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ENVIRONMENTAL PROTECTION

AIR QUALITY, ENERGY AND SUSTAINABILITY

DIVISION OF CLIMATE, CLEAN ENERGY AND RADIATION PROTECTION

COMMISSION ON RADIATION PROTECTION

Radiation Protection Programs

Proposed Amendments: N.J.A.C. 7:28-1.6, 19.1 through 19.10, 19.14, 24.11, 61.1, 64.2, and 64.10

Proposed Repeal and New Rule: N.J.A.C. 7:28-19.16

Proposed Recodification with Amendments: N.J.A.C. 7:28-19.17 as 19.18

Proposed Recodification: N.J.A.C. 7:28-19.18 as 19.19

Proposed New Rule: N.J.A.C. 7:28-19.17

Authorized By: Catherine McCabe, Commissioner, Department of Environmental Protection, and the Commission on Radiation Protection, Julie K. Timins, Chair.

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq., 26:2D-1 et seq., and 26:2D-25 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 05-19-10

Proposal Number:

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Submit comments by [60 days after publication], electronically at

<http://www.nj.gov/dep/rules/comments>. Each comment should be identified by the applicable

N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket Number 05-19-10

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

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P.O. Box 402

Trenton, New Jersey 08625-0402

The rule proposal may be viewed or downloaded from the Department's website at

<http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Commission on Radiation Protection (Commission) and the Department have provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

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The Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., and the Radiologic Technologist Act, N.J.S.A. 26:2D-24 et seq., govern the possession, handling, and use of sources of radiation within the State of New Jersey. The Radiation Protection Act established the Commission and vested in that body the power to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary radiation. The Radiation Protection Act authorizes the Department to establish and charge fees, through the promulgation of rules, for any of the services it performs under the Radiation Protection Act. Therefore, both the Commission and the Department propose the within amendments, repeal, and new rules.

Through the Radiation Protection Act, the Radiologic Technologist Act, and the Radiation Protection Programs rules, N.J.A.C. 7:28, New Jersey has a comprehensive radiation protection program encompassing x-ray machines, naturally occurring or accelerator produced radioactive materials (known as NARM), radon, clean-up of radioactively contaminated sites, monitoring around nuclear power plants, emergency preparedness and response to radiological incidents including transportation accidents, and requirements for non-ionizing sources of radiation. The State also regulates facilities through participation in the Agreement State program. As an Agreement State, New Jersey has assumed responsibility for regulation of radioactive materials that are governed under the Atomic Energy Act (AEA) through an agreement with the Nuclear Regulatory Commission (NRC). (See 42 U.S.C. § 2021.) Additionally, the Department's rules contain requirements for licensure and certification of people – radiologic technologists, nuclear medicine technologists, radon testers and mitigators, and qualified medical physicists.

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The Department and the Commission propose three general categories of amendments. The first category implements recent amendments to the Radiologic Technologist Act, N.J.S.A. 26:2D-24 et seq., which created the new license category of radiologist assistant for licensed diagnostic radiologic technologists. The proposed new rules and amendments to N.J.A.C. 7:28-19 establish the educational and licensing requirements and identify the scope of practice for this new license category, and establish a fee schedule for initial and renewal licensing. The proposed rules also establish requirements for radiologist assistant schools. The second category amends the fee schedule for nuclear medicine technologists and fusion imaging computed tomography (CT) technologists at N.J.A.C. 7:28-24.11(a) and (b). The third category relates to the NRC's requirements for Agreement States. The Department and the Commission propose to amend the provisions incorporating 10 CFR Part 35, Medical Use of Byproduct Material, and 10 CFR Part 71, Packaging and Transportation of Radioactive Materials; and to add general provisions that are applicable to all incorporations of the Federal regulations into the chapter by reference, and that otherwise make the State's rules consistent with the Agreement State rules. The Department and the Commission also propose clarifications and corrections to the fee schedule, cross-references, terminology, and the previous incorporations of Federal regulations by reference.

Radiologic Technologist and Radiologist Assistant

Radiologist Assistant License Category

In 1969, the Radiologic Technologist Act, N.J.S.A. 26:2D-24 et seq., was enacted. The Radiologic Technologist Act created the New Jersey Radiologic Technology Board of Examiners

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(Board) as an agency of the Commission, in the Department. See N.J.S.A. 26:2D-28. The Legislature gave the Board the authority to establish the standards for education and licensing of operators of ionizing radiation-producing equipment and the standards for schools in eight categories of radiologic technology. These categories are diagnostic radiologic technology, radiation therapy technology, chest radiologic technology, dental radiologic technology, fusion imaging computed tomography technology, orthopedic radiologic technology, podiatric radiologic technology, and urologic radiologic technology. As of the publication of this proposal, there are 45 Board-approved educational programs and more than 23,000 individuals with active radiologic technologist licenses.

In 2008 the Department and the Commission promulgated N.J.A.C. 7:28-19, Radiologic Technology (39 N.J.R. 4024(a), 40 N.J.R. 4790(b)). The rules implement the Radiologic Technologist Act and are necessary to ensure that New Jersey citizens are protected from unnecessary radiation exposure as prohibited by the Radiologic Technologist Act. The regulations ensure that only properly educated, qualified individuals are permitted to utilize ionizing radiation-producing equipment on humans during radiological procedures, thus increasing the quality of health care delivered in New Jersey by improving diagnostic imaging and radiation therapeutic procedures and reducing the likelihood that patients will receive unnecessary radiation exposure during these procedures.

In 2003, the American College of Radiology established the practice of the radiologist assistant to provide advanced level radiologic care under the supervision of a certified radiologist. Shortly thereafter, the American Society of Radiologic Technologists developed an educational curriculum and the American Registry of Radiologic Technologists (ARRT)

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developed standards for the approval of radiologist assistant schools and a certifying examination.

The existing Radiologic Technology rules include a recognition process for radiologist assistants and for radiologist assistant schools. See existing N.J.A.C. 7:28-19.1, 19.2, and 19.16. Although the existing rules define the practice of a radiologist assistant as it pertains to fluoroscopic procedures, the existing rules do not establish the license category of radiologist assistant. The rules define “delegated fluoroscopic procedures” as certain procedures that the BME has approved for a radiologist assistant to perform; however, New Jersey State Board of Medical Examiners (BME) did not promulgate rules to identify those procedures.

On January 8, 2018, former Governor Chris Christie signed P.L. 2017, c. 281, which amended the Radiologic Technologist Act to recognize the license category of “radiologist assistant.” The amended Radiologic Technologist Act requires radiologist assistants who practice in New Jersey to be licensed by the Radiologic Technology Board of Examiners (Board) and directs the BME to establish a list of “delegated fluoroscopic procedures” that can be performed by the radiologist assistant and the required level of radiologist supervision. The Department anticipates that the BME will in the near future propose rules listing the delegated fluoroscopic procedures and the level of supervision of a radiologist assistant.

As of the date of this proposal, there are eight ARRT-approved radiologist assistant schools in the United States. One of these approved schools is Rutgers University. There are 392 radiologist assistants certified by the ARRT in the United States. Ten ARRT-certified radiologist assistants reside in New Jersey. In the absence of the proposed rules, and without a list of delegated fluoroscopic procedures established by the BME, the 10 qualified New Jersey

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residents and those that reside in other states cannot practice as radiologist assistants in New Jersey.

The Department and the Commission propose to amend N.J.A.C. 7:28-19 to establish the educational and licensing requirements, identify the BME's scope of practice for a new license category of radiologist assistant, and establish a fee schedule for licensing of radiologist assistants. The proposed amendments also create a recognition process for radiologist assistant schools that assign students to New Jersey for clinical education. The proposed new heading of N.J.A.C. 7:28-19, Radiologic Technologist and Radiologist Assistant, reflects the addition of the new license category to the subchapter, and proposed amended N.J.A.C. 7:28-19.1, Purpose, scope and applicability, describes the expanded scope of the subchapter.

Existing N.J.A.C. 7:28-19.1 identifies individuals who are not required to be licensed under the subchapter in order to perform the activities that the subchapter regulates. The proposed amendments to the section identify licensed practitioners acting within the scope of their licenses as among the individuals who are not required to be licensed as radiologist assistants in order to perform the activities of a radiologist assistant. "Licensed practitioner" is a person licensed by the State to practice medicine, dentistry, podiatric medicine, osteopathy, or chiropractic. See N.J.A.C. 7:28-19.2. The Commission, through the Board, has determined that licensed physicians, by virtue of their medical training, have obtained appropriate education and training, and do not need to be specifically licensed as a radiologist assistant in order to operate x-ray equipment and perform tasks within the scope of practice of a radiologist assistant.

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Others who are not required to be licensed include students who are studying to be radiologist assistants and students who are studying to be doctors of medicine and doctors of osteopathy (physicians), provided the students are directly supervised by an appropriately licensed person. These students are using x-ray equipment as part of their courses of study and must be strictly supervised in accordance with the relevant rules. An appropriately licensed person is a licensed practitioner, in the case of a medical student (see proposed amended N.J.A.C. 7:28-19.1(d)), and a radiologist or radiologist assistant, in the case of a student radiologist assistant (see proposed amended N.J.A.C. 7:28-19.17(e)6). Once the students are graduated from their programs, they will either be exempt as licensed physicians or must obtain a license as a radiologist assistant.

Proposed amended N.J.A.C. 7:28-19.1 identifies the Board of Medical Examiners, defined at proposed amended N.J.A.C. 7:28-19.2, as the body that promulgates the rules authorizing the procedures that a radiologist assistant may perform. This is consistent with P.L. 2017, c. 281, § 6, codified at N.J.S.A. 45:9-2.1.a. The proposed amended definition of “delegated fluoroscopic procedures” at N.J.A.C. 7:28-19.2 similarly identifies the BME as the entity that authorizes the procedures a radiologist assistant may perform. The definitions of “radiologist” and “radiologist assistant” are proposed to be amended to conform to the definitions at N.J.S.A. 26:2D-26.o and p.

The proposed amended subchapter applies to the license categories of radiologic technology as well as radiologist assistant, and the licensing provisions are no longer consolidated into a single section. Therefore, in order to prevent confusion, the definitions of various specialties of radiologic technology are amended to refer to the specific radiologic

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technology license provisions applicable to the specialties, rather than to the licensing provisions of the subchapter, generally. For example, the proposed amended definition of “orthopedic radiologic technologist (LRT(O))” means a person licensed in accordance with N.J.A.C. 7:28-19.7, rather than in accordance with the subchapter. The definitions of “license” and “student” are proposed to be amended to include the new license category.

Existing N.J.A.C. 7:28-19.3, General provisions, applies to all licensed radiologic technologists. Proposed amendments to the section expand the existing rule to the proposed new license for radiologist assistants. Existing N.J.A.C. 7:28-19.3(a) prohibits a person from engaging in an activity within the scope of practice of radiologic technology, or operating radiation-producing equipment or positioning patients for mammographic procedures unless the person possesses a relevant valid license. Proposed new N.J.A.C. 7:28-19.3(a)3 adds a similar prohibition for the new radiologist assistant license category. An active radiologist assistant certification from the American Registry of Radiologic Technologists (ARRT), or other national certification body, is a condition of licensure as a radiologist assistant. See proposed N.J.A.C. 7:28-19.16(a)5. Proposed N.J.A.C. 7:28-19.3(a)3 identifies both a valid license and an active certification. While a license is valid for two years, a certification is active for only one year. Therefore, a radiologist assistant must renew his or her certification during a license cycle in order to continue to engage in an activity within the scope of practice. Proposed amended N.J.A.C. 7:28-19.3(c) contains a similar requirement, but prohibits an owner, licensed practitioner, or registrant of ionizing radiation-producing equipment from causing, allowing, or permitting a person to engage in an activity within the scope of practice of radiologist assistant unless the person possesses both a valid license and active certification.

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As provided in proposed new N.J.A.C. 7:28-19.4(i), the radiologist assistant is under the supervision of a licensed radiologist. This is consistent with the definition of “radiologist assistant” at N.J.S.A. 26:2D-26, discussed below. The BME determines the level of supervision that the licensed radiologist must provide to radiologist assistants. N.J.S.A. 45:9-2.1.c. Like a radiologic technologist, a radiologist assistant may not render an interpretation of a radiological examination; however, proposed amended N.J.A.C. 7:28-19.3(o) recognizes the additional training that a radiologist assistant possesses by specifically providing that the radiologist assistant may report his or her observations relating to the examination to a radiologist.

The scopes of practice for the practice of radiologic technology and its related specialties are codified at existing N.J.A.C. 7:28-19.4, Scopes of practice. Proposed new N.J.A.C. 7:28-19.4(i) provides the scope of practice for a radiologist assistant, which the BME is authorized to establish. Unlike the existing scopes of practice, which identify specific procedures that the radiologic technologist may perform, the proposed new scope of practice does not identify procedures, but instead refers generally to delegated fluoroscopic procedures and other activities that the BME may specify, under the required level of supervision. As of the date of this proposal, the BME has not adopted rules identifying the applicable scope of practice and level of supervision; accordingly, the Department is not able to identify the specific procedures and levels of supervision that the BME requires. Instead, the proposed rule cites to the BME’s rules. On adoption, if appropriate, the Department will modify the rule to identify the activities that fall within the scope of practice and the level of supervision required. If the BME has not promulgated rules before the Department adopts the proposed rules, when the BME’s rules are operative the Department will publish a notice of administrative change in the

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New Jersey Register to add the scope of practice and level of supervision that the BME requires, consistent with the scopes of practice for the other license categories in the section. Until the BME promulgates rules establishing the scope of practice and required level of supervision, the Department will not accept applications for radiologist assistant licenses.

The Radiologic Technologist Act at N.J.S.A. 26:2D-26 defines “radiologist assistant” as “a person, other than a licensed practitioner, who is a licensed radiologic technologist, is certified and registered with a national radiologic certifying body approved by the [B]oard, and is credentialed to provide primary advanced-level radiology health care under the supervision of a licensed radiologist.” Proposed new N.J.A.C. 7:28-19.16, Requirements of applicants for radiologist assistant licensure, establishes the licensing process and requirements for radiologist assistants. To be eligible for a radiologist assistant license, an applicant must be of good moral character, as required of all applicants for licenses under this subchapter. As provided in proposed amended N.J.A.C. 7:28-19.5(b), if the Board determines that a person has committed an act of unethical conduct or has been convicted of a crime involving moral turpitude, that person does not meet the standard of good moral character. This presumption applies to all of the licenses issued under the subchapter.

The applicant must hold a valid license in diagnostic radiologic technology, a statutory requirement. See the statutory definition of “radiologist assistant,” above. The applicant must also submit satisfactory evidence that he or she holds at least a bachelor’s degree from an accredited college or university in the United States, or the equivalent. The ARRT, a national radiologic certifying body approved by the Board, requires at least a bachelor’s degree as a prerequisite for enrolling in an ARRT-approved radiologist assistant school. Therefore, the

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proposed rule also requires the degree. The applicant must show that he or she has satisfactorily completed a course of study at a radiologist assistant school approved by the ARRT, or an equivalent body, as determined by the Board. The Department will provide a list of Board-recognized schools on its website, as stated in proposed N.J.A.C. 7:28-19.17(i). The Radiologic Technologist Act requires a radiologist assistant to be certified and registered with a national radiologic certifying body approved by the Board. The Board has approved the ARRT as a national certifying body; therefore, the proposed rule requires an applicant to hold a valid certification from the ARRT. If the Board approves another national certifying body, then certification from that body will also meet the requirements.

Payment of the appropriate fee to the Department is also a requirement for licensure. The fees are codified at N.J.A.C. 7:28-19.10, Fees. The existing rule provides a fee schedule associated with examination, initial and renewal licenses, and reprint of a license. The Department proposes that the same fees shall apply to the new license category of radiologist assistant as apply to radiologic technologists; therefore, the fee schedule is unchanged. The radiologist assistant will, however, be required to maintain both licenses, which includes payment of the fees for each license. For further discussion, see the Economic Impact below.

As with other license categories in this subchapter, for example the radiologic technologist license at existing N.J.A.C. 7:28-19.7(d), the Board may determine that an applicant is not eligible for licensure if the application is incomplete or the applicant has violated any provision of the chapter, the Radiation Protection Act, or the Radiologic Technologist Act. Applicants whose applications have been denied may apply for a hearing. The hearing process

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is set forth at N.J.A.C. 7:28-19.18(a). As a result of the addition of new N.J.A.C. 7:28-19.16, the remaining sections are recodified, with the amendments discussed in this proposal.

Radiologist assistant schools and clinical education centers

Existing N.J.A.C. 7:28-19.16 governs radiologist assistant schools and the practice of a radiologist assistant. The existing rule is proposed to be repealed and replaced with new N.J.A.C. 7:28-19.17, Radiologist assistant schools and clinical education centers. Unless a school is recognized by the Board, it may not send radiologist assistant students to a New Jersey clinical education center; clinical education is a requirement for licensure as a radiologist assistant. This is consistent with existing N.J.A.C. 7:28-19.16(h). The application requirements for a radiologist assistant school to become Board-recognized are proposed at N.J.A.C. 7:28-19.17(b). Proposed N.J.A.C. 7:28-19.17(b)1 and 2 are consistent with the application requirements for schools that teach radiologic technology. See N.J.A.C. 7:28-19.14(a)1 and 2. The applicant school must demonstrate that it is approved by the ARRT, or another Board-recognized accreditation agency. The ARRT is, at the time of this proposal, the only accreditation agency for radiologist assistant schools. The Board has reviewed the ARRT's accreditation requirements and, in lieu of developing duplicative standards and an approval process, the Board recognizes the ARRT's accreditation. The school must also demonstrate that it complies with the educational curriculum at proposed N.J.A.C. 7:28-19.17(b) and clinical education requirements at proposed N.J.A.C. 7:28-19.17(e). The education curriculum requirements are consistent with existing N.J.A.C. 7:28-19.16(b), and the clinical education requirements are consistent with existing N.J.A.C. 7:28-19.16(g), except as set forth in proposed N.J.A.C. 7:28-19.17(e)6iii discussed below.

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Pursuant to the proposed N.J.A.C. 7:28.17(b)5, the school must submit with its application annual examination reports of the most recent three years (or fewer, if the radiologist assistant school has not been in operation for three years). As provided at proposed N.J.A.C. 7:28-19.17(b)5 and (g)5, a school may lose its Board recognition if, for more than two consecutive years, fewer than 75 percent of its students pass the examination of the certifying board on the first attempt. This examination performance requirement is the same as the rules require of diagnostic radiologic technology and radiation therapy technology schools. See N.J.A.C. 7:28-19.13(f)17.

Under existing N.J.A.C. 7:28-19.16(g)6ii until a radiologist assistant student is determined to be competent in a procedure, the student must perform that procedure under the direct supervision of a supervising radiologist or radiologist assistant. Once the student is determined to be competent in a procedure, existing N.J.A.C. 7:28-19.16(g)6ii no longer requires direct supervision, provided the radiologist or radiologist assistant is on site and immediately available to furnish assistance and direction. Proposed new N.J.A.C. 7:28-19.17(e)6ii and iii continue to allow different levels of supervision for competent and not-yet-competent students. However, the proposed rule recognizes that as the BME has the authority to establish the level of supervision that a radiologist must provide to a licensed radiologist assistant, it is appropriate that the BME have a role, if it chooses, in determining the level of supervision that either a radiologist or licensed radiologist assistant must provide to a student who is performing a delegated fluoroscopic procedure. Accordingly, unless the BME expressly provides for a lesser level of supervision for a student who is determined to be competent in a

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procedure, all students must be directly supervised by a radiologist or licensed radiologist assistant.

If the Board denies a school's application for recognition, or terminates a school's recognition, the school may request an adjudicatory hearing by following the procedures at recodified N.J.A.C. 7:28-19.18.

In order to provide clinical education to a radiologist assistant student, a clinical education center must meet the clinical education requirements in the rules. These requirements, which are the same for the schools and the clinical education centers, are proposed at N.J.A.C. 7:28-19.17(e)2 through 7. See proposed N.J.A.C. 7:28-19.17(f). The existing rules at N.J.A.C. 7:28-19.12(c) similarly impose requirements on clinical education centers that train radiologic technology students.

Proposed amendments throughout the subchapter ensure that provisions of the existing rules apply to the new license category. Existing N.J.A.C. 7:28-19.5, Unethical conduct, contains a list of acts that constitute unethical conduct. The existing section applies only to licensed radiologic technologists and to students of radiologic technology. Proposed amendments expand the section to apply to radiologist assistants and to students of both categories. Existing N.J.A.C. 7:28-19.9, License expiration, reissuance and renewal, includes the license expiration dates and the requirement for license renewal and reissuance, and applies only to licensed radiologic technologists. Proposed amendments expand the section to apply to radiologist assistants. The procedure for requesting and conducting adjudicatory hearings at proposed N.J.A.C. 7:28-19.18, is amended to apply to the new radiologist assistant license category and radiologist assistant schools.

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Miscellaneous

Under existing N.J.A.C. 7:28-19.5(a)13, the Board may determine that an individual has acted in an unprofessional or unethical manner when the person is engaged in the practice of radiologic technology or is educating a student. The Board has found the existing rule is limiting, in that unprofessional or unethical acts that negatively affect patient or student wellbeing are not always committed during the performance of a radiological procedure. For example, actions such as making uninvited visits to a patient's room, taking and sharing sexually explicit pictures of a patient, or making inappropriate comments to a patient other than during the performance of a radiological procedure, fall outside the scope of as unprofessional or unethical conduct under the existing rule. The proposed amended rule expands the rule as the Board requests. The Board could determine that actions such as the examples provided fall within the category of "acting in an unprofessional manner, or a manner unbecoming" of the regulated professional.

The existing rules at N.J.A.C. 7:28-19.6 and 19.7 establish requirements for applicants for radiologic technology licensing examination and licensure. With the expansion of the subchapter to include radiologist assistants, it is necessary to specify that the existing sections apply only to radiologic technology. The proposed amended headings of the sections reflect their applicability.

At proposed amended N.J.A.C. 7:28-19.8, Conditional and restricted licenses, provisions regarding temporary licenses are proposed to be deleted, and the section heading amended. The Board stopped issuing temporary licenses in 2010. Prior to 2010, temporary licenses were

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issued to only new graduates of schools of radiologic technology so that the graduates could be employed while waiting for their written examination results, since the ARRT administered the examination only three times a year. Due to computer-based testing by the ARRT, graduates can take the examination on the date of graduation and be informed of the examination results within one to two weeks after taking the examination; the Board finds that a temporary license is no longer needed. The Board also finds that it is in the best interest of patient safety not to issue temporary licenses, because the holders of the licenses may not have passed the licensing examination. Since it stopped issuing temporary license, the Board has received no complaints regarding the stoppage of issuing temporary licenses. Other proposed amendments to the section add radiologist assistant to the types of conditional or restricted licenses that the Board may issue.

Proposed amendments throughout the subchapter correct cross references to conform to the proposed new and amended rules, and correct grammar and punctuation.

Nuclear Medicine Technology and Fusion Imaging Computed Tomography (CT) Technology Fees

Existing N.J.A.C. 7:28-24, Nuclear Medicine and Fusion Imaging Computed Tomography (CT) Technology, establishes educational and licensure requirements and delineates the scopes of practice for persons engaged in the practice of nuclear medicine technology, and for persons engaged in the practice of fusion imaging CT technology. The subchapter also establishes standards for the operation of, and the Department's approval of, educational programs in nuclear medicine technology. Among the provisions of the rules are fees for nuclear medicine technologist licenses and examinations.

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The Department proposes to amend the fee schedule at N.J.A.C. 7:28-24.11 in order that the fees that the Department charges are sufficient to cover the cost of administering the nuclear medicine and fusion imaging CT technology program. In addition, the Department proposes a new fee for obtaining a reprint of a license. The Department charges a license reprint fee of \$20.00 to radiologic technologists as provided at existing N.J.A.C. 7:28-19.10(a)4, and proposes to charge the same fee to radiologic assistants. The proposed new and increased fees at N.J.A.C. 7:28-24.11 are discussed in the Economic Impact below.

Agreement State

New Jersey has assumed responsibility for regulation of radioactive materials that are governed under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq. (AEA), through an agreement with the NRC. This is known as becoming an Agreement State. The AEA requires that an Agreement State's regulations be compatible with the NRC's regulations, and that the state's regulations be adequate to protect the public health and safety, with respect to such materials. See 42 U.S.C. § 2021(d). In order that New Jersey's rules are "adequate and compatible" with the Federal regulations, the Department's rules incorporate by reference substantial portions of the Federal regulations.

Incorporation of the CFR by Reference

The Department and the Commission propose amendments to the general provisions at N.J.A.C. 7:28-1.6 to address two comments from the NRC, which were not provided to the Department until after adoption of the amended rule in 2016. See 48 N.J.R. 409(b), March 7,

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2016. The NRC commented that existing N.J.A.C. 7:28-1.6(f) may cause confusion and be misinterpreted because it places on the licensee the burden of determining which set of requirements prevails. To address this comment, the Department and the Commission propose to identify the provisions of N.J.A.C. 7:28 that are substantially different from the NRC's rules. Therefore, proposed amended N.J.A.C. 7:28-1.6(f) specifies that N.J.A.C. 7:28-12 substitutes for 10 CFR Part 20 Subpart E in its entirety. It also states that N.J.A.C. 7:28 also does not incorporate by reference provisions of the NRC rules that allow determination of dosage of unsealed byproduct material for medical use by methods that do not include direct measurements because N.J.A.C. 7:28-55.1(b)5 and 6 differ from the requirements of the NRC rules at 10 CFR 35.63(b)(2)(i) through (iii) and 10 CFR 35.63(c)(3)(i) and (ii), and are proposed to be identified in the amended rule. Existing N.J.A.C. 7:28-6.1(c)6 through 11 and (d)19 already identify the differences between 10 CFR Part 20 Subpart E and the Department's requirements. Existing N.J.A.C. 7:28-55.1(b) and (c) already identify the differences between 10 CFR Part 35 and the Department's requirements.

The NRC recently amended 10 CFR Part 35, Medical use of byproduct material. The NRC published its revised regulations on July 16, 2018 (83 FR 33046). All of the NRC's amendments are incorporated by reference into N.J.A.C. 7:28 by operation of the incorporation provisions of existing N.J.A.C. 7:28-55.1. However, the Department and Commission propose new N.J.A.C. 7:28-1.6(h)5 to exclude from incorporation any reference to a master material license or permit issued by a master material licensee. A master material license is a multi-site, multi-regional material (byproduct, source, and/or special nuclear material) license issued to a Federal organization that authorizes the licensee to undertake a limited number of regulatory activities

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as specified in a joint Letter of Understanding with the NRC. The NRC has exclusive jurisdiction over Federal entities that possess and use radioactive materials, such as Veterans Administration hospitals and military bases.

Replacement terms for terms in CFR provisions incorporated by reference

Rather than identify in each subchapter a list of substituted terms or citations, the existing rules contains a table of the most common substitutions necessary when the Federal regulations are incorporated into N.J.A.C. 7:28. Each time an identified term appears in the Federal regulations, the incorporation by reference includes the corresponding substitution. For example, whenever the NRC regulations use “part 20 of this chapter,” the incorporation by reference substitutes “N.J.A.C. 7:28-6,” which is the subchapter that incorporates 10 CFR Part 20 by reference.

Existing Table 1 to N.J.A.C. 7:28-1.6 does not identify each of the subchapters related to the Agreement State program. The Department and the Commission propose to amend the table to identify the relevant CFR part and the replacement reference in the Department’s rules. The existing table does not identify all of the replacements, although to a large extent these substitutions are already included in the existing rules. For example, N.J.A.C. 7:28-51.1(c)8 replaces parts 30 and 32 with N.J.A.C. 7:28-51 and 53, but only in the incorporated 10 CFR 321(c)(8)(i). Because the existing rules, such as N.J.A.C. 7:28-51.1(c)8, are so specific with their replacement, they may not capture all of the replacements if the NRC amends its rules. The proposed amended table provides a more complete replacement, reducing the likelihood

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that the Department and the Commission will need to amend the rules each time the NRC amends its rules.

Packaging and Transportation of Radioactive Materials

After the NRC reviewed the 2016 amendments to N.J.A.C. 7:28-61, Packaging and Transportation of Radioactive Materials, which incorporated by reference 10 CFR Part 71, the NRC distributed a clarification letter (STC-17-060) to Agreement States. Other Agreement States were in the process of submitting their proposed regulations to incorporate NRC amendments to 10 CFR Part 71 for an NRC compatibility review and were asking the NRC's Office of Nuclear Material Safety and Safeguards staff about the Agreement States' authority and responsibilities under 10 CFR 71.17 and 71.101(c) for approving general licensees' quality assurance programs. The essential requirement of 10 CFR 71.101(c)(1) is that each licensee who uses a Type B package shall, prior to the use of any package for the shipment of any material subject to the regulation, obtain approval of its quality assurance program by the regulatory agency. Although the approval requirement may previously have been contained in the individual state's department of transportation regulations, the agency that administers the state's Agreement State program may not have been aware of the requirement.

Also, the NRC changed the classification of the approval requirement in 10 CFR 71.101(c)(1) from a compatibility category D or C designation to a C designation. Provisions that the NRC identifies as compatibility categories A, B, or C must be incorporated by Agreement States in order that the state's rules are compatible with the Federal regulations. Provisions that the NRC identifies as compatibility category D do not need to be adopted by

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Agreement States for compatibility, although New Jersey does incorporate some such sections by reference. Previously, an Agreement State was required to adopt compatible regulations only if it had users of Type B packages other than industrial radiography. However, as the NRC explained in its Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Transportation Requirements, 80 FR 33988, 34009, "If a [s]tate does not have a user of a Type B package, the [s]tate is able to seek an exemption from the requirement to make their requirement compatible." The letter also clarified that NRC compatibility reviews of the Agreement States' equivalent regulations incorporating these NRC rules may not have identified these issues, which was the case with the NRC review of the New Jersey regulations. While there currently are no Type B package users in New Jersey, the Department will not seek an exemption from the NRC, but is choosing to incorporate the appropriate regulations in case New Jersey receives an application for a Type B package user in the future.

When it incorporated 10 CFR Part 71 by reference into N.J.A.C. 7:28-61.1, the Department inadvertently omitted 10 CFR 71.70, 71.85(a) through (c) and 71.91(b) from the list of sections that are not incorporated by reference. In addition, the Department included 10 CFR 71.17 in its entirety as a section where "NRC" would not be replaced by "the Department." This is incorrect; only at 10 CFR 71.17(e), should "NRC" not be replaced by "Department." The proposed amendment corrects the error. This means that the Department will issue a general license to a Type B container user in the State, with the exception of industrial radiographers. In addition, the Department did not delete the words "certificate holder, and applicant for a Certificate of Compliance," as only the NRC can issue Certificates of Compliance for Type B

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containers. The proposed amendments delete these words from 10 CFR 71.101 (a) and (b), 71.103(a), and 71.135 as otherwise incorporated by reference. The proposed amendments recodify existing paragraphs as needed.

Radioactive Materials License Fees

Existing N.J.A.C. 7:28-64 establishes fees for radioactive materials licenses. The Department proposes to amend Table 1 of N.J.A.C. 7:28-64.2, Schedule of fees, to make it clear that when a reciprocity fee is calculated by taking 50 percent of the annual license fee, that it is rounded either up or down to the nearest multiple of \$5.00 using standard rounding techniques. For example, at existing N.J.A.C. 7:28-64.2 Table 1, fee category 3.O. Licenses for possession and use of byproduct material for industrial radiography operations, the annual fee is \$11,285. A reciprocity license would be $\$11,285/2$ which is \$5,642.50. Rounding to the nearest increment of \$5.00 would make the reciprocity fee \$5,640.

For ease of calculation and payment the Department is making a similar amendment to N.J.A.C. 7:28-64.10(a), which provides for an annual adjustment of fees in Tables 1 and 2 in N.J.A.C. 7:28-64.2. The existing rule does not specify that the adjusted fee is rounded when it is adjusted by the inflation factor. The fees in the tables are of a magnitude that rounding up or down to an increment of \$5.00 is a relatively small percent difference from what would otherwise result from application of the inflation factor.

Existing N.J.A.C. 7:28-58, Domestic Licensing of Source Material, incorporates by reference 10 CFR Part 40, Domestic Licensing of Source Material. The incorporated rules include the definition of unimportant quantities of source material, 10 CFR 40.4. Prior to the

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NRC's amendments to its rules, these unimportant quantities were issued a general license; the NRC's amended rules require a small class of users of source material to obtain a radioactive materials license.

The existing fee provisions at N.J.A.C. 7:28-64.2, Table 1, do not expressly provide for these licensees; therefore, the existing rule categorizes these users under "All other source material licenses," with a corresponding fee of \$10,300. Proposed amended Table 1 includes "licenses that authorize possession, storage and use of reference sources containing source material for calibration, proficiency testing, quality assurance and/or in the manufacturing of exempt devices" in the existing category with "licenses that authorize only the possession, use, and/or installation of source material for shielding," with a corresponding fee of \$600.00. This fee is more appropriate for users of these small quantities of source material.

Existing Table 2 identifies at fee category C.2. a fee for a "[r]equest to amend a license requiring review and a site visit, but not limited to, facility move or addition of a process." The existing description states that the fee applies when the amendment requires both a review and a site visit. As amended, the fee applies when a technical review is required, whether or not a site visit is also required. The proposed amendment divides the description into two sentences, for clarity.

Social Impact

Radiation is known to cause cancer and other adverse health effects in humans, and there are ongoing legitimate concerns about the adverse effects caused by overexposure to radiation, particularly as the use of radioactive materials and the use of ionizing radiation-

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producing machines for industrial, commercial, and medical applications continues to rise. The increased use of such materials and devices results in increased exposure to radiation and increased associated risks. With the exception of the amendments to N.J.A.C. 7:28-19, discussed below, the Department and the Commission anticipate that the proposed new rules, amendments, and repeals, will have no social impact.

The proposed new rules, amendments, and repeals at N.J.A.C. 7:28-19, Radiologic Technologist and Radiologist Assistant, will have a positive social impact on the citizens of New Jersey and all persons who have radiological procedures performed in New Jersey by continuing to provide protections against unnecessary radiation exposure. The proposed rules relate to the educational requirements for radiologist assistant students and the radiologist assistant schools that they attend. The rules establish a licensure program that provides consumers and employers with a mechanism to ensure that only qualified individuals perform radiological procedures.

By allowing radiologist assistants to perform delegated fluoroscopic procedures that, in the absence of the proposed rules, only a licensed physician, such as, a radiologist could perform, the proposed rules could result in radiologists having more time to interpret the results of radiological procedures. This may result in less patient wait time, greater patient satisfaction, and lower health care cost to the patient.

Economic Impact

Radiologist Assistant Licensure Program, N.J.A.C. 7:28-19

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The proposed new rules, amendments, and repeals at N.J.A.C. 7:28-19, establish the new license category of radiologist assistant. The existing fee schedule at N.J.A.C. 7:28-19.10(a) applies to the new license category, including license application fee (\$60.00), license reissuance or renewal fee (\$90.00), and license reprint fee (\$20.00). The fees are the same as for the existing license category of radiologic technologist. The ARRT administers the examination for radiologist assistants; therefore, a radiologist assistant will not be subject to the examination fee in the existing fee schedule. A radiologist assistant must also be a licensed diagnostic radiologic technologist; therefore, a radiologist assistant must also obtain and maintain a radiologic technologist license, which includes fees for examination, license application, and license reissuance, renewal, and reprinting (if applicable).

There is no proposed fee for Board approval of a radiologist assistant school. In order to be recognized by the Board, a radiologist assistant school must first be approved by the ARRT, or another certifying body that the Board designates. The Board has determined that the ARRT (or similar) approval of radiologist assistant schools provides adequate patient and student safeguards and that a duplicate approval process is not needed; therefore, no fee is required.

Although the United States Bureau of Labor Statistics has not conducted an Occupational Employment and Wages study for the radiologist assistant, it conducted a study for the physician assistant in 2017. The Department and Commission believe that the job responsibilities of a physician assistant are very similar to the radiologist assistant, since both professions require an advance level of medical education and both practice as an extension to a licensed physician. Therefore, it is reasonable that the mean hourly wage of a physician

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assistant in New Jersey of \$57.34 and the mean annual wage of \$119,260 applies to the radiologist assistant. Payment of the proposed initial application fee of \$60.00 is less than two hours of a radiologist assistant's salary. Since the amended Act requires a radiologist assistant to maintain his or her diagnostic radiologic technology license to practice in New Jersey, both licenses must be renewed every two years. Payment of the total proposed renewal application fee of \$180.00 is less than four hours of a radiologist assistant's salary over two years.

Pursuant to N.J.S.A. 26:2D-9, the Department has statutory authority to charge fees to cover its actual costs. No additional staffing is needed to administer the proposed radiologist assistant duties in N.J.A.C. 7:28 19. The Department estimates the annual cost to administer the radiologist assistant requirements to be \$9,575. In determining this cost, the Department reviewed the labor rates, fringe benefits, and indirect costs; these amounts include the average salary of the staff assigned to the activity, plus a component for direct support staff and division overhead, and fringe benefits such as pensions, health benefits, workers' compensation, disability benefits, and the employer's share of the Federal Income Compensation Act contribution. The Department also considered the operational expenses attributable to the employee and the program, including postage, telephone, training, travel, supplies, equipment maintenance, maintenance for vehicles used during licensure enforcement and school inspections, data system management, on-line license renewal maintenance and cost for each licensee who renews on-line, and legal services.

Based on the proposed new fees, the Department estimates that first-year revenue collected will be \$6,000. This is only 63 percent of the Department's estimated cost to administer the radiologist assistant licensure program. The anticipated number of radiologist

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assistant licensees is low; therefore, were the Department to establish fees that covers all of its costs to administer the program, at this time the fees would be cost-prohibitive to individual licensees.

Fees for Nuclear Medicine Technologists, N.J.A.C. 7:28-24

Pursuant to N.J.S.A. 26:2D-9, the Department has statutory authority to charge fees to cover its actual costs. As stated in the proposal Summary above, the Department proposes to amend the schedule of fees for nuclear medicine and fusion imaging CT technology at N.J.A.C. 7:28-24.11. The proposed nuclear medicine technologist examination fee is proposed to increase from \$75.00 to \$160.00. This is the first increase since 2000. The proposed fee reflects the increased costs to the Department from its test vendor to offer the examination and the administrative cost to review an application. The proposed increase in the examination fee is not anticipated to have an economic impact on prospective nuclear medicine technologists in the State because 100 percent of graduates of New Jersey schools apply directly to the ARRT or Nuclear Medicine Technology Certification Board (NMTCB) for examination. The State examination is usually taken by foreign educated technologists who are not eligible for these national examinations, since their education was not obtained in the United States. In the past eight years, only two State examinations were administered.

The initial license application fee for both nuclear medicine technologist and fusion imaging CT technologist is proposed to increase from \$40.00 to \$60.00. This is the first proposed increase since 2000. The Department processes approximately 100 initial

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applications annually. The Department's annual projected revenue collected will increase from \$4,000 to \$6,000.

Lastly, the biennial license renewal application fee for both nuclear medicine technologist and fusion imaging CT technologist is proposed to increase from \$40.00 to \$90.00. This too is the first increase since 2000. The Department processes approximately 1,030 renewal applications every two years. The annual projected revenue collected will increase from \$20,600 to \$46,350. Licensed technologists have the option to renew their licenses on-line via the Department's business portal.

Although these fees are being increased, according to the United States Bureau of Labor Statistics' 2017 Occupational Employment and Wages study, the mean hourly wage of a nuclear medicine technologist in New Jersey is \$44.13 and the mean annual wage is \$91,790. Payment of the proposed initial application fee of \$60.00 or the proposed renewal application fee of \$90.00 allows the technologist to work in New Jersey for two years and costs the technologist less than three hours of a his or her salary. A licensed fusion imaging CT technologist must also hold a current nuclear medicine technology license, and is, therefore, subject to fees for both licenses. The cost of the proposed fees for renewal of both licenses is \$180.00, or less than five hours of the nuclear medicine technologist's salary.

The Department estimates the annual cost to administer its duties related to N.J.A.C. 7:28-24 to be \$54,779. In determining this cost, the Department reviewed the labor rates, fringe benefits, and indirect costs. These amounts include the average salary of the staff assigned to the activity, plus a component for direct support staff and division overhead, and fringe benefits such as pensions, health benefits, workers' compensation, disability benefits,

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and the employer's share of the Federal Income Compensation Act contribution. The Department also considered the operational expenses attributable to the employee and the program, including postage, telephone, training, travel, supplies, equipment maintenance, maintenance for vehicles used during licensure enforcement and school inspections, data system management, on-line license renewal maintenance and cost for each licensee who renews on-line, and legal services.

Under the existing fee schedule, which includes the fees associated with nuclear medicine technology and fusion imaging CT technology, the Department collects \$27,000 per year. Under the proposed fees, the Department anticipates that it will collect \$52,350 in the first year. The Department anticipates that the proposed fees will cover 96 percent of its estimated cost to administer the nuclear medicine technology and fusion imaging CT technology programs.

Agreement State

The Department and the Commission anticipate that the proposed amendments to the Agreement State provisions of N.J.A.C. 7:28 will have no economic impact, except regarding the proposed decrease in fees. The proposed amendments to N.J.A.C. 7:28-61.1 relate to New Jersey licensees, other than industrial radiographers, that use Type B packages. At present there are no New Jersey licensees that would be affected by the proposed amendments. If a new licensee were affected by the proposed amendments, the proposed amendments would not have an economic impact because New Jersey does not charge a fee for this type of general licensee.

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The proposed amendments to N.J.A.C. 7:28-64.2 Table 1 and N.J.A.C. 7:28-64.10 provide that the calculated fee will be rounded to the nearest \$5.00. The Department anticipates that the proposed amendments will have no economic impact. Some calculated fees will be rounded up, and some will be rounded down, effectively offsetting any overall impact.

The proposed amendment to Table 1 to include licenses that authorize possession, storage, and use of reference sources containing source material for calibration, proficiency testing, quality assurance, and/or in the manufacturing of exempt devices will have a positive economic impact on these users because the fee charged to them will decrease from \$10,300 to \$600.00. The proposed amendment to Table 2 will not affect the way in which the program assesses these fees; therefore, there will be no economic impact from the amendment.

Environmental Impact

The proposed new rules, amendments, and repeals continue to limit the amount of radiation allowed in the environment. Human exposure to radiation causes cancer and other adverse health effects. Limits on the amount of radiation allowed in the environment continue to have a positive effect on the health of humans. A fundamental tenet of radiation protection has been the assertion that populations of non-human biota are protected in situations where exposure levels are protective of humans (National Council on Radiation Protection Report No. 109, 1991). Plant, animal, and aquatic life benefit from the proposed amendments insofar as the proposed amendments continue to prevent or reduce unnecessary radiation exposure.

Federal Standards Statement

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N.J.S.A. 52:14B-1 et seq. requires State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed new rules, amendments, and repeal at N.J.A.C. 7:28-19 and 24 are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Therefore, no further analysis is required.

Proposed amendments to the Agreement State program, N.J.A.C. 7:28-1.6, and 61.1, 64.2, and 64.10, are proposed in order to comply with the Federal requirements for Agreement States. Therefore, they are consistent with and do not exceed Federal standards. No further analysis is required.

Jobs Impact

With the exception of the proposed amendments discussed below, the proposed new rules, amendments, and repeals are not anticipated to have an impact on job creation or retention in the State.

Radiologist Assistant Licensure Program, N.J.A.C. 7:28-19

The proposed new rules, amendments, and repeal related to the new license category of radiologist assistant are anticipated to have a positive impact on jobs in the State. As of the date of this proposal, there are 10 radiologist assistants certified by the ARRT who reside in New Jersey. These individuals may be eligible for a license under the proposed rules.

Additionally, certified radiologist assistants from out of State could, under the proposed rules,

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seek employment in New Jersey, thereby increasing the pool of qualified radiologist assistant candidates for employment in New Jersey.

Agriculture Industry Impact

The proposed amendments regulate the possession, handling, and use of sources of radiation within the State. The proposed amendments are not anticipated to impact the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission and the Department have evaluated the proposed amendments to N.J.A.C. 7:28 to determine their impact on small business. "Small business" is defined as 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."

Radiologist Assistant Licensure Program

The proposed new rules, amendments, and repeals related to the new license category of radiologist assistant apply to individuals who want to become licensed radiologist assistants, to radiologist assistant schools, and to medical facilities that hire licensed radiologist assistants. Although the individuals do not fall within the definition of "small business," many of the schools and medical facilities do. The Department and the Commission estimate that at least 80 percent of those affected by the proposed amendments meet the definition of "small

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businesses.” The compliance requirements and their associated costs are discussed in the Summary and Economic Impact above.

The Radiologic Technologist Act, which creates the new license category of radiologist assistant, was enacted based upon the finding that all citizens of New Jersey are entitled to maximum radiation protection. The potential hazard posed by exposure ionizing radiation is the same whether or not the owner of the x-ray facility is a small business; therefore, the proposed amendments to N.J.A.C. 7:28-19 do not exempt small businesses or provide a different standard for small businesses. In order to avoid any impact resulting from the proposed rules, a medical facility can elect not to employ a radiologist assistant, and a school or clinical education center can elect not to provide training and clinical experience to student radiologist assistants. In the case of a medical facility, a licensed physician may perform radiological procedures without being a licensed radiologist assistant.

In proposing these amendments and new rules the Commission and the Department have evaluated the need to protect the public from unnecessary exposure to radiation against the economic impact of the rules and have determined that to provide a different standard for small businesses would endanger the environment and public health and safety.

Agreement State

None of the proposed amendments to the Agreement State regulations will have a compliance or recordkeeping impact on small businesses. Although any New Jersey users Type B packaging may be small businesses, the requirements are not new; the requirements are in the NRC rules, and are the same throughout the United States.

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Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4.1b, the Commission and the Department have evaluated the proposed amendments to determine their impact, if any, on the affordability of housing. The proposed amendments govern the education and licensing of radiology assistants; fees for professional licenses; and possession, handling, and use of sources of radiation within the State of New Jersey. None of these relate to housing. Accordingly, the Commission and the Department have determined that the proposed amendments are extremely unlikely to evoke a change in the average costs associated with housing in the State.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4.1b, the Commission and the Department have evaluated the proposed amendments to determine their impact, if any, on housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments govern the education and licensing of radiology assistants; fees for professional licenses; and possession, handling, and use of sources of radiation within the State of New Jersey. Therefore, the proposed amendments will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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Full text of the rule proposed for repeal can be found at N.J.A.C. 7:28-19.16.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:28-1.6 Incorporation of the Code of Federal Regulations by reference

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

(f) In the event that there are inconsistencies or duplications in the requirements of the provisions incorporated by reference from the CFR and the rules set forth in this chapter, the provisions incorporated by reference from the CFR shall prevail, except where the rules set forth in this chapter are more stringent. **This includes N.J.A.C. 7:28-12, Remediation Standards for Radioactive Materials, which replaces 10 CFR Part 20, Subpart E, in its entirety, and N.J.A.C. 7:28-55.1(b)5 and 6, which specifically exclude provisions of the CFR that allow determination of dosage of unsealed byproduct material for medical use by methods that do not include direct measurements.** The foregoing notwithstanding, as to subparts the NRC identifies as compatibility categories A or B, in the event of inconsistencies or duplications, the provisions of the CFR shall prevail, **except as provided in Table 1 below and the non-substantive substitutions identified in individual subchapters of this chapter.**

(g) (No change.)

(h) The following provisions of the CFR are not incorporated by reference:

1. – 4. (No change.)

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5. Any reference to a master material license or a permit issued by a master material licensee.

(i) The following words and terms in the CFR shall be replaced as indicated in Table 1 below, except as otherwise indicated in this chapter:

Table 1: Replacement terms for terms in CFR provisions incorporated by reference

<u>Terms in CFR</u>	<u>Replacement Terms</u>
Of this part	Of this subchapter
To this part	To this subchapter
By this subpart	By this subchapter
Subject to this subpart	Subject to this subchapter
Under this subpart	Under this subchapter
In this subpart	In this subchapter
Agreement State or Agreement State agency	Agreement State or the NRC
Any non-Agreement State	The State of New Jersey, where the Department maintains jurisdiction
Commission	Department
NRC	

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Nuclear Regulatory Commission	
U.S. NRC	
Act	
Atomic Energy Act	Radiation Protection Act
Atomic Energy Act of 1954	
Section ___ of the Act	the Act
Part 19	N.J.A.C. 7:28-50
Part 20	N.J.A.C. 7:28-6
Part 30	N.J.A.C. 7:28-51
Part 31	N.J.A.C. 7:28-52
Part 32	N.J.A.C. 7:28-53
Part 33	N.J.A.C. 7:28-54
Part 34	N.J.A.C. 7:28-63
Part 35	N.J.A.C. 7:28-55
Part 36	N.J.A.C. 7:28-56
Part 37	N.J.A.C. 7:28-65
Part 39	N.J.A.C. 7:28-57
Part 40	N.J.A.C. 7:28-58
Part 61	N.J.A.C. 7:28-59
Part 70	N.J.A.C. 7:28-60

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Part 71	N.J.A.C. 7:28-61
Part 150	N.J.A.C. 7:28-62
NRC Operations Center (301-816-5100)	Department of Environmental Protection's hotline 1-877 WARNDP (1-877-927-6337)
Written interpretation by the General Counsel	Written interpretation signed and approved by the Commissioner of the Department
NRC regional office or Director of the office of Federal and State Materials and Environmental Management Programs or Director, Division of Security Policy, Office of Nuclear Security and Incident Response	Bureau of Environmental Radiation at the address specified in N.J.A.C. 7:28-1.5(b)
10 CFR 20.1401	N.J.A.C. 7:28-12
10 CFR 20.1402	
10 CFR 20.1403	
10 CFR 20.1404	
10 CFR 20.1405	

(j)-(n) (No change.)

SUBCHAPTER 19 RADIOLOGIC [TECHNOLOGY] TECHNOLOGIST AND RADIOLOGIST ASSISTANT

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7:28-19.1 Purpose, scope and applicability

(a) (No change.)

(b) This subchapter:

1.- 3. (No change.)

4. Establishes standards for the approval and operation of schools of radiologic technology;[and]

5. [Defines] **Establishes the educational and licensure requirements of radiologist assistant and defines** the practice of a radiologist assistant as it pertains to fluoroscopic procedures **as authorized by the New Jersey State Board of Medical Examiners, and**

6. Establishes the standards for the recognition of a radiologist assistant school.

(c) (No change.)

(d) The following persons are not required to possess a radiologist assistant license under this subchapter in order to perform the activities of a radiologist assistant, but are otherwise subject to the requirements of this subchapter unless specifically exempted:

1. Students enrolled in a Board recognized radiologist assistant school in accordance with N.J.A.C. 7:28-19.17;

2. A licensed practitioner as defined in N.J.A.C. 7:28-19.2, provided that the licensed practitioner is practicing within the scope of his or her license; and

3. A person enrolled in and attending a school or college of medicine or osteopathy, who is acting within the school's curriculum, when the person is performing tasks within the scope of practice of a radiologist assistant and is under the direct supervision of a licensed practitioner who is practicing within the scope of his or her license.

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Recodify (d) through (f) as **(e)** through **(g)** (No change in text.)

7:28-19.2 Definitions

In addition to the terms defined at N.J.A.C. 7:28-1 and N.J.S.A. 26:2D-1 et seq., the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Board of Medical Examiners” or “BME” means the State Board of Medical Examiners created pursuant to N.J.S.A. 45:9-1 et seq.

"Chest radiologic technologist (LRT(C))" means a person licensed in accordance with [this subchapter]**N.J.A.C. 7:28-19.7** whose scope of practice of radiologic technology is limited to the chest area for diagnostic purposes, as set forth at N.J.A.C. 7:28-19.4(a) and (d).

"Clinical education center" means a medical or dental facility (such as an office, hospital or imaging center) where students engage in the practice of radiologic technology **or practice as radiologist assistants** for clinical education purposes.

...

"Delegated fluoroscopic procedures" are those procedures [contained in the American Registry of Radiologic Technologists "Registered Radiologist Assistant Role Delineation" (January 2005), as supplemented or amended and incorporated herein by reference,] that have been [approved] **authorized** by the [New Jersey State]Board of Medical Examiners [(BME)] for the [R]radiologist [A]assistant to perform under the level of radiologist supervision specified by the BME[. The Registered Radiologist Assistant Role Delineation is available at www.arrt.org].

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...

"Dental radiologic technologist (LRT(D))" means a person licensed in accordance with [this subchapter] **N.J.A.C. 7:28-19.7** whose scope of practice of radiologic technology is limited to dental radiography for diagnostic purposes, as set forth at N.J.A.C. 7:28-19.4(a) and (e).

...

"Diagnostic radiologic technologist (LRT(R))" means a person licensed in accordance with [this subchapter] **N.J.A.C. 7:28-19.7** whose scope of practice of radiologic technology includes all types of radiographic procedures for diagnostic purposes, as set forth at N.J.A.C. 7:28-19.4(a) and (b).

...

"License" means a written authorization applied for in accordance with this subchapter and issued by the Board authorizing the licensee to engage in a specific scope of practice of radiologic technology **or radiologist assistant** as set forth at N.J.A.C. 7:28-19.4.

...

"Orthopedic radiologic technologist (LRT(O))" means a person licensed in accordance with [this subchapter] **N.J.A.C. 7:28-19.7** whose scope of practice of radiologic technology is limited to the spine and extremities for diagnostic purposes, as set forth at N.J.A.C. 7:28-19.4(a) and (f).

"Podiatric radiologic technologist (LRT(P))" means a person licensed in accordance with [this subchapter] **N.J.A.C. 7:28-19.7** whose scope of practice of radiologic technology is limited to the operation of x-ray machines on the foot, ankle and the distal third of the lower leg for diagnostic purposes, as set forth at N.J.A.C. 7:28-19.4(a) and (g).

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"Radiation therapist (LRT(T))" means a person licensed in accordance with [this subchapter] **N.J.A.C. 7:28-19.7** whose scope of practice of radiologic technology is limited to the use of ionizing radiation-producing equipment for therapy simulation and therapeutic purposes, as set forth at N.J.A.C. 7:28-19.4(a) and (c).

"Radiologist" means a physician who is licensed by the New Jersey Board of Medical Examiners and is either board-certified by the American Board of Radiology or the American Osteopathic Board of Radiology **or another national radiologic certifying body approved by the Board.** [has satisfactorily completed a residency program in radiology approved by the Accreditation Council for Graduate Medical Education.]

["Radiologist assistant means a licensed diagnostic radiologic technologist who has completed additional education in a radiologist assistant program and attained national certification as a radiologist assistant and who may perform delegated fluoroscopic procedures, as provided at N.J.A.C. 7:28-19.16(a).]

"Radiologist assistant (LRT(RA))" means a person who is licensed in accordance with N.J.A.C. 7:28-19.16, and who provides primary advanced-level radiologic care as set forth at N.J.A.C. 7:28-19.4(a) and (i).

"Student" means any person who is currently enrolled in and attending a school of radiologic technology approved by the Board **or a radiologist assistant school recognized by the Board.**

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["Temporary license" means a license issued for a limited period of time in accordance with N.J.A.C. 7:28-19.8.]

...

"Urologic radiologic technologist (LRT(U))" means a person licensed in accordance with [this subchapter] **N.J.A.C. 7:28-19.7** whose scope of practice of radiologic technology is limited to the abdomen and pelvic area for urologic diagnostic purposes, as set forth at N.J.A.C. 7:28-19.4(a) and (h).

7:28-19.3 General provisions

(a) Except as provided at N.J.A.C. 7:28-19.1(c) through [(f)] **(g)**:

1. and 2. (No change.)

3. No person shall engage in any activity within the scope of practice of a radiologist assistant as defined in N.J.A.C. 7:28-19.4, unless that person possesses a valid license as a radiologist assistant, a valid license in diagnostic radiologic technology, and an active radiologist assistant certification from the American Registry of Radiologic Technologists or another national certification body approved by the Board.

(b) (No change.)

(c) No owner, licensed practitioner, or registrant of ionizing radiation-producing equipment shall cause, allow, or permit any person to engage in any activity within a scope of practice of radiologic technology **or radiologic assistant** as defined in N.J.A.C. 7:28-19.4, unless [that]:

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1. **That** person possesses a valid license authorizing the person to engage in that scope of radiologic technology **or radiologist assistant; and**

2. **If the person is a radiologist assistant, the person possesses a valid license as a diagnostic radiologic technologist and an active radiologist assistant certification from the American Registry of Radiologic Technologists or another national certification body approved by the Board.**

(d) No person shall cause, allow, or permit a radiologic technologist **or radiologist assistant** to be in the primary beam, unless it is deemed essential for the specific examination by the licensed practitioner and the radiologic technologist **or radiologist assistant** is wearing protective garments over all body areas in the primary beam as required by N.J.A.C. 7:28-15.9.

(e)-(h) (No change.)

(i) A radiologic technologist **or radiologist assistant** shall carry his or her current radiologic technology **or radiologist assistant** license on his or her person at work, and display his or her [radiologic technology] license, upon request of the Department, employer or any patient.

(j) A radiologic technologist **or radiologist assistant** shall notify the Department of any conviction of a crime under Federal law or the law of any state within 30 calendar days of such conviction.

(k) Any conviction of a crime committed while not engaged in the practice of radiologic technology **or radiologist assistant** does not, in itself, constitute a lack of good moral character for the purposes of N.J.A.C. 7:28-19.6(a)2, 19.9(e), [and] 19.11(a)1, **and 19.16(a)1.**

(l)-(m) (No change.)

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(n) No radiologic technologist **or radiologist assistant** licensed pursuant to this subchapter shall prescribe a radiological examination.

(o) No radiologic technologist **or radiologist assistant** licensed pursuant to this subchapter shall render an interpretation of a radiological examination, **but may report his or her observations relating to the outcome of a radiological examination to a radiologist.**

(p) The license of a radiologic technologist **or radiologist assistant** may be suspended for a fixed period, or may be revoked, or the technologist may be censured, reprimanded or otherwise disciplined in accordance with the provisions and procedures set forth in the Radiologic Technologist Act, if after due process, the Board finds that the **radiologic technologist or radiologist assistant** has committed an act of unethical conduct, as defined in N.J.A.C. 7:28-19.5, or has violated any provision of this chapter, the Radiation Protection Act or the Radiologic Technologist Act. A radiologic technologist **or radiologist assistant** may request a hearing in accordance with N.J.A.C. 7:28-19.[17]**18(b)** if aggrieved by the Board's actions.

7:28-19.4 Scopes of practice

(a) Any person who possesses a valid license in radiologic technology **or as a radiologist assistant** shall exercise proper principles of radiation protection with regard to radiological examinations.

(b) – (h) (No change.)

(i) Any person who possesses a valid radiologist assistant license issued in accordance with N.J.A.C. 7:28-19.16 may perform delegated fluoroscopic procedures and other activities

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as authorized by the BME while under the supervision of a licensed radiologist, at a level of supervision that the BME specifies. See the BME rules at N.J.A.C. 13:35.

7:28-19.5 Unethical conduct

(a) The Board may, in its discretion, consider the acts listed in (a)1 through 13 below as acts of unethical conduct by a person subject to this subchapter. Such acts are subject to sanction pursuant to N.J.S.A. 26:2D-34(a) and 36, as supplemented or amended:

1. Conviction of any crime that reasonably relates to any field of radiologic technology **or radiologist assistant**. For the purpose of this section, a plea of guilty, non vult, no contest, or other such disposition of alleged criminal activity shall be deemed a conviction;

2. Revocation or suspension of a certification, registration, or license to practice radiologic technology **or radiologist assistant** or censure or reprimand by any other state or certifying agency for reasons consistent with this subchapter;

3. Dishonesty, fraud, deception, misrepresentation, or falsification in:

i. Any field relating to radiologic technology **or radiologist assistant** or the education of [radiologic technology] students or in documenting compliance with the Radiation Protection Act, the Radiologic Technologist Act or this chapter as supplemented or amended;

ii. Obtaining a radiologic technology **or radiologist assistant** license, including taking the examination and completing the required education and training;

iii. (No change.)

iv. Statements or documentation regarding the status of any national certification relating to the field of radiologic technology **or radiologist assistant**;

v. (No change.)

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vi. Any records relating to the practice of radiologic technology **or radiologist assistant** or to the education of [radiologic technology] students;

4. (No change.)

5. Practicing [radiologic technology] or reporting to work as a radiologic technologist **or radiologist assistant** while under the influence of alcohol or a controlled dangerous substance as defined in the New Jersey Code of Criminal Justice;

6. Acting in a negligent or incompetent manner relating to radiologic technology **or radiologist assistant** or the education of [radiologic technology] students **as determined by the Board;**

7. Maliciously destroying or stealing property or records relating to the practice of radiologic technology **or radiologist assistant** or to the education of [radiologic technology] students;

8. Failing to exercise due regard for safety, life or health while engaged in the practice of radiologic technology **or radiologist assistant** or the education of [radiologic technology] students;

9. Violating any term limitation, condition or restriction that the Board has placed on his or her radiologic technology **or radiologist assistant** license;

10. (No change.)

11. Impersonating a licensed radiologic technologist **or radiologist assistant;**

12. Discriminating in the practice of radiologic technology **or radiologist assistant** or in the education of [radiologic technology] students as defined in Section 3 of New Jersey Law Against Discrimination in N.J.S.A. 10:5-3, as supplemented or amended; or

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13. [Engaging in the practice of radiologic technology or in the education of students in an unprofessional or unethical manner as determined by the Board.] **Acting in an unprofessional manner, or a manner unbecoming of a radiologic technologist or radiologist assistant or an educator of students, as determined by the Board.**

(b) There is a rebuttable presumption that a person who has been determined by the Board to have committed an act of unethical conduct or has been convicted of a crime involving moral turpitude does not meet the standard of good moral character as required for purposes of N.J.A.C. 7:28-19.6(a)2, 19.9(e), [and] 19.11(a)1, **and 19.16(a)1.**

7:28-19.6 Requirements of applicants for the **radiologic technology** licensing examination

(a) –(b) (No change.)

(c) The Board may determine that an applicant is ineligible for examination if the applicant does not fulfill the requirements of (a) and (b) above or has violated any provision of this chapter, the Radiation Protection Act or the Radiologic Technologist Act. The applicant may request a hearing in accordance with N.J.A.C. 7:28-19.[17]**18(a)**, if aggrieved by the Board's actions.

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

7:28-19.7 Requirements of applicants for **radiologic technology** licensure

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

(d) The Board may determine that an applicant is ineligible for licensure if the applicant does not fulfill the requirements of (a), (b) and (c) above or has violated any provision of this

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chapter, the Radiation Protection Act or the Radiologic Technologist Act. The applicant may request a hearing in accordance with N.J.A.C. 7:28-19.[17]**18(a)**, if aggrieved by the Board's actions.

7:28-19.8 [Temporary,] [c]**Conditional and restricted licenses**

[(a) The Board may, at its discretion, issue a temporary license to any person who has submitted a license application for a license in diagnostic radiologic technology or radiation therapy technology when the issuance of a temporary license may be justified by reason of special circumstances. A temporary license shall be issued only if the Board finds that its issuance will not violate the purposes of the Radiation Protection Act or the Radiologic Technologist Act, or tend to endanger the public health and safety. A temporary license shall expire 90 calendar days after the date the applicant has successfully completed the course of study in radiologic technology. Only one temporary license in a specific licensure category shall be issued to any person.]

[(b)] **(a)** The Board, at its discretion, may place conditions or restrictions on any license including, but not limited to, a condition or restriction limiting the scope of practice of a licensed radiologic technologist **or radiologist assistant**.

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

7:28-19.9 License expiration, reissuance, and renewal

(a) Except as provided at N.J.A.C. 7:28-19.1(c) **or 19.1(d)**, no person or radiologic technologist **or radiologist assistant** shall engage in any scope of practice of radiologic

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technology **or radiologist assistant** without a valid and effective radiologic technology **or radiologist assistant** license issued under this subchapter authorizing the licensee to engage in that scope of practice.

(b) (No change.)

(c) A radiologic technologist **or radiologist assistant** shall inform the Department of any change in his or her name and/or address no later than 30 calendar days after the change.

(d) To maintain a valid license, a radiologic technologist **or radiologist assistant** shall renew his or her license any time prior to its expiration by submitting a renewal application for a radiologic technology **or radiologist assistant** license and the required renewal fee specified in N.J.A.C. 7:28-19.10(a)3.

(e) The Board may deny an application for renewal if the Board has determined that the radiologic technologist **or radiologist assistant** is not of good moral character or has violated any provision of this subchapter, the Radiation Protection Act or the Radiologic Technologist Act. The applicant may request a hearing as provided by N.J.A.C. 7:28-19.[17]18(b) if aggrieved by the Board's action.

(f) A radiologic technologist **or radiologist assistant** who possesses an expired license may apply to have the license reissued, provided that the license has not been expired for five years or more. An individual who wishes to have a license reissued that has been expired less than five years shall submit an application for reissuance and the fee specified in N.J.A.C. 7:28-19.10(a)3. If such individual has not engaged in the practice of radiologic technology **or radiologist assistant** at any time in New Jersey during the period the license was expired, the individual is required only to pay the reissuance fee for the current license period. If such

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individual has engaged in the practice of radiologic technology **or radiologist assistant** at any time in New Jersey during the period the license was expired, in addition to the reissuance fee for the current license period, the individual shall pay the reissuance fee for each previous renewal period, in addition to other sanctions that may be imposed under the Radiation Protection Act or the Radiologic Technologist Act for practicing radiologic technology **or radiologist assistant** without a license.

(g) A radiologic technologist **or radiologist assistant** who possesses a license that has been expired for five or more years may not have that license renewed, but may apply for a license in accordance with N.J.A.C. 7:28-19.7 **or 19.16**.

7:28-19.14 School of radiologic technology: process for approval; provisional approval; probationary approval; termination of approval and other general provisions

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

(l) A school whose application for approval is denied may request a hearing as provided by N.J.A.C. 7:28-19.[17]**18(a)** if aggrieved by the Board's actions.

(m) A Board-approved school whose approval is terminated or reduced to probationary may request a hearing as provided by N.J.A.C. 7:28-19.[17]**18(b)** if aggrieved by the Board's actions.

7:28-19.16 Requirements of applicants for radiologist assistant licensure

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(a) Subject to (b) below, the Board shall issue a license to any applicant who has paid to the Department a fee as specified in N.J.A.C. 7:28-19.10(a)2 and has submitted satisfactory evidence to the Board, verified by oath or affirmation, that the applicant:

1. Is of good moral character;
2. Holds at least a bachelor's degree from an accredited college or university in the United States, or the equivalent;
3. Holds a valid license in diagnostic radiologic technology;
4. Satisfactorily completed a radiologist assistant school approved by American Registry of Radiologic Technologists or another national certifying body approved by the Board; and
5. Holds a valid active radiologist assistant certification from the American Registry of Radiologic Technologists or another national certifying body approved by the Board.

(b) The Board may determine that an applicant is ineligible for licensure if the applicant does not fulfill the requirements of (a)1 through 5 above or has violated any provision of this chapter, the Radiation Protection Act, or the Radiologic Technologist Act. The applicant may request a hearing in accordance with N.J.A.C. 7:28-19.18(a), if aggrieved by the Board's actions.

7:28-19.17 Radiologist assistant schools and Clinical Education Centers

(a) No school shall assign a radiologist assistant student to a New Jersey clinical education center for training as a radiologist assistant unless the school is recognized by the Board.

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(b) In order to be Board-recognized, a radiologist assistant school shall submit a complete application to the Department. The Department will forward all complete applications to the Board for its consideration. If the application is incomplete, the Department shall notify the school. The school shall be provided an opportunity to complete the application within 90 calendar days of receipt of such notice. If after 90 days the application is still incomplete, the Department will forward the incomplete application to the Board for consideration. A complete application shall include:

- 1. The name, address, and contact information of the school;**
- 2. The name and credentials of the program director or directors;**
- 3. Proof that the school is approved by the American Registry of Radiologic Technologist or another accreditation agency recognized by the Board;**
- 4. A demonstration that the school complies with N.J.A.C. 7:28-19.17(c) and (e)2 through 7 ;and**
- 5. The last three annual examination reports of the school's radiologist assistant graduates' first-time examination performance on the American Registry of Radiologic Technologists or another certifying board recognized by the Board. A school that has graduated students for less than three years shall submit the most recent annual examination reports, if any.**

(c) The Board will recognize a radiologist assistant school in which the educational curriculum contains, at a minimum, the following content: patient assessment, management and education; pharmacology and clinical decision making in radiology; contrast media; pathophysiology; radiographic and fluoroscopic procedures; fluoroscopic unit operation and

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safety; radiation safety; radiation biology; health physics; image correlation to anatomy, physiology and pathology; clinical pathways related to radiology; quality of care review and audit; directed readings and research; medico-legal and professional standards and governmental standards; and clinical education, which includes testing to determine clinical competency. The curriculum may follow the American Society of Radiologic Technologists curriculum or any nationally recognized curriculum, provided that it does not conflict with this section.

(d) A radiologist assistant student who is enrolled in and attending a Board-recognized school, who is acting within the school's curriculum and possesses a valid diagnostic radiologic technology license issued by the Board, is permitted to perform delegated fluoroscopic procedures in New Jersey under the appropriate supervision as prescribed in (e)6 below.

(e) Any radiologist assistant school that assigns radiologist assistant students to a clinical education center shall:

1. Be recognized by the Board;
2. Ensure that all assigned students possess and maintain a valid diagnostic radiologic technology license issued by the Board;
3. Develop and implement a log to track fluoroscopic procedures that are performed by each radiologist assistant student. This log shall include, but not be limited to, the name of the student, the procedure performed, the name of the supervisor responsible for the procedure, the type of supervision provided, and the fluoroscopic time used. The school shall ensure that the log is reviewed at least weekly by the supervising radiologist. If a trend of unexplained

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high use of fluoroscopic time is identified, the school shall ensure that corrective action by the supervising radiologist is implemented and recorded in the student's file;

4. Develop and implement an educational plan for competency based clinical education, which shall include, but not be limited to, didactic and laboratory instruction, clinical practice, clinical competency testing and remediation for failed competency evaluations. The school shall ensure that no person other than a radiologist determines clinical competency;

5. Prior to the start of the assignment, inform the Department of the location where the radiologist assistant student will be assigned for clinical education, the name of each supervising radiologist, and the length of the assignment;

6. Ensure that all assigned radiologist assistant students perform delegated fluoroscopic procedures as prescribed below under the appropriate level of supervision of a radiologist or a radiologist assistant:

i. Only a radiologist can determine whether a student is clinically competent to perform a delegated fluoroscopic procedure.

ii. Subject to iii below, a student shall perform each delegated fluoroscopic procedure under direct supervision as defined at N.J.A.C. 7:28-19.2 by a supervising radiologist or a radiologist assistant who is under the supervision of a radiologist, in accordance with the requirements of the Board of Medical Examiners at N.J.A.C. 13:35.

iii. If expressly allowed by the rules of the Board of Medical Examiners, N.J.A.C. 13:35, a student who is determined to be clinically competent in a given delegated fluoroscopic procedure may perform that procedure without direct supervision, provided that a supervising radiologist or a radiologist assistant under the supervision of a radiologist is on

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site and immediately available to furnish assistance and direction throughout the performance of the procedure; and

7. Provide remedial instruction for any procedure that is performed by a radiologist assistant student and found to be unacceptable by the supervising radiologist or radiologist assistant. If the student's performance of the procedure is determined to be unacceptable after a student has been determined to be clinically competent, the school shall ensure that the student's performance of the procedure is directly supervised as required in (f)5ii above until a radiologist determines that the student is clinically competent to perform that procedure. All remedial instruction shall be documented in the student's file.

(f) A clinical education center that provides clinical education to radiologist assistant students shall comply with (e)2 through 7 above.

(g) In order to maintain Board recognition, a school shall:

1. Comply with N.J.A.C. 7:28-19.17;
2. Maintain approved by the American Registry of Radiologic Technologist or another accreditation agency recognized by the Board;
3. Inform the Department within 15 calendar days of any change that could adversely affect the school's ability to fulfill its ability to provide students with appropriate didactic and laboratory instruction and clinical assignments, or has altered how the school operates, since its recognition by the Board. Such changes include, but are not limited to, a change in approval status as required in 2 above or change of curriculum;
4. Permit one or more Board representatives or Department employees to conduct a site inspection and make available such information, records, or persons that may be needed

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to determine compliance with the requirements with N.J.A.C. 7:28-19.17; and

5. Not have more than two consecutive years in which the first-time pass rate is below 75 percent for students taking the American Registry of Radiologic Technologists examination or another certifying board recognized by the Board.

6. A school that is found not in compliance with 1 through 5 above may have its recognition terminated.

(h) A school whose application for recognition is denied, or a Board-recognized school whose recognition has been terminated, may request a hearing as provided by N.J.A.C. 7:28-19.18.

(i) A list of Board-recognized radiologist assistant schools may be obtained from the Bureau of X-ray Compliance website at www.xray.nj.gov.

7:28-19.[17] 18 Procedures for requesting and conducting adjudicatory hearings

(a) Subject to the limitation on third-party hearing rights specified in (f) below, an applicant for examination, license, or Board[-]approval for a radiologic technology school or **Board recognition for a radiologist assistant school**, or any person who believes that he or she is aggrieved by any Board finding as it relates to such an application may contest the decision and request a contested case hearing. The request shall be made in writing to the Department at the address listed in (e) below within 20 calendar days from receipt of the Board's findings. The person requesting the hearing shall include the following information in each hearing request:

1.- 8. (No change.)

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(b) Subject to the limitation on third-party hearing rights specified in (f) below, a licensed **radiologic technologist or radiologist assistant**, applicant for license renewal, or Board-approved school **for radiologic technology, or Board-recognized radiologist assistant school**, or any person who believes that he or she is aggrieved by any Board finding or an administrative order issued pursuant to this subchapter may contest the finding or administrative order and request a contested case hearing. The person requesting the hearing shall submit an original request in writing to the Department at the address at (e) below within 20 calendar days after the violator's receipt of the administrative order. The person requesting the hearing shall include the following information in each hearing request:

1.-8. (No change.)

(c)-(f) (No change.)

Recodify N.J.A.C. 7:28-19.18 as **19.19** (No change in text.)

SUBCHAPTER 24 NUCLEAR MEDICINE AND FUSION IMAGING COMPUTED TOMOGRAPHY
(CT) TECHNOLOGY

7:28-24.11 Fees

(a) Any person who submits a nuclear medicine technology application for an examination, license, or license renewal to the Department shall include as an integral part of the application a service fee as follows:

1. Examination application fee: [\$75.00] **\$160.00**;

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2. Initial license application fee: [~~\$40.00~~] **\$60.00**;

3. Biennial license renewal fee: [~~\$40.00.~~] **\$90.00**;

4. License reprint fee: \$20.00

(b) Any person who submits a fusion imaging CT technology application for an examination, license, or license renewal to the Department shall include as an integral part of the application a service fee as follows:

1. Examination application fee: [~~\$75.00~~] **\$160.00**;

2. Initial license application fee: [~~\$40.00~~] **\$60.00**;

3. Biennial license renewal fee: [~~\$40.00.~~] **\$90.00**;

4. License reprint fee: \$20.00

(c) (No change)

SUBCHAPTER 61. PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIALS

7:28-61.1 Incorporation by reference

(a) (No change.)

(b) The following provision of 10 CFR 71 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross-referenced citation is not incorporated by virtue of the cross reference.

1.-20. (No change.)

21. 10 CFR 71.70, Incorporation by reference;

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Recodify existing 21-25 as **22-26** (No change in text.)

27. 10 CFR 71.85 (a)-(c);

28. 10 CFR 71.91(b);

Recodify existing 26 – 36. as **29-38** (No change in text.)

(c) In addition to the changes outlined in N.J.A.C. 7:28-1.6, the following provisions of 10 CFR 71 are incorporated by reference with the specified changes:

1. "Commission," "Nuclear Regulatory Commission," "NRC," and "U.S. Nuclear Regulatory Commission," as used in the provisions of Part 71 of the Code of Federal Regulations that are incorporated by reference, means the Department, except at:

i.-ii. (No change.)

iii. 10 CFR 71.17(e);

iv.-viii. (No change.)

2.-12. (No change.)

13. 10 CFR 71.17(c)(3), Do not replace the address as otherwise indicated in N.J.A.C. 7:28-1.6 Table 1;

14. 10 CFR 71.85 (d), replace “in paragraphs (a) through (c) of this section,” with “of paragraphs (a) through (c) of 10 CFR 71.85”;

15. 10 CFR 91(c) and (d), delete “certificate holder, and an applicant for a CoC”;

Recodify existing 13 as **16** (No change in text.)

17. 10 CFR 71.101(a) delete “Each certificate holder and applicant for a package approval is responsible for satisfying the quality assurance requirements that

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apply to design, fabrication, testing, and modification of packaging subject to this subpart.”;

18. 10 CFR 71.101(b) delete “certificate holder, and an applicant for a CoC”;

Recodify existing 15-16 as **19-20** (No change in text.)

21. 10 CFR 71.103(a) delete “certificate holder, and applicant for a Certificate of Compliance” in both instances;

22. 10 CFR 71.135 delete “certificate holder, and applicant for a Certificate of Compliance”;

(d) – (e) (No change.)

SUBCHAPTER 64 RADIOACTIVE MATERIALS LICENSE FEES

7:28-64.2 Schedule of fees

(a) through (h) (No change.)

Table 1

Schedule of Source, Special Nuclear, and Byproduct Material Annual Fees

<u>FEE CATEGORY</u>	<u>LICENSE TYPE</u>	<u>ANNUAL FEE (\$)</u>
1. (No change.)		
2.	Source Material	
A. (No change.)		
B.	Licenses that authorize only the possession, use, and/or installation of source	600

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material for shielding, **or**
licenses that authorize
possession, storage and use
of reference sources
containing source material
for calibration, proficiency
testing, quality assurance
and/or in the manufacturing
of exempt devices.

C. (No change.)

3. through 15. (No change.)

16.	Reciprocity	50 percent of annual fee of applicable category, rounded to the nearest \$5.00.
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17. through 18. (No change.)

Table 2

Schedule of Radioactive Materials Annual Fees

<u>FEE CATEGORY</u>	<u>LICENSE TYPE</u>	<u>ANNUAL FEE (\$)</u>
1. (No change.)		

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2. Amendments

A. through B. (No change.)

C.

1. (No change.)

2. [Request to amend a license \$410

requiring review and a site visit, but not limited to, facility move or addition of a process.]**Request to amend a license requiring a technical review, whether or not a site visit is also required. This includes, but is not limited to, a facility move or the addition of a process.**

3. through 8. (No change.)

7:28-64.10 Annual adjustment of fees

(a) Each year the annual fees in Tables 1 and 2 in N.J.A.C. 7:28-64.2 will be adjusted by the previous 12-month inflation factor. The inflation factor is calculated from the Consumer Price Index, all urban consumers, U.S. city average (CPI-U), published monthly by the U.S.

Department of Labor, Bureau of Labor Statistics. The CPI-U for purposes of calculating the

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inflation factor shall be the CPI-U for the 12-month period ending May 31. **The resulting fee will be rounded up or down to the nearest increment of \$5.00.**

(b) – (d) (No change.)