EHTMUA). The projected wastewater flow is 1,000 gallons per day or less. Design of the EHTMUA collection system, as well as the Treatment Works Approval permit, would limit access to this sanitary sewer extension so that only the Scullville Volunteer Fire House would be able to use the proposed extension to EHTMUA's collection system. EHTMUA sends its wastewater flow for treatment to the Atlantic County Utilities Authority-City Island Sewage Treatment Plant, located in Atlantic City, which discharges into the Atlantic Ocean. The Scullville Volunteer Fire House is located in a Limited Growth Region of the Coastal Management Zone.

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 Atlantic County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the Office of Policy, Planning, and Economic Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the NJDEP, Office of Environmental Planning, CN418, 401 East State Street, Trenton, New Jersey 08625. These documents are 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 Atlantic County Office of Policy, Planning, and Economic Development at (609) 345-6700 or the Office of Environmental Planning at (609) 633-1179.

The Atlantic County Office of Policy, Planning, and Economic Development will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, May 17, 1995 at 11:00 A.M. in the Fourth Floor Conference Room J of the County Office Building in Atlantic City. Interested persons may submit written comments on the proposed amendment to Mr. Lauren Moore at the County Office Building address cited above with a copy sent to Dr. Daniel J. Van Abs, at the NJDEP address cited above. All comments must be delivered within 15 days after the close of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered with respect to the amendment request. Atlantic County and the NJDEP thereafter may approve and adopt this amendment without further notice. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan amendment to the County Executive and the Chairman of the Board of Chosen Freeholders. An amendment adoption shall be incorporated into the Atlantic County WQM Plan only upon adoption of an ordinance by the Atlantic County Board of Chosen Freeholders, and adoption of the amendment by the NJDEP.

(c)

### OFFICE OF ENVIRONMENTAL PLANNING

#### Amendment to the Atlantic County Water Quality Management Plan

##### Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of Lenape Car Wash, a proposed five bay self service car wash, to be located on Route 50 (Block 735, Lot 5) on 2.01 acres in Mays Landing, Hamilton Township. The facility would be designed to accommodate 1,500 gallons of commercial wastewater flow per day to be conveyed to the Hamilton Township Municipal Utilities Authority collection system. Treatment of the commercial wastewater flow would be at the Atlantic County Utilities Authority-City Island Sewage Treatment Plant, which discharges into the Atlantic Ocean. The site lies within the Pinelands National Reserve and has been designated as a Forest Management Area by the Pinelands Comprehensive Management Plan and also lies within the Coastal Area Facility Review Act zone.

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.

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Daniel J. Van Abs, at the NJDEP address cited above. All comments must be delivered within 15 days after the close of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered with respect to the amendment request. Atlantic County and the NJDEP thereafter may approve and adopt this amendment without further notice. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan amendment to the County Executive and the Chairman of the Board of Chosen Freeholders. An amendment adoption shall be incorporated into the Atlantic County WQM Plan only upon adoption of an ordinance by the Atlantic County Board of Chosen Freeholders, and adoption of the amendment by the NJDEP.

## (a)

**OFFICE OF LAND AND WATER PLANNING**  
**Amendment to the Upper Delaware Water Quality**  
**Management Plan**  
**Public Notice**

**Take notice** that on February 16, 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 Delaware Water Quality Management Plan was adopted by the Department. This amendment allows for expansion of the Allamuchy Township Elementary School (Block 401, Lot 100) on-site discharge to ground water facility to accommodate a maximum of 450 students with a wastewater planning flow of 11,250 gallons per day (gpd). The existing wastewater treatment system consists of a conventional subsurface disposal system including septic tanks and a leaching field. The proposed system will consist of a package type sewage treatment plant which treats the wastewater prior to discharge into a new subsurface leaching field. The Allamuchy Township Wastewater Management Plan has additionally been updated to clarify the "Areas To Be Served By On-Site Ground Water Disposal Systems" designation as systems with wastewater planning flows of less than 20,000 gpd.

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.

## (b)

**OFFICE OF ENVIRONMENTAL PLANNING**  
**Amendment to the Upper Raritan Water Quality**  
**Management Plan**  
**Public Notice**

**Take notice** that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Upper Raritan Water Quality Management (WQM) Plan. This amendment proposal, submitted by Montgomery Township, would amend the Montgomery Township Wastewater Management Plan regarding several of the existing sewage treatment plants (STPs) and their sewer service areas. The Ingersoll-Rand STP will be upgraded and expanded to accommodate a wastewater planning flow of 94,015 gallons per day (gpd) which will serve a proposed development of 205 single family detached dwellings, 177 assisted living facility units, and a civic use building. The service area of the Ingersoll-Rand STP will be expanded to include all of Block 23001, Lots 13, 16 and 17. Portions of these lots were previously located in an "On-Site Groundwater Disposal Area."

The service area to the Stage II STP will be expanded to include Block 28001, Lots 59 (Thul Auto), and 65 (Village Shopper), and Block 29002, Lot 45 (DeVan Development). These lots were previously located in an "On-Site Groundwater Disposal Area." The existing on-site ground

water disposal facilities will be abandoned. This expansion incorporates the entire Highway Commercial Zone in this portion of the Township into the Stage II STP sewer service area.

The Pike Brook STP will be expanded to accommodate a wastewater planning flow of 700,000 gpd, an increase of 27,000 gpd from the presently identified planning flow. The increase is to serve a service area expansion to include the Jewish Community Center (Block 6006, Lots 1, 2, and 3), Evangelical Free Church (Block 7033, Lot 24), and 64 existing single family homes located in the R-Zone on the west side of Route 206.

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 Upper Raritan WQM Plan. All information relating to the WQM Plan, and the proposed amendment is located at the NJDEP, 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 the Office of Environmental Planning at (609) 633-1179.

**Interested persons** may submit written comments on the amendment to Dr. Daniel J. Van Abs, Office of Environmental Planning, at the NJDEP address cited above with a copy sent to Mr. Donald E. Johnson, P.E., Donald E. Johnson Consulting Engineers, 8 Wall Street, Princeton, New Jersey 08540. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

## (c)

**DIVISION OF FISH, GAME AND WILDLIFE**  
**Notice of Receipt of and Action on Petition for**  
**Rulemaking**  
**Amendments to the Crab Management Rules**  
**N.J.A.C. 7:25-14**

Petitioner: Lance Naylor.

**Take notice** that on February 3, 1995 the Department of Environmental Protection (Department) received a petition for rulemaking requesting amendments to the Crab Management Rules of N.J.A.C. 7:25-14.

Petitioner Lance Naylor is a commercial fisherman in New Jersey.

The petitioner requests that the Department amend N.J.A.C. 7:25-14.6(c) to allow crab pots to be placed in a creek, ditch or tributary that are not less than 25 feet in width in order to allow crabbers a larger and more diversified area to crab. N.J.A.C. 7:25-14.6(c) currently prohibits a crab pot to be placed in a creek, ditch or tributary that is less than 50 feet wide at mean low water.

In addition, the petitioner requests the Department amend N.J.A.C. 7:25-14.10 to allow all mature female crabs and a small percentage of undersized crabs to be taken from any tidal waters of this State. N.J.A.C. 7:25-14.10(a) currently prohibits a person from taking or possessing any peeler or shredder crab measuring less than three inches across the back from the tip of the longest lateral spine to the other, or hard crab measuring less than four and one-half inches across the back from tip

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to tip of spike. Subsection (b) prohibits a person from selling or exposing for sale any hard crab measuring less than four and three-quarter inches across the back from tip to tip of spike.

In accordance with N.J.A.C. 1:30-3.6, the Department has determined that the matter will receive further deliberations.

The Crab Management Rules were adopted on March 21, 1994. The Marine Fisheries Council intended to review the rules after a year to determine their effectiveness. The review process has already commenced with the Council's Crab Dredge Committee reviewing the crab dredge aspects of the rules. Once this aspect is completed, the Crab Pot Committee will review the potting procedures.

Upon the conclusion of the Department's deliberations, the decision will be mailed to the petitioner and published in a future New Jersey Register.

As required under N.J.A.C. 1:30-3.6, the Department has mailed the Notice of Action on the petition to the petitioner.

### (a)

#### OFFICE OF AIR QUALITY MANAGEMENT

##### Notice of Temporary Vehicular Fuels Policy for N.J.A.C. 7:27-25

**Take notice** that the Department of Environmental Protection (Department) anticipates adopting by April 7, 1995, the amendments to N.J.A.C. 7:27-25 governing gasoline oxygen content control periods and Reid vapor pressure which it concurrently proposed with an emergency adoption of these same amendments on February 7, 1995. This adoption is anticipated to occur before the expiration of the emergency adoption. However, since, under the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-8) the adoption of the concurrently proposed amendments cannot take effect until 60 days after adoption, that is, on or about June 6, 1995, the Department hereby announces that its regulatory policy regarding the oxygen content control periods and Reid vapor pressure requirements will be that expressed in the adoption of the concurrently proposed amendments.

Accordingly, during the period of time between April 9, 1995 and June 6, 1995 (or that date which is 60 days following the date of adoption of the concurrent proposal), the Department will not take enforcement action against any person for failure to comply with those provisions of Subchapter 25 which were amended during the emergency rulemaking period and which the Department anticipates adopting on or before April 7, 1995, but which will not yet be fully effective in accordance with N.J.S.A. 26:2C-8.

The Department is publishing this notice to preclude any confusion regarding its intent to enforce N.J.A.C. 7:27-25 due to the requirements of N.J.S.A. 26:2C-8. This enforcement policy is based on the traditional and judicially recognized enforcement discretion authorities granted the Commissioner at N.J.S.A. 13:1D-9 and 26:2C-19.

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### (b)

#### THE COMMISSIONER

##### Notice of Invitation for Certificate of Need Applications

##### Guidelines for the Camden City Initiative

**Take notice** that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Commissioner, New Jersey Department of Health, is inviting certificate of need applications for a vertically integrated health care delivery network in the City of Camden. Applications will be evaluated in accordance with the specifications for the Camden City Initiative set forth below. The following Guidelines will provide a conceptual framework for those specifications to assist in the preparation of responsive certificate of need applications.

##### Background

In health care, the whole is not always equal to the sum of its parts. American health care facilities are among the best in the world, yet the United States trails a number of developed nations in certain health status indicators such as infant mortality and life expectancy.

Camden, New Jersey is an excellent case in point—a city with several excellent health care facilities and a divergent array of health programs yet a population whose health, when measured against either national or New Jersey norms, is poor.

- Camden's infant mortality rate is 23.3 deaths per 1,000 live births, compared to the state rate of just 8.34.

- 3.3 percent of Camden babies are born to women who have received no prenatal care, compared to state mean of 1.44 percent.

- Only one in eight Camden infants is born with low birthweight—nearly twice as many as the statewide norm.

- Only about one in three Camden children is appropriately immunized by the age of two.

As is the case with many American cities, Camden's inner-city African American and Latino residents fare worse. In addition to the problems just mentioned, they suffer disproportionately from HIV infection and AIDS, the effects of substance abuse, violence and, perhaps most importantly, inadequate access to preventive and primary care.

Although any Camden resident can walk into the emergency room of any Camden hospital and receive excellent treatment, a major problem is that too many people are not receiving primary care. What is needed is a more unified system that links services in acute-care hospitals with primary care providers and community agencies. Camden residents within this coordinated network need a community-based and family-centered "medical home" where they can go for care, case management, referral, and follow-up services.

The Department of Health has prepared these guidelines to assist Camden providers in formulating new proposals for a vertically integrated health care system.

##### Definition and Description

What are the defining characteristics and functions of a vertically integrated health care delivery system?

1. Such a system is, to the greatest extent possible, community-based.
2. Its participating providers have learned the health care needs of the community by conducting a comprehensive needs assessment.
3. It monitors these needs, and provides a continuum of care, from primary to tertiary, to community residents of all ages.
4. It is seamless; that is, community members should see it as a comprehensive whole, not as a loosely connected and fragmented array of facilities and services.
5. It is a formal network and, as such, it links primary care—whether delivered in federally qualified health centers, by local health departments, or by private providers in their offices—to acute hospital services. What will a system with these attributes do for Camden residents? It will:

- improve their health—and be capable of measuring that improvement;
- provide them with a community-based and family-centered "medical home," that includes case management, referral, and follow-up care;
- improve access to preventive and primary care and reduce unnecessary and expensive emergency department visits and hospital admissions; and,
- increase access to every level of care, including specialty tertiary acute-care services, regardless of insurance status.

In responding to these guidelines, providers may, subject to all applicable certificate of need and licensing rules and regulations, propose capital projects that will expand or consolidate existing services, or add new ones. They are also encouraged to work with other providers at all levels, in an attempt to achieve vertical integration. To that end, joint applications from two or more providers are encouraged. In all cases, proposals must include a strategic plan that responds to the applicant's assessment and analysis of community needs. It must also take into account the effects of the proliferation of managed care in the Camden area.

##### Comprehensive Strategic Plan

The heart of a proposal's strategic plan is its needs assessment. This plan must pinpoint the problems and identify the barriers standing in the way of effective care delivery in Camden. These may include:

- a lack of providers, especially those accepting Medicaid patients;
- a lack of insurance;
- inadequate hours and/or days of operation of facilities;
- inconvenient location of, or transportation to, facilities;
- inadequate child care services;
- endemic substance abuse and/or violence;

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- inadequately educated and/or motivated patients; and
- a lack of ethnically or racially sensitive services.

Proposals must be designed to address as many of these issues and problems as possible, and to identify and eliminate barriers to care. Most importantly, as previously stated, they must increase access to a "medical home" that meets comprehensive primary care needs and, when appropriate, links residents to acute-care services. A medical home is defined as health care which is accessible, continuous, comprehensive, family centered, coordinated and compassionate. It must be delivered or directed by well trained health care providers who are able to manage or facilitate essentially all aspects of care.

A proposal's objectives must be prioritized, and based, at least in part, on an analysis of epidemiological factors such as the primary causes of mortality and morbidity, and of years of potential life lost. Strategies must incorporate components of both health and human services models. Increased coordination amongst providers with long-term goals of reducing fragmentation or duplication of services must also be reflected. Finally, the proposal must create a community-based system that reaches, and meets the unique needs of, Camden residents.

As previously indicated, episodic primary care provided by hospital emergency departments—while essential—is not the most effective way to improve long-term health outcomes. The associated costs of providing such care in an appropriate setting are also very high. Therefore, strategies must improve access to timely and appropriate primary care, and coordinate and integrate care providers into a network or system. The following are possible examples of such strategies.

(1) Managed care is proliferating in New Jersey, and one of the goals of this Administration is to move Medicaid recipients into managed care. In Camden, however, HMOs have not yet been able to enroll enough physicians who serve inner-city clients, or who are affiliated with hospitals where Medicaid clients typically go for care. Solutions to this and related problems are important to the structuring of any truly integrated and comprehensive care network.

(2) Hospitals can provide excellent tertiary care and may serve as the focal point of a coordinated care network. Using birth certificates, a hospital infant-tracking system initiated at delivery is one way to identify families needing a primary care provider.

(3) A community-based network of providers can integrate health and social services and co-locate them for the convenience of clients. This is sometimes referred to as "one-stop shopping." For example, WIC and AFDC now also screen children to identify those needing immunizations to complete their primary series by age two. Follow-up immunizations can then be provided.

(4) An integrated school-based program or a comprehensive network of home-visiting programs can effectively link the community to primary care services. Mentoring programs using grandmothers or community-based outreach workers have also been very successful.

(5) Violence-reduction efforts which employ community centers or churches as 24-hour-a-day "safe havens" can provide youth activities and links to schools and job-training programs.

**Process**

While a single service provider may submit a proposal, the Department of Health suggests that providers collaborate in developing an integrated health care delivery system for Camden. A proposal involving more than one provider must contain documentation demonstrating a commitment among all involved to ensure equitable participation in planning and development. In order to facilitate planning, a group process that involves public and community input must be utilized.

Camden already has a number of networks. They include the Healthy Mothers, Healthy Babies Coalition; the Southern New Jersey Perinatal Cooperative; the Health Planning and Advocacy Council; the Area Health Education Center (AHEC); and church groups, community centers, and other consumer advocacy groups. Input can also be obtained from church and community leaders, and from consumer and neighborhood organizations through focus groups and town meetings. Public/private partnerships can also be extremely successful in maximizing resources, and are encouraged.

The Department of Health will be happy to provide technical assistance in developing proposals. Department staff will also be available to work directly with successful applicants in the implementation of approved strategic plans.

Guidelines defining a vertically integrated health system were initially sent out on September 29, 1994. These guidelines were reissued in

October and input was solicited. These final guidelines reflect responses received. A single coordinated plan submitted jointly by all providers is strongly encouraged.

**Specifications for the Camden City Initiative**

In order to support the design and development of the vertically integrated health care delivery system, the following information is essential:

**I. Demographic Profile**

A comparative demographic profile of Camden residents utilizing census data among all sectors of the city. The demographic profile shall be provided for each city census tract, or political ward, or neighborhood, and shall include, but not be limited to, the demographic data categories included in Exhibit I (below).

**II. Available Services Profile**

A description of all health care and related services and the levels of services provided (for example, unduplicated patients served and revisits) in each city census tract including an explanation of the range of services offered at each site as well as their geographic location (include a map with census tract designations), days and hours of operation, accessibility to public transportation (include route and terminal locations on map), and insurance participation (including Medicare and Medicaid eligibility). The services profile must include at a minimum the categories itemized below:

- 1) Ambulatory care services; hospital and non-hospital based (include CHCs & FOHCs).
- 2) Hospital non-ambulatory care services—acute and non-acute by category (hospital analysis must include a three to five year trend for all admissions and distributions by type and age).
- 3) Long term care facilities by type (for example, SNF, assisted living, etc.)
- 4) Practicing private providers by category of practice including Family Practice, Internal Medicine, Obstetrics, Pediatrics, by specialty or subspecialty (surgical et al), etc. Include pertinent information on the designation of city areas as medically underserved areas (MUAs) or health manpower shortage areas (HMSAs).
- 5) Emergency medical transport systems (first responders, paramedics MICU's, ER capabilities.)
- 6) Local health departments and associated governmental programs (for example, Office on Aging, Camden County Pre-School Immunization Program.)
- 7) Community-based groups/agencies such as:
  - WIC
  - Nutritional congregation sites (seniors)
  - Mental health counseling and referral services
  - Senior day services
  - Senior congregate feeding centers
  - Family planning.
- 8) Home health care services.
- 9) Outpatient and residential substance abuse treatment facilities.
- 10) Transportation resources.
- 11) Social service agencies.
- 12) Outreach and education efforts (including voluntary or paraprofessional).
- 13) Rehabilitation services.
- 14) School-based programs.
- 15) Existing educational opportunities.
- 16) Day care (including HeadStart).
- 17) Available housing (single, multi-family).
- 18) Dental services.
- 19) Mental and Behavioral Health Services.

**III. Problem Identification**

Based on the findings of the demographic profile of the City of Camden, the applicant shall define the key health problems facing each sector of the City of Camden, with a description of the significance and impact of each problem. The applicant shall describe the disparities in health status between different population groups, and provide a comparative analysis of such disparities among the sectors of the City of Camden. The analysis shall include a needs assessment which does the following:

- 1) Describes the gaps in health services;
- 2) Assesses the deficiencies in current health care service delivery capability per census tract;

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3) Provides a determination of the need for and the appropriate location of additional services such as:

- Primary care services, including the appropriate location of primary care demonstrations and new and creative primary care delivery strategies in keeping with the Commissioner's call.
- Expanded home visiting programs, prevention treatment programs, education, testing and counseling services, etc.; and
- 4) Prioritizes the needs.

### IV. Goals and Objectives

The applicant shall provide a plan which provides specific and measurable goals and objectives for improving the health care outcomes of the residents of Camden City, as prioritized (either by crude mortality and morbidity or by years of Potential Life Lost) utilizing all of the demographic data categories included in Exhibit I.

### V. Implementation Strategies

In keeping with the Commissioner's call for vertically integrated health care networks that address the significant health related problems in the City of Camden through new and creative and cost effective strategies, the applicant shall offer a strategic plan which provides the following:

- 1) The plan must explain how the above goals and objectives will be met (by census tract and by which provider) and how each problem or health services gap identified in "C" (Problem Identification) will be addressed, specifying a time frame and implementation date.
- 2) The proposal must involve integration among providers of health care services participating in the proposal, and documentation demonstrating a commitment such as memorandum of understanding or letters of intent.
- 3) The proposal must include provisions for establishing a medical home for residents currently lacking such access and a "one-stop-shopping methodology" for family-centered preventive and primary care services. Such provisions must include specific culturally sensitive strategies for expanding and improving primary care accessibility to the underserved and underinsured. (This must include on-site determination of Medicaid eligibility).
- 4) The plan must contain provisions for addressing underutilized bed capacity, for reducing ambulatory care sensitive admissions and non-urgent emergency department visits, and for consolidating other non-hospital based existing health care services that are provided inefficiently, and/or are not cost-effective.
- 5) The plan must address the process utilized to establish an integrated health systems planning committee that reflects the racial and ethnic makeup of the clients and the community.
- 6) The plan must address the process utilized to assess the community's needs and to develop the strategic plan. There must be documentation of the group process utilized such as a coalition or task force. Neighborhood representation with public and community input must be evident.
- 7) Coordination between all participating providers must be demonstrated with a goal of reducing fragmentation or duplication of services.
- 8) The plan must address integration with Medicaid managed care.
- 9) The plan should also integrate other issues which affect health status outcomes such as: day care, job training, and violence reduction efforts. This must include evidence of collaboration with other involved agencies such as: law enforcement, job training, social service agencies, educational groups, day care etc.

### VI. Evaluation Component

There must be a plan for evaluating the success of the initiative. Therefore, the plan must contain methods for:

- a. evaluating the effectiveness, quality and efficiency of health services delivery; and
- b. measuring patient health outcomes through a quality improvement process.

### EXHIBIT I

#### CAMDEN INITIATIVE

#### DEMOGRAPHIC DATA REQUIREMENTS

#### A. GENERAL DEMOGRAPHIC DATA

1) **Population Data per Census Tract** (as defined by the U.S. Census Bureau)

- Population size and percentages by race and ethnicity:
- Race Categories**—white, black, hispanic and "other".

**Change Categories**—1980, 1990, % change between '80 & '90.

- Population size and changes by age and sex:
- By age**—under 5, 5-17, 18-24, 25-44, 45-64, 65+.

**Change Categories**—1980, 1990, % change between '80 & '90.

- Population size, percentage and % changes for those living below the poverty level:

**Change Categories**—1980, 1990, % change between '80 & '90.

2) **Socioeconomic Indicators (1990 Census data)**

- Median family and per capita income:

**Area categories**—Citywide and per Census tract.

- Poverty Status:

**Census Categories**—By age, by sex and age, by race and age, by family type and presence and age of children.

**Area Categories**—Citywide and per Census tract.

- Education/Work Status (workers 16 and over):

**Census Categories**—Educational attainment; school enrollment, educational attainment, and employment status; Race by school enrollment, educational attainment and employment status, distribution by industry, distribution by occupation.

**Area Categories**—Citywide and per Census tract.

- Unemployment Rate (non-Census data):

**Age Categories**—16-19, 16 and over.

**Race Categories**—White, Black, Total.

- Housing stock:

**Census Categories**—housing unit count, vacancy status (as a % of total units), mortgage status and selected monthly owner costs, average monthly rental costs.

**Area Categories**—Citywide and per Census tract.

3) **Access to Preventive and Primary Care by County**

- Population size and percentages, by race and age, of those having no health insurance coverage.

—White, black, hispanic, other.

—Under 5, 5-17, 18-24, 25-44, 45-64, 65+.

- Total residents and % of residents who have no primary source of care.

—Black, Hispanic, total.

- Number and % of emergency room visits per hospital which are primary care in origin.

- Number of admissions for ambulatory care sensitive diagnoses by hospitals.

**B. MORTALITY AND MORBIDITY** (Citywide, using most recent available data).

1) **Mortality Data**

- Deaths and Mortality Rates per 100,000 population by age.

**By age, race and sex**—under 1\*, 1-4, 5-14, 15-24, 25-44, 45-64, 65+.

\*Rate expressed as number of deaths per 1,000 live births.

- Total Deaths and % of deaths in infants under 1 year old per cause.

**Cause Group**—Respiratory distress syndrome, disorders relating to short gestation and unspecified low birthweight, sudden death, other respiratory conditions of fetus and newborn, and "all other".

- Total Deaths and % of deaths in infants 1-4 years old per cause.

**Cause Group**—Unintentional injuries, congenital anomalies, malignant neoplasms, and "all other".

- Total Deaths and death rate per 100,000 of children ages 5-14 years old per cause.

**Cause Group**—Unintentional injuries, malignant neoplasms, homicide and legal intervention, congenital anomalies, and "all other".

- Total Deaths and death rate per 100,000 of adolescents and young adults aged 15-24 per cause.

**Cause Group**—Unintentional injuries, homicide and legal intervention, suicide, and "all other".

- Total Deaths and death rates per 100,000 of adults aged 25-44 per cause.

**Cause Group**—HIV infection, unintentional injuries, malignant neoplasms, heart disease, and "all other".

- Total Deaths and % of deaths of adults aged 45 to 64 per cause.

**Cause Group**—Malignant neoplasms, heart disease, cerebrovascular disease, chronic liver disease and cirrhosis and "all other".

- Total Deaths and % of deaths of older adults aged 65 and over.

**Cause Group**—Heart disease, malignant neoplasms, cerebrovascular disease, pneumonia and influenza, and "all other".

**C. INCIDENT-SPECIFIC DATA** (Citywide, using most recent data available).

1) **Infant, Child Health and Maternal Outcomes**

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- Infant deaths per 1,000 live births.
- Black, total.
- Infants with birthweight less than 2500 grams.
- Black, total.
- Infants with birthweight less than 1500 grams.
- Black, total.
- Total and percentage of live births whose mothers received prenatal treatment.
- Black, total.
- Total and percentage of eligible population served by the Women, Infants and Children program.
- Black, total.
- Total and percentage of mothers who abstained from alcohol during pregnancy.
- Number of reported and substantiated cases of abuse and neglect.
- Total and percentage of children who screened positive for lead.
- 2) Incidence of Adolescent Pregnancy**
- Total and Births per 1,000 females aged 10-14.
- Minority, Total.
- Total and Births per 1,000 females aged 15-19.
- Minority, Total.
- 3) Incidence and Detection of Cancer**
- Breast cancer deaths per 100,000 women.
- 50-64, 65+, total.
- Black, total.
- Deaths due to lung cancer per 100,000 population.
- Minority males, total population.
- Deaths from Cervical Cancer per 100,000 women.
- 65 and over, total.
- Minority, total.
- 4) Incidence and Detection of Vascular Diseases**
- Deaths due to coronary heart disease per 100,000 population.
- Minority population 45-64, total population 45-64, total minority population, total.
- Deaths due to cerebrovascular diseases per 100,000 population.
- Race and Age Categories**—Population 65% over, minority population 45-64, total population 45-64, minority population, total.
- 5) AIDS and HIV Infection**
- Incidence of AIDS per 100,000 population.
- Minority females 15-44, minority males 25-44, white males 25-44, children 0-9.
- Deaths due to AIDS/HIV per 100,000 population.
- By Age**—25-44, total.
- 6) Sexually Transmitted Diseases**
- Incidence of Primary and Secondary Syphilis per 100,000 population.
- Minority, Total.
- Incidence of Congenital Syphilis per 100,000 population.
- Minority, Total.
- Incidence of Gonorrhea per 100,000 population.
- Incidence of Chlamydia Trachomatis Infections Incidence per 100,000 population.
- 7) Vaccine-Preventable and Other Infectious Diseases**
- Cases of Measles (rubeola).
- Incidence of Active TB per 100,000 population.
- Primary immunizations compliance rates by age 2.
- 8) Preventable Unintentional and Intentional Injuries**
- Deaths caused by motor vehicle accidents per 100,000 population.
- By Age**—15-24, 70 and over, total.
- Homicide Deaths per 100,000 population.
- Minority males age 15-44, minority females age 15-44, total.
- Suicides per 100,000 population.
- By age**—15-24, 65 and over, total.
- Trauma Registry Data for Camden City residents.
- 9) Substance Abuse**
- Admissions for residential alcohol and drug treatment.
- Total admissions and admissions per site.
- 10) Other**
- Number of arrests for driving-while-intoxicated & drug offenses.
- Juvenile incarceration rate.

Any application filed pursuant to this call for an integrated health care delivery network which contains services or capital improvements subject to certificate of need regulations shall ensure that each of the component parts of the overall application are in compliance with the Certificate of Need Application and Review Process, N.J.A.C. 8:33 and with all applicable planning and licensing rules.

In accordance with N.J.A.C. 8:33-1.2(d), certificate of need applications shall be reviewed for conformance with the rules in effect on the date the certificate of need application is deemed complete for processing.

**Specific area to be served:** City of Camden, Camden County

**Date application is due:** June 1, 1995

**Date application will be deemed complete for processing:** September 1, 1995

**Date Local Advisory Board will review the applications and submit recommendations to the Commissioner:** ON OR BEFORE November 15, 1995

**Date State Health Planning Board will review the applications and submit recommendations to the Commissioner:** ON OR BEFORE December 1, 1995

**Applications may be requested from and must be filed with:**

New Jersey State Department of Health  
Certificate of Need Program  
CN 360  
Trenton, NJ 08625-0360  
609-292-6552

**Applications must also be filed with:** Local Advisory Board serving the region of the proposed service.

(a)

### OFFICE OF ALCOHOLISM, DRUG ABUSE AND ADDICTION SERVICES

#### Notice of Availability of Grants Alcoholism and Drug Abuse Treatment New Jersey Drug Abuse Campus Treatment Program

**Take notice** that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

**Name of grant program:** Alcoholism and Drug Abuse Treatment Grant Program No. 96-65-ADA.

**Statutory authority:** Public Health Service Act, 45 CFR Part 96, P.L. 1994, c.67, P.L. 1987, c.51, Public Law P.L. 102-321.

**Purpose for which the grant program funds will be used:** A grant will be awarded to provide residential treatment services at the New Jersey Drug Abuse Campus Treatment Project. The Campus Project is a 350 bed residential drug treatment facility. It also includes a 10 bed detoxification unit, a centralized intake unit and a medical unit providing a full range of primary care services.

**Amount of money in the grant program:** Funds available for this program are contingent upon state or federal appropriations. Contact the individual identified on this form to determine whether the funds have been awarded.

**Eligible applicants must comply with the following requirements:**

1. Terms and conditions for the administration of Health Service Grants
2. General and specific grant compliance requirements issued by the granting agency
3. Applicable federal cost principles relating to the applicant

**Group or entities which may apply for the grant program:** Not-for-profit corporations.

**Qualifications needed by an applicant to be considered for the grant:** Applicants or subgrantee of applicant must possess proper license or certification for services. Key treatment staff must be certified Alcohol and Substance Abuse Counselors (S.A.C.) or be S.A.C. eligible. Demonstrated experience in providing residential services.

**Application procedures:**

1. Contact Assistant Commissioner's Office for copies of the request for proposal.
2. Respond to formal request for proposal.

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### For information contact:

Donald C. Busch  
Division of Alcoholism, Drug Abuse and Addiction  
Services (DADAAS)  
New Jersey Department of Health  
CN 362  
Trenton, New Jersey 08625-0362  
(609) 292-9068

**Deadline by which applications must be submitted:** Response to the formal request for proposal must be received by DADAAS by 4:00 P.M., June 1, 1995.

**Date by which applicant shall be notified whether they will receive funds:** Applicant will be notified by July 1, 1995.

## HUMAN SERVICES

### (a)

#### DIVISION OF FAMILY DEVELOPMENT

##### Notice of Increase in General Assistance Rate in Residential Health Care Facilities

**Take notice** that, in accordance with N.J.A.C. 10:85-3.3(f)4i, the Department of Human Services announces that the rate to be paid for General Assistance recipients in Residential Health Care Facilities (RHCFs) has been increased from \$596.05 to \$608.05 monthly. This change is effective January 1, 1995 and is the same in both the amount and effective date as the change in the rate for the same services paid to recipients under the Federal program of Supplemental Security Income.

### (b)

#### DIVISION OF DEVELOPMENTAL DISABILITIES (DDD)

##### Notice of Availability of Grant Funds Privatization of DDD Operated Adult Training Services, Effective July 1, 1995

**Take notice** that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

**Name of grant program:** Privatization of DDD Operated Adult Training Centers.

##### Purpose for which the grant program shall be used:

The State of New Jersey, Department of Human Services, Division of Developmental Disabilities is soliciting proposals for the provision of Adult Training Services (ATS). All proposals shall provide for the conversion of State-operated programs to private sector services. The programs offer training in skills needed for employment, vocational activities, daily living, developing each consumer's capacity for self-determination, decision-making, and expanding his or her role as a contributing member at home and in the community.

The Division of Developmental Disabilities exists to serve persons who are developmentally disabled by endeavoring to meet their needs for care, treatment, training, habilitation and protection in a manner that recognizes their strengths, worth, legal and civil rights, interests and wishes. Every service offered by the Division or under contract shall be designed to maximize the developmental potential of its consumers. It is the goal of the Division to provide an array of services which sustains individuals within their community and to encourage them to become participating members.

The definition of developmental disabilities is "a severe, chronic disability which:

1. is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. is manifest before age 22;
3. is likely to continue indefinitely;
4. results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive

language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and

5. reflects the needs for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

6. includes but is not limited to severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met." (N.J.S.A. 30:6D-25)

The Adult Training Services Program provides training in three basic habilitation areas. These established program areas are:

Personal Awareness

Practical Arts

Other Habilitative Activities

The Crew Labor Program provides program participants with the opportunity to work for competitive wages. The community job site is the primary program environment. The program consists of training and supervised on-the-job experiences. Training emphasizes the development of specific job skills, work attitudes, decision-making abilities, socialization, communication, money management, consumer behavior, accepting responsibility and overall independence in daily functioning.

DDD, Community Services is charged with the responsibility of determining eligibility of an Applicant for Adult Training Services and administers all admissions, discharges and transfers to the program.

DDD requires a minimum of 230 days of program per year.

Provision of transportation services will be provided either directly by the contracted agency or through sub-contract with a private transportation vendor.

Where feasible, selected applicants awarded a contract under the initiative may choose to expand the operations of their current programs. Any expansions of the operational capacity to increase the availability of services must be financed within contract limits. Contractors may propose different, new or additional services than are already occurring at these program sites.

The Division reserves the right to reject any and all proposals when circumstances indicate that it is in its best interest to do so. The Division's best interests in this context include, but are not limited to: loss of funding; the inability of the applicant to provide adequate services; any indication of misrepresentation of information; and/or non-compliance with State and Federal laws and regulations.

The Division assumes no responsibility or liability for the costs incurred by an applicant for planning or preparing a proposal in response to this announcement.

##### Amount of money in the grant program:

**Note:** Operating budgets do not include vehicle and equipment costs.

**NRO** Morris County (Boonton/Lincoln Park)  
36 consumers operating budget: \$405,147  
Passaic County (Fairfield, Passaic Clifton)  
60 consumers operating budget: \$570,526

**UCRO** Union County (All Union County and consumers residing at Keystone Community in South Plainfield, Middlesex County)  
24 consumers operating budget: \$293,432  
Essex Crew Labor (Essex County, Northern Union County)  
18 consumers operating budget: \$146,871  
Greenbrook Crew Labor (Somerset County)  
12 consumers operating budget: \$102,273

**LCRO** Mercer County (primarily Western Mercer County but including Hightstown, Yardville and Pennington)  
36 consumers operating budget: \$486,370  
Monmouth County (Primarily Neptune and Asbury Park)  
42 consumers operating budget: \$578,176  
Ocean County (Primarily Lakewood, Jackson, Brick Town and Toms River area)  
36 consumers operating budget: \$438,215  
Middlesex County (Primarily Northern Middlesex County)  
66 consumers operating budget: \$603,352

**SRO** Burlington County  
36 consumers operating budget: \$481,116  
Burlington County Crew Labor Program  
35 consumers operating budget: \$383,450

## HUMAN SERVICES

## PUBLIC NOTICES

Camden County  
24 consumers operating budget: \$371,743  
Camden County Crew Labor Program  
25 consumers operating budget: \$312,986  
Cape May Crew Labor Program  
15 consumers operating budget: \$170,600  
Cape May (Cape May County)  
36 consumers operating budget: \$476,460  
Cumberland County (Primarily Seabrook)  
30 consumers operating budget: \$431,661

Proposals must remain within recommended Budgetary limits. Level of Services is provided with an automatic expectation of 10 percent over enrollment due to respite services and emergency placements.

### Organizations Eligible to Apply for Funding:

Private non-profit or for-profit agencies, that meet the following requirements are eligible to apply for funding under this program:

1. The applicant must be willing to enter into a contract with DDD and comply with the contracting rules and regulations of the Department of Human Services (that is, the Standard Contract Reimbursement Manual and the Contract Policy and Information Manual, N.J.A.C. 10:3.)

2. The applicant must give DDD employees who are impacted by privatization the "First Right of Refusal" for employment at the program where they currently work. In other words, DDD employees at these programs must be offered employment by the selected provider, and given the opportunity to accept or reject this offer before non-DDD employed persons are recruited, interviewed or hired for positions at these centers.

3. For the information of applicants and in accordance with guidelines established by the Executive Commission on Ethical Standards, be advised that Division (DDD) employees or former employees are eligible to submit proposals.

4. The applicant must be willing to adhere specifically to the program requirements containing in the Request for Proposals (RFP) and comply with DDD monitoring and evaluation procedures.

5. The applicant must not discriminate in providing services to consumers based on age, race, creed, national origin, sex, handicap or financial status.

The applicant must be willing to adhere to all reporting requirements specified in the RFP.

The applicant must include all consumers currently receiving services in their program proposal. DDD will continue to administer all admissions, discharges and transfers to the programs. Subsequently, applicants may not reject a consumer admission to their program.

### Application Selection Criteria

A DDD Review Committee shall convene a panel to assess, rate and rank proposals and to recommend an applicant for funding.

Applicants shall be evaluated and rated in accordance with the criteria listed below.

The Department of Human Services review and recommendation process will be followed. All submitted proposals that are completed and fulfill the requirements of the RFP will be eligible for selection, and shall be evaluated and scored in accordance with the criteria listed below.

The maximum score for all proposals shall equal 100 points and shall be computed based on the following guidelines:

The program approach, including the definition of services to be provided, description of the activities/methods used to achieve objectives, appropriate staff, qualifications and skills needed, description of monitoring plan and evaluation of quality of services (Max. 25 points);

The completeness of the application and clarity of statements within the proposal, including the availability and accuracy of all supporting documentation, the logic and consistency of the proposal, the attainability of the description of the agency's plan for implementation and an assurance of compliance with—contract requirements (Max. 20 points);

The feasibility of the timetable to implement the proposed services (Max. 20 points);

The applicant's stability, performance, and strength, both programmatic and fiscally (Max. 15 points);

Description of the management and supervision methods to ensure program accountability; supervision and training of staff; monitoring performance of service activities and ensuring attainment of objectives, program and consumer (Max. 10 points);

Reasonableness of budget plan (Max. 10 points).

### Procedures for eligible applicants to apply:

Agencies and organizations interested in applying for these funds may obtain a copy of the Request for Proposals by attending the Bidder's Conference. It is a prerequisite and a requirement that prospective applicants attend the Bidder's Conference. Any person with a physical disability who plans to attend this meeting and requires any special accommodations should contact the regional office prior to the meeting.

**A Bidder's Conference** is scheduled for:

Date: Monday, April 17, 1995

Time: 10:00 A.M.

Locations:

**Morris, Warren, Sussex, Bergen, Passaic, Hudson Counties**

Northern Regional Office

1-B Laurel Drive

Flanders, NJ 07836

201-927-2600

**Essex, Somerset, Union**

Upper Central Regional Office

65 Springfield Avenue

Springfield, NJ 07081

201-379-1700

**Mercer, Middlesex, Monmouth, Ocean, Hunterdon Counties**

Lower Central Regional Office

220 Route 9, Suite #300

Howell, NJ 07731

908-577-8960

**Camden, Atlantic, Cape May, Burlington, Gloucester, Salem, Cumberland Counties**

Vineland Developmental Center

1676 East Landis Avenue

Auditorium—East Campus

Vineland, NJ 08360

609-696-6000

Failure to attend Bidder's Conference will disqualify individuals, agencies, or organizations from the application process. Those who attend this conference must confirm their attendance by registering at the conference site.

The Bidders Conference will provide an opportunity for DDD to clarify the contents of the RFP, answer any questions and provide technical information regarding the RFP. Additional information regarding the proposed budgets will also be distributed at this meeting.

One signed original and six copies of the completed proposal shall be hand-delivered or mailed as follows:

**If Being Mailed:** Regional Office Address Noted Below Applications received after 4:00 P.M. on May 8, 1995 will not be accepted. Envelope must indicate: Proposal Enclosed

**If Being Hand-Delivered:** Applications received after 4:00 P.M. on May 8, 1995 will not be accepted. Envelope must indicate: Proposal Enclosed

**Morris, Warren, Sussex, Bergen, Passaic, Hudson Counties**

Northern Regional Office

1B Laurel Drive

Flanders, NJ 07836

201-927-2600

**Essex, Somerset, Union**

Upper Central Regional Office

65 Springfield Avenue

Springfield, NJ 07081

201-379-1700

**Mercer, Middlesex, Monmouth, Ocean, Hunterdon Counties**

Lower Central Regional Office

Capital Place One

222 South Warren Street

Trenton, NJ 08625

609-292-4500

**Camden, Atlantic, Cape May, Burlington, Gloucester, Salem, Cumberland Counties**

Southern Regional Office

101 Haddon Avenue, Suite 17

Camden, NJ 08103-1485

609-757-4700

**PUBLIC NOTICES****INSURANCE**

**Award notification** to be made by May 19, 1995.

Visitation to program sites for the purpose of proposal development must be by appointment and with the prior approval of the Community Services Regional Administrator or his/her designee.

All requests for technical assistance should be directed to the Regional Administrator.

**INSURANCE****(a)****DIVISION OF PROPERTY AND CASUALTY****Public Notice****List of Special Risks**

**Take notice** that effective March 9, 1995 Andrew J. Karpinski, Commissioner of Insurance, pursuant to the authority of the Commercial Insurance Deregulation Act of 1982 (N.J.S.A. 17:29AA-1 et seq.), hereby promulgates the list of special risks described in N.J.S.A. 17:29AA-3k. This list was last published November 15, 1993 at 25 N.J.R. 5366(a). The Department has added Subsection H, relating to Healthcare Provider Stop Loss Insurance to Section II, as a specifically designated special risk.

The following commercial lines insurance risks are special risks:

1. Risks which are written on an excess or umbrella basis;
2. Risks which are eligible for export as set forth on any current list of exportables promulgated by the Commissioner under N.J.S.A. 17:22-6.43; or
3. Those commercial lines insurance risks, or portions thereof which:
  - (a) do not appear in any of the following manuals, rating plans or schedules below;
  - (b) are excepted below from such manuals, rating plans or schedules; or
  - (c) are specifically designated special risks below, are found to be special risks which are of an unusual nature or high loss hazard or are difficult to place or rate.

**I. RATING ORGANIZATION MANUALS, RATING PLANS, OR SCHEDULE AND EXCEPTIONS****A. INSURANCE SERVICES OFFICE**

1. **COMMERCIAL LINES MANUAL** (including Commercial Automobile Supplementary Rating Procedures)  
Except risks which are designated as:
  - (a) "a" rated
  - (b) "refer to company" either exclusively or in the alternative
  - (c) "Submit to company"
  - (d) Property owned by the Federal government
  - (e) Railroad property
  - (f) Computer fraud risks
  - (g) Extortion risks
2. **COMMERCIAL AUTOMOBILE SUPPLEMENTARY RATING PROCEDURES**

**B. MUTUAL SERVICE OFFICE**

- SPECIAL MULTI PERIL MANUAL, BURGLARY AND THEFT MANUAL FIRE AND ALLIED LINES MANUAL**  
Except risks designated as:
1. "a" rated
  2. "refer to company" either exclusively or in the alternative
  3. "submit to company"

**C. CROP-HAIL INSURANCE ACTUARIAL ASSOCIATION MANUAL****D. AMERICAN ASSOCIATION OR INSURANCE SERVICES GENERAL LIABILITY MANUAL**

- Except risks as designated as:
1. "a" rated
  2. "refer to company" either exclusively or in the alternative
  3. "submit to company"

**E. MILL AND ELEVATOR RATING BUREAU MANUAL****F. SPECIAL RISK EXCEPTIONS**

Notwithstanding anything aforesaid, the following risks are not special risks and are specifically excepted from the special risks list:

1. Legal malpractice liability
2. Medical malpractice liability

3. Hospitals professional liability
4. Physicians and surgeons professional liability
5. Dentist professional liability
6. Employees professional liability
7. Nurses professional liability
8. Optometrists professional liability
9. Physiotherapists professional liability
10. Chiropractors professional liability

**II. SPECIFICALLY DESIGNED SPECIAL RISKS****A. INSURANCE SERVICES OFFICE**

1. Risks rated under any of the following schedules are special risks:
    - (a) Petroleum properties
    - (b) Petrochemicals plans
    - (c) Electric generating stations
    - (d) Natural gas pumping stations
    - (e) Coal, oil and water gas plants
    - (f) Electric traction properties
  2. Risks insured under the provisions of the Highly Protected Risks Rating Plan are special risks.
- B. Preferred risk properties insured and rated as shown in the rules and rating schedules of the FACTORY MUTUAL SERVICE BUREAU are special risks.**
- C. All commercial insurance aviation risks (including those rates from the AVIATION INSURANCE RATING BUREAU Schedule of Rates) are special risks.**
- D. All nuclear insurance risks are special risks.**
- E. All Animal Mortality risks are special risks.**
- F. All Credit Insurance risks are special risks.**
- G. All Boiler and Machinery risks are special risks.**
- H. All Healthcare Provider Stop Loss Insurance risks are special risks.**

**(b)****THE COMMISSIONER****Public Notice****List of Municipalities Requiring Payment of Liens by Companies Writing Fire Insurance**

**Take notice** that Andrew J. Karpinski, Commissioner of Insurance, in accordance with the provisions of N.J.S.A. 17:36-9, announces the publication of New Jersey municipalities that have adopted ordinances pursuant to the aforementioned statute. Those municipalities which have adopted said ordinances since the previous date of publication shall be designated by asterisk.

**LIST OF MUNICIPALITIES REQUIRING PAYMENT OF LIENS BY COMPANIES WRITING FIRE INSURANCE**

The following is a list of municipalities that have passed an ordinance requiring companies writing fire insurance on risks located in that municipality to pay unpaid liens out of any claimed payments in excess of \$2,500.

	<b>Date Filed with the Department of Insurance</b>
Aberdeen, Township of 07747 (Monmouth County)	September 8, 1980
Absecon, City of 08201 (Atlantic County)	July 5, 1983
Alloway, Township of 08079 (Salem County)	December 20, 1984
Asbury Park, City of 07712 (Monmouth County)	May 25, 1979
Atlantic City, City of 08401 (Atlantic County)	March 19, 1979
Barrington, Borough of 08007 (Camden County)	September 17, 1982
Bayonne, City of 07002 (Hudson County)	March 12, 1979
Belmar, Borough of 07719 (Monmouth County)	March 5, 1982
Berkeley, Township of 08721 (Ocean County)	May 22, 1979
Berrington, Borough of 08009 (Camden County)	September 17, 1982
Berlin, Township of 08091 (Camden County)	March 20, 1980
Bloomfield, Town of 07003 (Essex County)	March 26, 1979
Bordentown, Township of 08505 (Mercer County)*	October 24, 1994
Branchburg, Township of 08876 (Somerset County)	December 15, 1992
Brick, Township of 08723 (Ocean County)	May 2, 1980

## INSURANCE

## PUBLIC NOTICES

Bridgeton, City of 08302 (Cumberland County) April 30, 1979  
 Brigantine, City of 08203 (Atlantic County) October 14, 1982  
 Buena, Borough of 08341 (Atlantic County) November 1, 1982  
 Burlington, City of 08016 (Burlington County) December 9, 1986  
 Butler, Borough of 07405 (Morris County) November 14, 1980  
 Byram, Township of 07860 (Sussex County) October 9, 1980  
 Camden, City of 08101 (Camden County) May 4, 1979  
 Cape May, City of 08204 (Cape May County) May 22, 1979  
 Carneys Point, Township of 08069 (Salem County) July 2, 1979  
 Cedar Grove, Township of 07009 (Essex County) August 10, 1979  
 Chatham, Township of 07928 (Morris County) June 4, 1986  
 Chesterfield, Township of 08620 (Burlington County) September 16, 1994  
 Cinnaminson, Township of 08077 (Burlington County) August 30, 1979  
 Clinton, Township of 08801 (Hunterdon County) December 10, 1981  
 Delaware, Township of 08557 (Hunterdon County) October 15, 1992  
 Delran, Township of 08075 (Burlington County) August 30, 1979  
 Dover, Town of 07801 (Morris County) April 16, 1980  
 Dover, Township of 08753 (Ocean County) September 26, 1979  
 East Orange, City of 07019 (Essex County) February 20, 1979  
 East Windsor, Township of 08520 (Mercer County) December 23, 1991  
 Eatontown, Borough of 07724 (Monmouth County) March 23, 1979  
 Edgewater Park, Township of 08010 (Burlington County) July 24, 1979  
 Egg Harbor, Township of 08221 (Atlantic County) September 24, 1979  
 Egg Harbor, City of 08215 (Atlantic County) May 21, 1981  
 Elizabeth, City of 07201 (Union County) April 30, 1979  
 Elmer, Borough of 08318 (Salem County) November 19, 1991  
 Ewing, Township of 08618 (Mercer County) November 10, 1981  
 Fairfield, Township of 07006 (Essex County) August 21, 1980  
 Fair View, Borough of 07022 (Bergen County) September 5, 1979  
 Fanwood, Borough of 07023 (Union County) June 29, 1979  
 Farmingdale, Borough of 07727 (Union County) May 18, 1981  
 Florham Park, Borough of 07932 (Morris County) April 25, 1979  
 Fort Lee, Borough of 07024 (Bergen County) August 27, 1979  
 Franklin, Township of 07826 (Somerset County) June 20, 1980  
 Fredon, Township of 07860 (Sussex County) October 28, 1980  
 Freehold, Borough of 07728 (Monmouth County) July 21, 1994  
 Freehold, Township of 07728 (Monmouth County) October 8, 1992  
 Gloucester, City of 08030 (Camden County) January 24, 1989  
 Green, Township of 07821 (Sussex County) July 20, 1982  
 Hackensack, City of 07602 (Bergen County) April 22, 1980  
 Haddon Heights, Borough of 08035 (Camden County) August 8, 1994  
 Hamilton, Township of 08330 (Atlantic County) November 18, 1982  
 Hamilton, Township of 08650 (Mercer County) August 2, 1994  
 Hammonton, Town of 08037 (Atlantic County) August 3, 1979  
 Hanover, Township of 07981 (Morris County) January 7, 1986  
 Hightstown, Borough of 08520 (Mercer County) September 3, 1980  
 Hillside, Township of 07205 (Union County) June 4, 1979  
 Hoboken, City of 07030 (Hudson County) October 15, 1979  
 Holland, Township of 08848 (Hunterdon County) June 1, 1992  
 Holmdel, Township of 07733 (Monmouth County) October 20, 1987  
 Hopewell, Township of 08302 (Cumberland County) September 26, 1979  
 Hopewell, Township of 08560 (Mercer County)\* October 14, 1994  
 Howell, Township of 07731 (Monmouth County) March 23, 1979  
 Irvington, Town of 07111 (Essex County) March 20, 1979  
 Irvington, Township of 07111 (Essex County) July 1, 1985  
 Jackson, Township of 08257 (Ocean County) March 7, 1979  
 Jamesburg, Borough of 08831 (Middlesex County) March 2, 1983  
 Jefferson, Township of 07981 (Morris County) April 19, 1983  
 Jersey City, City of 07302 (Hudson County) February 23, 1979  
 Keansburg, Township of 07734 (Monmouth County) April 5, 1984  
 Kearny, Town of 07032 (Hudson County) August 26, 1980  
 Keyport, Borough of 07735 (Monmouth County) August 15, 1979  
 Kinnelon, Borough of 07405 (Morris County) June 4, 1986  
 Lacey, Township of 08731 (Ocean County) August 18, 1981  
 Lavallette, Borough of 08735 (Ocean County) December 11, 1979  
 Lawrence, Township of 08648 (Mercer County) April 24, 1979  
 Lindenwold, Borough of 08021 (Camden County) July 6, 1994  
 Little Silver, Borough of 07739 (Monmouth County) April 5, 1984

Logan, Township of 08096 (Gloucester County) January 2, 1990  
 Long Branch, City of 07740 (Monmouth County) December 4, 1987  
 Lopatcong, Township of 08865 (Warren County) August 30, 1979  
 Lower, Township of 08024 (Cape May County) June 5, 1979  
 Manchester, Township of 08733 (Ocean County) September 21, 1982  
 Mannington, Township of 08079 (Salem County) May 17, 1979  
 Maple Shade, Township of 08052 (Burlington County) July 18, 1980  
 Maplewood, Township of 07040 (Essex County) April 4, 1979  
 Matawan, Borough of 07747 (Monmouth County) June 19, 1981  
 Maurice River, Township of 08332 (Cumberland County) September 26, 1980  
 Medford Lakes, Borough of 08055 (Burlington County) February 3, 1992  
 Mendham, Township of 07949 (Morris County) January 16, 1985  
 Millburn, Township of 07041 (Essex County) May 19, 1981  
 Millville, City of 08332 (Cumberland County) April 10, 1979  
 Millstone, Township of 07726 (Monmouth County) January 14, 1988  
 Montclair, Town of 07042 (Essex County) April 5, 1979  
 Mount Holly, Township of 08060 (Burlington County) January 29, 1980  
 Mount Laurel, Township of 08054 (Burlington County) May 27, 1980  
 Neptune, Township of 07753 (Monmouth County) January 4, 1982  
 Neptune City, Borough of 07712 (Monmouth County) December 2, 1982  
 Newark, City of 07102 (Essex County) March 16, 1979  
 New Brunswick, City of 08903 (Middlesex County) January 30, 1986  
 North Plainfield, Borough of 07060 (Somerset County) July 1, 1985  
 North Wildwood, City of 08260 (Cape May County) August 24, 1979  
 Ocean, Township of 07755 (Monmouth County) November 27, 1979  
 Ocean, Township of 08758 (Ocean County) May 29, 1985  
 Orange, City of 07050 (Essex County) July 2, 1979  
 Passaic, City of 07055 (Passaic County) September 4, 1980  
 Paterson, City of 07050 (Passaic County) February 16, 1979  
 Paulsboro, Borough of 08066 (Gloucester County) May 7, 1981  
 Pemberton, Township of 08057 (Burlington County) August 9, 1993  
 Penns Grove, Borough of 08069 (Salem County) July 9, 1979  
 Phillipsburg, Town of 08865 (Warren County) July 13, 1979  
 Pine Hill, Borough of 08021 (Camden County) March 2, 1982  
 Piscataway, Township of 08854 (Middlesex County) March 20, 1981  
 Pittsgrove, Township of 08318 (Salem County) January 8, 1993  
 Plainfield, City of 07061 (Union County) April 5, 1979  
 Pleasantville, City of 08232 (Atlantic County) December 27, 1979  
 Plumsted, Township of 08533 (Ocean County) November 16, 1992  
 Pohatcong, Township of 08865 (Warren County) July 20, 1979  
 Princeton, Borough of 08540 (Mercer County) July 16, 1980  
 Princeton, Township of 08540 (Mercer County) September 25, 1980  
 Rahway, City of 07065 (Union County) December 18, 1979  
 Randolph, Township of 07801 (Morris County) May 10, 1979  
 Readington, Township of 08889 (Hunterdon County) June 23, 1980  
 Red Bank, Borough of 07701 (Monmouth County) September 9, 1980  
 Riverside, Township of 08075 (Burlington County) May 10, 1979  
 Roosevelt, Borough of 08555 (Monmouth County) March 3, 1992  
 Roselle, Borough of 07203 (Union County) August 8, 1979  
 Roselle Park, Borough of 07204 (Union County) March 5, 1981  
 Runnemede, Borough of 08078 (Camden County) May 6, 1982  
 Salem, City of 08079 (Salem County) June 20, 1979  
 Sayreville, Borough of 08872 (Middlesex County) September 19, 1979  
 Scotch Plains, Township of 07076 (Union County) August 22, 1979  
 Sea Bright, Borough of 07760 (Monmouth County) April 10, 1979  
 Sea Girt, Borough of 07762 (Monmouth County) March 12, 1991  
 Seaside Heights, Borough of 08751 (Ocean County) June 21, 1991  
 Secaucus, Town of 07094 (Hudson County) March 5, 1980  
 Somerdale, Borough of 08083 (Camden County) July 28, 1982  
 Somers Point, City of 08244 (Atlantic County) June 3, 1993  
 Somerville, Borough of 08876 (Somerset County) March 23, 1979  
 South Amboy, City of 08879 (Middlesex County) July 12, 1984

**PUBLIC NOTICES**

South Harrison, Township of 08039 (Gloucester County)	December 29, 1988
South Orange Village, Township of 07079 (Essex County)	August 19, 1980
South Plainfield, Borough of 07080 (Middlesex County)	September 26, 1980
South River, Borough of 08882 (Middlesex County)	March 16, 1979
Spotswood, Borough of 08884 (Middlesex County)	June 19, 1981
Stafford, Township of 08050 (Ocean County)	May 2, 1985
Sussex, Borough of 07461 (Sussex County)	October 24, 1979
Tenaflly, Borough of 07670 (Bergen County)	June 17, 1980
Tewsbury, Township of 08833 (Hunterdon County)	August 21, 1992
Tinton Falls, Township of 07724 (Monmouth County)	June 20, 1980
Trenton, City of 08608 (Mercer County)	June 12, 1980
Tuckerton, Borough of 08087 (Ocean County)	February 2, 1989
Union City, City of 07087 (Hudson County)	April 23, 1979
Upper Deerfield, Township of 08302 (Cumberland County)	May 19, 1989
Upper Pittsgrove, Township of 08318 (Salem County)	October 15, 1979
Ventnor City, City of 08401 (Atlantic County)	March 30, 1982
Verona, Borough of, Township of 07044 (Essex County)	February 23, 1984
Victory Gardens, Borough of 07801 (Morris County)	August 15, 1979

Vineland, City of 08360 (Cumberland County)	July 6, 1979
Washington, Borough of 07882 (Warren County)	June 24, 1986
Washington, Township of 08214 (Burlington County)	March 12, 1979
Washington, Township of 07853 (Morris County)	May 30, 1979
Waterford, Township of 08004 (Camden County)	July 9, 1984
Wayne, Township of 07470 (Passaic County)	October 6, 1986
Weehawken, Township of 07087 (Hudson County)	August 14, 1986
Wenonah, Borough of 08090 (Gloucester County)	July 1, 1985
West Deptford, Township of 08086 (Gloucester County)	November 14, 1988
Westfield, Town of 07090 (Union County)	July 15, 1992
Westhampton, Township of 08060 (Burlington County)	June 4, 1979
West New York, Town of 07093 (Hudson County)	March 16, 1979
Westville, Borough of 08093 (Gloucester County)	March 18, 1988
West Orange, Town of 07052 (Essex County)	February 26, 1979
Westwood, Borough of 07675 (Bergen County)	November 28, 1991
Wildwood, City of 08260 (Cape May County)	December 5, 1984
Willingboro, Township of 08046 (Burlington County)	April 17, 1980
Winslow, Township of 08037 (Camden County)	November 13, 1980
Woodbury, City of 08086 (Gloucester County)	January 7, 1986
Woodlynne, Borough of 08107 (Camden County)	June 7, 1982
Woodridge, Borough of 07075 (Bergen County)	July 9, 1984
Woodstown, Borough of 08079 (Salem County)	September 8, 1983
Woolwich, Township of 08085 (Gloucester County)	March 28, 1994

**INSURANCE**

# 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 February 6, 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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JANUARY 17, 1995**

**NEXT UPDATE: SUPPLEMENT FEBRUARY 21, 1995**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
26 N.J.R. 1273 and 1416	March 21, 1994	26 N.J.R. 3917 and 4120	October 3, 1994
26 N.J.R. 1417 and 1554	April 4, 1994	26 N.J.R. 4121 and 4244	October 17, 1994
26 N.J.R. 1555 and 1738	April 18, 1994	26 N.J.R. 4245 and 4470	November 7, 1994
26 N.J.R. 1739 and 1904	May 2, 1994	26 N.J.R. 4471 and 4720	November 21, 1994
26 N.J.R. 1905 and 2166	May 16, 1994	26 N.J.R. 4721 and 4856	December 5, 1994
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

## NJAC. CITATION

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1:1-3.2, 14.10, 14.14	Conduct of contested cases: fines for misconduct
1:6A	Special Education Program
1:7A	Department of Environmental Protection cases
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27 N.J.R. 609(a)
27 N.J.R. 4(a)
26 N.J.R. 4124(a)
26 N.J.R. 4863(a)

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27 N.J.R. 1179(a)
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2:6	Animal health: biological products for diagnostic or therapeutic purposes
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27 N.J.R. 5(a)
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5:2	Organization of the Department	Exempt	R.1995 d.186	27 N.J.R. 1404(a)
5:12	Homelessness Prevention Program	26 N.J.R. 4248(a)	R.1995 d.56	27 N.J.R. 483(a)
5:16	Local Housing Authority and Municipal Redevelopment Agency Training Program	26 N.J.R. 4867(a)		
5:17	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
5:18	Uniform Fire Code	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18-1.5, 2.7, 2.8, 2.22, 3.3, 3.4, 3.5, 4.9, 4.13	Uniform Fire Code requirements	26 N.J.R. 4249(a)	R.1995 d.59	27 N.J.R. 891(a)
5:18-2.4A	Uniform Fire Code: overnight camps life hazard use category	26 N.J.R. 4254(a)	R.1995 d.57	27 N.J.R. 878(a)
5:18-2.11A	Construction boards of appeal: UCC and Fire Code appeals	26 N.J.R. 4254(b)		
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:18A	Fire Code Enforcement	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18B	High Level Alarms	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18C	Standards for Fire Service Training and Certification	26 N.J.R. 4258(a)	R.1995 d.58	27 N.J.R. 878(b)
5:18C-2.4	Fire service training facilities	26 N.J.R. 4249(a)	R.1995 d.59	27 N.J.R. 891(a)
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5:23-1.4, 2.4, 2.7, 2.14, 2.15, 2.17A, 2.23, 4.18, 4.20	Lead Hazard Evaluation and Abatement Code	27 N.J.R. 970(a)		
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5:23-3.4, 3.18	Uniform Construction Code: energy subcode	26 N.J.R. 4872(a)	R.1995 d.143	27 N.J.R. 1179(b)
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)	R.1995 d.144	27 N.J.R. 1180(a)
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-3.15	Uniform Construction Code: abandonment of septic systems	26 N.J.R. 4874(a)	R.1995 d.122	27 N.J.R. 894(a)
5:23-3.20	Uniform Construction Code: mechanical subcode	26 N.J.R. 4874(b)	R.1995 d.120	27 N.J.R. 894(b)
5:23-9.4	Uniform Construction Code: seismic zones	26 N.J.R. 4875(a)	R.1995 d.121	27 N.J.R. 894(c)
5:23-2.20, 4.5	Uniform Construction Code: heating equipment installation	27 N.J.R. 619(a)		
5:34-7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 4724(a)	R.1995 d.142	27 N.J.R. 1189(a)
5:52	Volunteer Coaches' Safety Orientation and Training Skills Programs	27 N.J.R. 21(a)	R.1995 d.150	27 N.J.R. 1190(a)
5:80	New Jersey Housing and Mortgage Finance Agency rules	27 N.J.R. 265(a)		
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<b>Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)</b>				
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7:1C-1.5	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
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7:1H	County Environmental Health Act rules: postponement of new rules proposal	27 N.J.R. 22(a)		
7:1L	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:2-17.1	State Park Service: Spring Meadow Golf Course fees			27 N.J.R. 1404(b)
7:5D	State Trails System	26 N.J.R. 1459(a)	R.1995 d.147	27 N.J.R. 1204(c)

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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. 7:7A-16.1	Coastal Permit Program	27 N.J.R. 1005(a)		
7:7E	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:9	Coastal zone management	27 N.J.R. 417(a)		
7:9B	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:10-15.1	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:11-2.2, 2.3, 2.4, 2.10, 2.12	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:11-4.3, 4.4, 4.9, 4.13	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water	26 N.J.R. 4907(a)		
7:12-1.2, 2.1, 3.2, 4.1, 4.2, 9.1	Manasquan Reservoir Water Supply System: sale of water	26 N.J.R. 4910(a)		
7:13	Shellfish growing water classifications	26 N.J.R. 4475(b)	R.1995 d.81	27 N.J.R. 484(a)
7:14	Flood hazard area control	26 N.J.R. 1009(a)	R.1995 d.149	27 N.J.R. 1211(a)
7:14-8.1, 8.3, 8.4, 8.15	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A-1.8	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:14B-3.9	NJPDES permit fees	27 N.J.R. 1028(a)		
7:15	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:19	NJPDES permitting program: proposal summary and request for public comment	26 N.J.R. 3927(a)		
7:19-3.8	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
7:19A	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
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7:20	Water supply allocation	26 N.J.R. 4912(a)	R.1995 d.162	27 N.J.R. 1265(a)
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7:25-4.18	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)	R.1995 d.117	27 N.J.R. 895(a)
7:25-18.1, 18.4, 18.5, 18.13-18.15	Endangered and Nongame Species Advisory Committee: term limitations requirement	27 N.J.R. 797(a)		
7:25-24.7, 24.9	Marine fisheries management: winter flounder, bluefish, weakfish, Atlantic sturgeon, American lobster	26 N.J.R. 4277(b)	R.1995 d.82	27 N.J.R. 487(a)
7:25A	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)	R.1995 d.202	27 N.J.R. 1405(a)
7:26-1.4, 3.4, 3.6, 4.3, 4.7	Oyster management and harvest	27 N.J.R. 798(a)		
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7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-8.1, 16.1, 17.1, 19.1, 21.1, 22.1, 23.2, 25.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-8.11	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27-15	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-19	Control and prohibition of air pollution by volatile organic compounds	26 N.J.R. 4478(a)		
7:27-22	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-22.1, 22.31	Air pollution control: facility operating permits	27 N.J.R. 1040(a)		
7:27-24	Air Quality Regulation Program: facility operating permit fees	27 N.J.R. 22(b)		
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7:27-25.3	Oxygenated fuels program	Emergency (expires 4-9-95)	R.1995 d.129	27 N.J.R. 787(a)
7:27-26	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27A	Low Emission Vehicles Program: extension of comment period	26 N.J.R. 4482(a)		
7:27A-3.2	Air administrative procedures and penalties: administrative correction	_____	_____	27 N.J.R. 498(a)
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7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-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)		
7:28	Radiation protection	26 N.J.R. 4942(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
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)		
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)		
7:50-6.48	Pinelands Comprehensive Management Plan: administrative correction regarding source discharges	_____	_____	27 N.J.R. 1410(a)
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8:19	Newborn Screening Program	27 N.J.R. 807(a)		
8:20	Birth Defects Registry	27 N.J.R. 269(a)	R.1995 d.182	27 N.J.R. 1410(b)
8:33I	Megavoltage radiation oncology services: certificate of need	26 N.J.R. 4875(b)	R.1995 d.146	27 N.J.R. 1287(a)
8:39-2.2, 2.12	Long-term care facilities: application for licensure; add-a-bed	26 N.J.R. 4641(a)	R.1995 d.127	27 N.J.R. 937(b)
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8:43G	Hospital licensing standards	26 N.J.R. 4537(a)	R.1995 d.124	27 N.J.R. 1290(a)
8:44	Operation of clinical laboratories	27 N.J.R. 626(a)		
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8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:45	Clinical laboratory services	27 N.J.R. 32(a)	R.1995 d.126	27 N.J.R. 941(a)
8:57	Communicable diseases	27 N.J.R. 420(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)
8:57-5	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	27 N.J.R. 28(a)		
8:57A	Cancer Registry	27 N.J.R. 629(a)		
8:60	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	27 N.J.R. 1465(a)
8:62	Certification of lead abatement workers, supervisors, inspectors, project designers	26 N.J.R. 3575(a)	R.1995 d.92	27 N.J.R. 671(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)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b), 4387(a))	26 N.J.R. 1190(b)	R.1995 d.31	27 N.J.R. 355(a)
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)

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8:71	Interchangeable drug products	27 N.J.R. 810(a)		

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9:12	EOF Program (recodify as 9A:12)	27 N.J.R. 812(a)		
9:17	Recodification (see 9A:14)	26 N.J.R. 4878(a)	R.1995 d.113	27 N.J.R. 682(a)
9:18	Recodification (see 9A:15)	26 N.J.R. 4879(a)	R.1995 d.114	27 N.J.R. 683(a)
9A:11	Educational Opportunity Fund Program	27 N.J.R. 812(a)		
9A:12	Educational Opportunity Fund Program	27 N.J.R. 812(a)		
9A:14	Implementation of Higher Education Equipment Leasing Fund Act	26 N.J.R. 4878(a)	R.1995 d.113	27 N.J.R. 682(a)
9A:15	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 4879(a)	R.1995 d.114	27 N.J.R. 683(a)

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10:17	Child placement rights	26 N.J.R. 1563(a)		
10:19	Manual of Standards for Juvenile Detention Facilities	27 N.J.R. 1101(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)		
10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
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10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:48-4	Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services	26 N.J.R. 2756(a)		
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:49-19	Repeal (see 10:74)	27 N.J.R. 853(a)		
10:51-1.6, 1.23, 2.6, 2.21, 4.6, 4.22, App. E	Medicaid and Pharmaceutical Assistance to the Aged and Disabled programs: EMC billing	26 N.J.R. 4136(a)	R.1995 d.104	27 N.J.R. 684(a)
10:51-1.11, 1.12	Pharmaceutical Services Manual: Medicaid coverage of non-legend drugs provided to children and adolescents	27 N.J.R. 1104(a)		
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52	Hospital Services Manual	26 N.J.R. 4551(a)		
10:52-5.1, 5.3, 5.4, 5.6, 5.9, 5.12-5.15, 5.17, 5.18, 5.20, 6.13, 7.2, 9.1	Hospital Services Manual: inpatient reimbursement methodology	27 N.J.R. 34(a)	R.1995 d.141	27 N.J.R. 908(a)
10:52-10	Manual for Hospital Services: charity care eligibility	27 N.J.R. 656(a)		
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)		
10:60-5.1	Traumatic Brain Injury Program: administrative change	_____	_____	27 N.J.R. 686(a)
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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)		
10:85-3.1, 3.2, 3.3, 3.5, 5.1, 5.2, 5.7	General Assistance program: general nursing facility assistance	27 N.J.R. 1105(a)		
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10:88	Families First Program	27 N.J.R. 1110(a)		
10:89	Home Energy Assistance Handbook	26 N.J.R. 4726(a)	R.1995 d.172	27 N.J.R. 1317(a)
10:89-2.3, 3.1	Home Energy Assistance program: income eligibility; automatic payments	Emergency (expires 4-17-95)	R.1995 d.145	27 N.J.R. 942(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)		
10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1-9.5	Manual of Requirements for Child Care Centers	26 N.J.R. 4139(a)	R.1995 d.87	27 N.J.R. 499(c)
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)		
10:126A	Division of Youth and Family Services: utilization of family day care providers	27 N.J.R. 432(a)		
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)		
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial response	26 N.J.R. 3355(a)	R.1995 d.188	27 N.J.R. 1464(a)
10:133F	Division of Youth and Family Services: collection of support monies and government benefits	27 N.J.R. 865(a)		
10:133G	Division of Youth and Family Services: client information	27 N.J.R. 38(a)		
10:133I	Division of Youth and Family Services: reasonable efforts; reasonable and diligent efforts; necessary activities to achieve a case goal	27 N.J.R. 433(a)		

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10A:12-2	Inmate liaison committees	26 N.J.R. 4881(a)	R.1995 d.115	27 N.J.R. 916(b)
10A:22-2.10	Release of juvenile records	27 N.J.R. 436(b)		
10A:26	Bureau of Parole: policies and procedures	26 N.J.R. 4143(a)	R.1995 d.85	27 N.J.R. 550(a)
10A:32	Manual of Standards for Juvenile Detention Facilities (recodify as 10:19)	27 N.J.R. 1101(a)		
10A:71	State Parole Board rules	26 N.J.R. 4150(a)	R.1995 d.109	27 N.J.R. 686(b)
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11:15-2	Joint insurance funds for local governmental units: extension of comment period	26 N.J.R. 3592(a)		
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11:17B	Insurance producers and limited insurance representatives: commissions and fees	26 N.J.R. 4307(a)	R.1995 d.60	27 N.J.R. 562(a)
11:17C	Insurance producer standards of conduct: management of funds	26 N.J.R. 4307(a)	R.1995 d.60	27 N.J.R. 562(a)
11:17D	Insurance producers and limited insurance representatives: administrative procedures and penalties	26 N.J.R. 4307(a)	R.1995 d.60	27 N.J.R. 562(a)
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)	R.1995 d.112	27 N.J.R. 709(a)
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11:21-2.5	Small Employer Health Benefits Program: Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(a)		
11:21-2.5	Small Employer Health Benefits Program: public hearing on Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(b)		
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12:120	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	27 N.J.R. 1465(a)
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13:27	Board of Architects rules	26 N.J.R. 4952(a)	R.1995 d.101	27 N.J.R. 716(a)
13:29	Board of Accountancy rules	27 N.J.R. 1134(a)		
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13:44E-2.6	Board of Chiropractic Examiners: practice identification	26 N.J.R. 4964(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
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13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		
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13:70-6.5, 6.58	Thoroughbred racing: coupled horses; limitation of entries by trainers	27 N.J.R. 464(a)		
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13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-29.50	Thoroughbred racing: Daily Triple	27 N.J.R. 306(a)		
13:71	Harness racing rules	26 N.J.R. 4744(a)	R.1995 d.103	27 N.J.R. 733(b)
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13:71-7.37	Harness racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(b)	R.1995 d.165	27 N.J.R. 1193(b)
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13:71-19.6	Harness racing: safety vests	26 N.J.R. 4482(b)	R.1995 d.203	27 N.J.R. 1440(a)
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:71-27.54	Harness racing: Daily Triple	27 N.J.R. 306(b)		
13:72-9.1, 9.3-9.6	Casino simulcasting: supervisors of mutuels and verifiers at hub facilities	27 N.J.R. 45(a)	R.1995 d.166	27 N.J.R. 1193(c)
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13:75-1.27	Violent Crimes Compensation Board: award of additional counseling sessions	27 N.J.R. 467(a)		
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14:7	Natural gas pipelines	27 N.J.R. 870(a)		
14:11-8	Natural gas (recodify as 14:7-1)	27 N.J.R. 870(a)		
14:17-6.17	Office of Cable Television: scheduling hearings for public comment	27 N.J.R. 46(a)	R.1995 d.173	27 N.J.R. 1194(a)
14:18	Cable television	27 N.J.R. 873(a)		
14:25	Solar energy devices and systems: technical sufficiency standards for sales tax exemption	27 N.J.R. 307(c)	R.1995 d.151	27 N.J.R. 1194(b)
14:31	Business Energy Improvement Program	26 N.J.R. 4482(c)		
14:33	Energy Facility Review Board	26 N.J.R. 4484(a)		
14:34	Periodic reporting of energy information by energy industries	26 N.J.R. 4484(b)		

**Most recent update to Title 14: TRANSMITTAL 1994-4 (supplement December 19, 1994)**

**ENERGY—TITLE 14A**

14A:6	Business Energy Improvement Program: recodify as 14:31	26 N.J.R. 4482(c)	R.1995 d.68	27 N.J.R. 503(a)
14A:8	Energy Facility Review Board: recodify as 14:33	26 N.J.R. 4484(a)	R.1995 d.69	27 N.J.R. 503(b)
14A:11	Periodic reporting by energy industries: recodify as 14:34	26 N.J.R. 4484(b)	R.1995 d.70	27 N.J.R. 504(a)
14:13	Electric utility integrated resource planning	27 N.J.R. 1148(a)		
14:18	Railroads (recodify as 16:23)	27 N.J.R. 1155(a)		

**Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)**

**STATE—TITLE 15**

**Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)**

**PUBLIC ADVOCATE—TITLE 15A**

**Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)**

**TRANSPORTATION—TITLE 16**

16:5	Compensation to owners for income loss resulting from harvesting of standing crops	27 N.J.R. 822(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:20A	Federal Aid Urban System Substitution Program: county and municipal aid	26 N.J.R. 4485(a)	R.1995 d.71	27 N.J.R. 504(b)
16:20B	Transportation Trust Fund Authority Act: municipal fund for road and bridge improvement projects	26 N.J.R. 4486(a)	R.1995 d.72	27 N.J.R. 504(c)
16:23	Railroads: track safety and service requirements	27 N.J.R. 1155(a)		
16:28-1.61	Speed limit zones along Collins Avenue-Nixon Drive under State jurisdiction in Burlington County	26 N.J.R. 4337(b)	R.1995 d.95	27 N.J.R. 733(c)
16:28-1.62	Speed limits along connector roads to U.S. 202, U.S. 206, and Route 28 in Somerset County	27 N.J.R. 46(b)	R.1995 d.157	27 N.J.R. 1195(a)
16:28-1.64	Speed limit zone along Grove Street-Haddonfield Road-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(a)		
16:28-1.65	Speed limit zone along Penn Avenue-Route 70 connector ramp in Cherry Hill	27 N.J.R. 468(b)		
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206, in East Windsor	27 N.J.R. 47(a)	R.1995 d.158	27 N.J.R. 1195(b)
16:28-1.71	Speed limit zone along Park Boulevard-Route 70 connector ramp in Cherry Hill	27 N.J.R. 469(a)		
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.96	Speed limit zones along Route 45 in Harrison Township	26 N.J.R. 4970(a)	R.1995 d.97	27 N.J.R. 734(a)
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 4745(a)	R.1995 d.98	27 N.J.R. 734(b)
16:28-1.158	Speed limit zones along Route 179 in West Amwell Township	26 N.J.R. 4486(b)	R.1995 d.62	27 N.J.R. 505(a)
16:28A-1.21	No stopping or standing zones along U.S. 30 in Oaklyn Borough	26 N.J.R. 4971(a)	R.1995 d.93	27 N.J.R. 734(c)
16:28A-1.33	No stopping or standing zone on Route 47 in Millville	27 N.J.R. 309(a)	R.1995 d.153	27 N.J.R. 1196(a)
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	26 N.J.R. 4160(b)	R.1995 d.67	27 N.J.R. 505(b)
16:28A-1.37	No stopping or standing zones along Route 70 in Cherry Hill and Pennsauken	26 N.J.R. 4338(a)	R.1995 d.94	27 N.J.R. 735(a)
16:28A-1.38	No stopping or standing along Route 71 in Bradley Beach Borough	26 N.J.R. 4161(a)	R.1995 d.66	27 N.J.R. 505(c)
16:28A-1.38	Parking restrictions along Route 71 in Asbury Park	27 N.J.R. 48(a)	R.1995 d.154	27 N.J.R. 1196(b)
16:28A-1.41	Bus stops along Route 77 in Bridgeton	27 N.J.R. 49(a)	R.1995 d.155	27 N.J.R. 1197(a)
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood	27 N.J.R. 823(a)		
16:28A-1.52	No stopping or standing zones along Route 173 in Town of Clinton	26 N.J.R. 4971(b)	R.1995 d.96	27 N.J.R. 735(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township	26 N.J.R. 3820(a)	R.1995 d.54	27 N.J.R. 506(a)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township: administrative correction and extension of comment period	26 N.J.R. 4487(a)		
16:28A-1.58	Parking restrictions along U.S. 206-94 in Newton	27 N.J.R. 49(b)	R.1995 d.156	27 N.J.R. 1197(b)
16:30-1.4	One-way access along U.S. 202 in Bernardsville	27 N.J.R. 50(a)	R.1995 d.159	27 N.J.R. 1198(a)
16:30-3.9	Truck lane-usage restriction along Route I-80 in Morris County	26 N.J.R. 4162(a)	R.1995 d.136	27 N.J.R. 934(a)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-3.13	Left turns along U.S. 9 in Middle Township, Cape May	26 N.J.R. 4746(a)	R.1995 d.99	27 N.J.R. 736(a)
16:30-3.14	Left turn lane along Route 154 in Cherry Hill	27 N.J.R. 51(a)	R.1995 d.160	27 N.J.R. 1198(b)
16:30-3.15	Left turn lane along Route 34 in Old Bridge	27 N.J.R. 51(b)	R.1995 d.161	27 N.J.R. 1198(c)
16:30-3.16	Left turn only lane on U.S. 206 in Lawrence Township	27 N.J.R. 1156(a)		
16:30-5.4	Traffic and parking restrictions at DOT Regional 1 Facility	27 N.J.R. 824(a)		
16:30-9.23	Drawbridge usage along Route 152 in Atlantic County	26 N.J.R. 4487(b)	R.1995 d.63	27 N.J.R. 506(b)
16:30-11.3	Traffic and parking restrictions at I-295 scenic overlook in Hamilton Township	27 N.J.R. 825(a)		
16:31-1.8	Turn prohibitions along Route 47 in Middle Township, Cape May	26 N.J.R. 3937(b)	R.1994 d.607	27 N.J.R. 506(c)
16:31-1.22	Turn prohibition on U.S. 130 in Mansfield Township	27 N.J.R. 826(a)		
16:31-1.26	Left turn prohibitions along Route 27 in Metuchen and Highland Park	26 N.J.R. 4488(a)	R.1995 d.100	27 N.J.R. 736(b)
16:31-1.37	Turn prohibitions along Route 70 in Cherry Hill	27 N.J.R. 643(a)		
16:32	Truck operations within State	26 N.J.R. 4163(a)	R.1995 d.73	27 N.J.R. 507(a)
16:41B	Newspaper boxes on State highway right-of-way	27 N.J.R. 1157(a)		
16:43	Junkyards adjacent to the Interstate and national highway systems	27 N.J.R. 644(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)	R.1995 d.107	27 N.J.R. 736(c)
16:49	Transportation of hazardous materials	26 N.J.R. 4488(b)	R.1995 d.74	27 N.J.R. 509(a)
16:50	Employer Trip Reduction Program	27 N.J.R. 827(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)	R.1995 d.75	27 N.J.R. 521(a)
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:62	Air safety and hazardous zoning	26 N.J.R. 4502(a)	R.1995 d.76	27 N.J.R. 525(a)
16:77	Use or occupancy of NJ TRANSIT-owned property	26 N.J.R. 4972(a)	R.1995 d.111	27 N.J.R. 750(a)

**Most recent update to Title 16: TRANSMITTAL 1995-1 (supplement January 17, 1995)**

**TREASURY-GENERAL—TITLE 17**

17:1-2.10, 2.11, 2.12	Alternate Benefit Program: enrollment eligibility; transfers from another State retirement system	27 N.J.R. 469(b)		
17:2	Public Employees' Retirement System	26 N.J.R. 4747(a)	R.1995 d.91	27 N.J.R. 754(a)
17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 3823(a)	R.1995 d.61	27 N.J.R. 754(b)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 3606(a)	R.1995 d.89	27 N.J.R. 754(c)
17:12	Purchase Bureau rules: extension of comment period	26 N.J.R. 4166(a)		
17:13	Goods and services contracts for small businesses and female and minority businesses	27 N.J.R. 52(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	27 N.J.R. 54(a)		
17:19	Division of Building and Construction: classification and qualification of bidders	26 N.J.R. 4747(b)	R.1995 d.90	27 N.J.R. 755(a)
17:25	Collection of debts owed to NJHEAA by public employees	27 N.J.R. 309(b)	R.1995 d.170	26 N.J.R. 1199(a)

**Most recent update to Title 17: TRANSMITTAL 1995-1 (supplement January 17, 1995)**

**TREASURY-TAXATION—TITLE 18**

18:1-1.9	Office of Criminal Investigation: training of Special Agents	27 N.J.R. 56(a)	R.1995 d.131	27 N.J.R. 935(a)
18:1-2.4	Issuance of warrants by Division of Taxation	26 N.J.R. 4975(a)	R.1995 d.132	27 N.J.R. 935(b)
18:7-1.9	Corporation Business Tax: doing business in New Jersey	27 N.J.R. 471(a)	R.1995 d.194	27 N.J.R. 1440(b)
18:7-3.6	Corporation Business Tax rates	27 N.J.R. 57(a)	R.1995 d.134	27 N.J.R. 935(c)
18:7-3.18, 3.20	Corporation Business Tax: priority of tax credits	27 N.J.R. 472(a)		
18:7-3.19	Corporation Business Tax: employer trip reduction program tax credit	26 N.J.R. 4976(a)	R.1995 d.148	27 N.J.R. 1201(a)
18:7-3.21	Corporation Business Tax: manufacturing equipment and employment investment credit	27 N.J.R. 838(a)		
18:7-3.22	Corporation Business Tax: new jobs investment credit	27 N.J.R. 840(a)		
18:7-3.23	Corporation Business Tax: research credit	27 N.J.R. 842(a)		
18:7-13.1, 13.8	Corporation Business Tax: assessment and reassessment; claims for refund	27 N.J.R. 645(a)		
18:18	Motor fuels taxes	26 N.J.R. 4512(a)	R.1995 d.79	27 N.J.R. 535(a)
18:19-1.1, 2.1, 2.2, 2.7, 3.1, 3.2, 4.1, 4.2, 5.5, 5.6, 6.1	Retail sales of motor fuels	26 N.J.R. 4512(a)	R.1995 d.79	27 N.J.R. 535(a)
18:22-5.5, 11.12, 14	Public Utility Tax: expression of tax rates; Municipal Purposes Tax Assistance Fund	27 N.J.R. 473(a)	R.1995 d.195	27 N.J.R. 1441(a)
18:24-9.13	Sales and Use Tax: student organization purchases	26 N.J.R. 4977(a)	R.1995 d.133	27 N.J.R. 936(a)
18:24-10.6	Sales and Use Tax: sales for resale	27 N.J.R. 474(a)		
18:35-1.14, 1.25	Gross Income Tax: partners and partnerships	27 N.J.R. 475(a)		
18:36	Savings Institution Tax Act rules	27 N.J.R. 479(a)	R.1995 d.196	27 N.J.R. 1442(a)

**Most recent update to Title 18: TRANSMITTAL 1995-1 (supplement January 17, 1995)**

**TITLE 19—OTHER AGENCIES**

19:4-3.3	Hackensack Meadowlands Development Commission: zoning of District renewal areas	27 N.J.R. 846(a)		
19:4-4.75	Hackensack Meadowlands Development Commission: administrative correction regarding research distribution park zone	_____	_____	27 N.J.R. 1442(b)

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19:18	Public Employment Relations Commission: contested employee transfer determinations	27 N.J.R. 847(a)	
19:25-1.7, 9.2, 9.3, 10, 11	ELEC: candidacy contribution reporting and limits	27 N.J.R. 312(a)	
19:25-1.7, 9.2, 9.3, 10, 11	Candidacy contribution reporting and limits: change of public hearing date	27 N.J.R. 480(a)	
19:25-8.6, 8.9, 8.10, 8.12, 9.3, 9.4, 9.6	Filing of 48-hour notices by electronic facsimile transmission	27 N.J.R. 1161(a)	
19:25-20.19	Annual registration and filing fee of legislative agents	26 N.J.R. 4978(a)	R.1995 d.152 27 N.J.R. 1201(b)
19:61-6	Executive Commission on Ethical Standards: State officials and employees and attendance at events, acceptance of honoraria, and compensation for published works	26 N.J.R. 4757(a)	R.1995 d.108 27 N.J.R. 763(a)

**Most recent update to Title 19: TRANSMITTAL 1994-11 (supplement November 21, 1994)**

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)	
19:40-1.2	Position endorsements; casino key employee and casino employee experience requirements	27 N.J.R. 1162(a)	
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)	
19:41	Applications for licensure	27 N.J.R. 647(a)	
19:41-1.1, 1.1A, 1.2, 1.2A, 1.3, 1.6, 1.8	Casino employee licensure and registration	26 N.J.R. 4338(a)	
19:41-1.3	Keno	26 N.J.R. 2218(a)	
19:41-1.5, 1.5A, 1.8, 1.9, 4.3, 5.2–5.5, 7.1A, 7.1B, 8.8, 9.15, 9.16	Position endorsements; casino key employee and casino employee experience requirements; casino hotel employee registration	27 N.J.R. 1162(a)	
19:41-1.5A	Super Pan 9	27 N.J.R. 648(a)	
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)	
19:41-5.13, 5.14, 7.1A, 12.1–12.12	Labor Organization Registration Statement and Labor Organization Individual Disclosure Form	27 N.J.R. 1165(a)	
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)	
19:41-7.1A, 7.7, 14.3	Federal criminal record checks of casino employees and applicants	27 N.J.R. 319(a)	
19:41-7.1A, 9.11A, 14.3	Junket representative licensure	27 N.J.R. 1168(a)	
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)	
19:41-9.8, 9.14, 14.1, 14.4, 14.6	License renewal terms of casino key employees and gaming-related casino service industries; gaming school employee licensure	27 N.J.R. 1171(a)	
19:43-2.7A	Federal criminal record checks of casino employees and applicants	27 N.J.R. 319(a)	
19:43-9.4, 9.5	Employee experience; casino service employee registration	27 N.J.R. 1162(a)	
19:44	Gaming schools	26 N.J.R. 4174(b)	
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)	
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)	
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46–1.51	Keno	26 N.J.R. 2218(a)	
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)	
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)	
19:45-1.9	Cash compliments based upon patron's actual loss	26 N.J.R. 4173(b)	R.1995 d.77 27 N.J.R. 549(a)
19:45-1.9B	Exclusion of match play coupons from cash complimentary limits	27 N.J.R. 848(a)	
19:45-1.10	Surveillance employment restrictions	27 N.J.R. 654(a)	
19:45-1.11, 1.12	Super Pan 9	27 N.J.R. 648(a)	
19:45-1.11, 1.12	Casino personnel requirements	27 N.J.R. 1162(a)	
19:45-1.12	Casino employee licensure and registration	26 N.J.R. 4338(a)	
19:45-1.15–1.19	Super Pan 9: temporary adoption of gaming rules		27 N.J.R. 549(b)
19:45-1.15, 1.41	Preparation of slot machine hopper fill slips	27 N.J.R. 1172(a)	
19:45-1.25	Exchange of counter checks	26 N.J.R. 1994(a)	
19:45-1.27A	Patron request for suspension or reinstatement of credit privileges	27 N.J.R. 655(a)	
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19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 2218(a)	

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
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19:46-1.12A	Super Pan 9: temporary adoption of gaming rules	27 N.J.R. 648(a)	_____	27 N.J.R. 549(b)
19:46-1.12A, 1.15-1.19	Super Pan 9			
19:46-1.13B	Additional wager in pai gow poker	26 N.J.R. 4343(a)	R.1995 d.78	27 N.J.R. 549(c)
19:46-1.27	Slot machine floor space	27 N.J.R. 1173(a)		
19:47-1.6	Supplemental wagers in craps	26 N.J.R. 4978(b)	R.1995 d.137	27 N.J.R. 936(b)
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19:47-3.5, 4.4, 7.5	Baccarat-punto banco, baccarat-chemin de fer, minibaccarat: reshuffling option	27 N.J.R. 1176(a)		
19:47-5.1-5.4	Roulette	27 N.J.R. 57(b)	R.1995 d.167	27 N.J.R. 1202(a)
19:47-11.8, 11.8A, 11.8B, 11.13	Additional wager in pai gow poker	26 N.J.R. 4343(a)	R.1995 d.78	27 N.J.R. 549(c)
19:47-13	Super Pan 9: temporary adoption of gaming rules	_____	_____	27 N.J.R. 549(b)
19:47-13	Super Pan 9	27 N.J.R. 648(a)		
19:47-15	Keno	26 N.J.R. 2218(a)		
19:47-15	Keno: temporary adoption of gaming rules	_____	_____	27 N.J.R. 937(a)
19:47-17.7	Double down stud personnel requirements	27 N.J.R. 1162(a)		
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19:50-2.2	New Year's Eve combination sales by CHAB licensees	27 N.J.R. 60(a)	R.1995 d.168	27 N.J.R. 1204(a)
19:51-1.1, 1.2	Gaming-related casino service industry licensure	26 N.J.R. 4344(a)		
19:51-1.3	Casino service industry qualification	27 N.J.R. 1162(a)		
19:51-1.8	License renewal terms	27 N.J.R. 1171(a)		
19:53-1.2, 5.5, 5.7	Determination of casino disbursements for goods and services; commercial buyers	27 N.J.R. 849(a)		
19:53-1.4	Equal opportunity officer	27 N.J.R. 1162(a)		
19:54-1.8, 1.10	Annual gross revenue tax examinations; tax deficiency penalties and sanctions	26 N.J.R. 1994(a)		
19:55-9.1, 9.3-9.6	Casino simulcasting: supervisors of mutuels and verifiers at hub facilities	27 N.J.R. 60(b)	R.1995 d.169	27 N.J.R. 1204(b)

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<b>May 1 issue:</b>		<b>June 5 issue:</b>	
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<b>May 15 issue:</b>		Adoptions .....	<b>May 12</b>
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NOTES

## NOTES



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