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(Includes adopted rules filed through November 20, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 21, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT NOVEMBER 18, 1991

RULEMAKING IN THIS ISSUE

EXECUTIVE ORDERS

RULE PROPOSALS

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **January 15, 1992.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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RULE ADOPTIONS

PUBLIC NOTICES

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NEW JERSEY REGISTER

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

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 47(1991)
New Jersey Quality Achievement Award

Issued: November 14, 1991.
Effective: November 14, 1991.
Expiration: Indefinite.

WHEREAS, the quality of New Jersey products and services are essential to New Jersey's success in today's highly competitive, global economy; and

WHEREAS, quality initiatives in all aspects of work, from manufacturing to health services, education to government services, cannot only improve the economy but can contribute significantly to the quality of life in New Jersey; and

WHEREAS, the value of quality improvement processes has been clearly and repeatedly demonstrated in both the public and private sectors; and

WHEREAS, these quality programs must be encouraged, shared and adapted wherever possible to improve New Jersey's competitive stance and quality of life; and

WHEREAS, the Malcolm Baldrige National Quality Award has demonstrated that an awards program can provide a valuable means of self-assessment as well as elevate quality standards on a national level; and

WHEREAS, the fundamental success of the Malcolm Baldrige National Quality Award is attributable to an active partnership between the public and private sectors.

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Commissioner of the Department of Commerce and Economic Development, or his designee, shall cooperate with Quality New Jersey Inc. in the development, administration and promotion of a New Jersey Quality Achievement Award.

2. The Commissioner of the Department of Commerce and Economic Development, in cooperation with Quality New Jersey and the Office of the Governor, shall assist in the recruitment of an Advisory Board to the New Jersey Quality Achievement Award which shall support and encourage all aspects of the awards program.

3. The Commissioner of the Department of Commerce and Economic Development shall carry out the directives contained in this Order as long as the awards program remains in existence.

4. The Commissioner of the Department of Commerce and Economic Development shall implement this Executive Order, and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of the Department of Commerce and Economic Development and to make available to him such information, personnel and assistance as necessary to accomplish the purposes of this Order.

5. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 48(1991)
Termination of Limited State of Emergency in Atlantic, Cape May, Monmouth and Ocean Counties

Issued: November 19, 1991.
Effective: November 19, 1991.

WHEREAS, Executive Order No. 46, issued on October 31, 1991 declared a limited State of Emergency in Atlantic, Cape May, Monmouth, and Ocean Counties in response to a storm which caused severe weather conditions which threatened the health, safety and resources of residents; and

WHEREAS, the immediate threat posed by this storm has passed and ceased to endanger the health, safety or resources of residents;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, declare that the limited State of Emergency is hereby terminated and that Executive Order No. 46 is rescinded.

I wish to express my gratitude to the people of the affected areas for the manner in which they cooperated during the limited State of Emergency, and to law enforcement, military and emergency response personnel for their untiring efforts.

This ORDER shall take effect immediately.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Division of Consumer Affairs
Lemon Law Hearings; Exceptions
Reproposed Repeal and New Rule: N.J.A.C. 1:13A-18.2

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1991-614.

Submit comments by January 15, 1992 to:
Jeff S. Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On August 5, 1991 (see 23 N.J.R. 2208(a)), the Office of Administrative Law (OAL) proposed to repeal N.J.A.C. 1:13A-18.2 which prohibits exceptions in lemon law cases and to propose a new rule with a provision permitting the filing of exceptions no later than seven days after the date the initial decision was mailed to the parties. The Office of Administrative Law special rules now do not permit exceptions or replies to be filed in these cases because the Director of the Division of Consumer Affairs has only 10 days from receipt of the initial decision to adopt, reject or modify the decision. However, since parties have, in fact, been contacting the Division and attempting to comment on the initial decision, the OAL now believes that exceptions should be permitted. The OAL had hoped that the August 5 proposal adequately balanced the need of the parties to comment on an initial decision with the requirement that the decision be promptly issued.

The OAL received three comments on that proposal. The Acting Director of the Division of Consumer Affairs agreed that it might be helpful to permit parties to file exceptions, but expressed concern that recent cutbacks in staff coupled with the limited review period made the review of exceptions a burden that the Division could not manage. Chrysler Corporation supported the proposal, but suggested that replies and cross-exceptions also be permitted. The Department of the Public Advocate took no position on the proposal.

After further discussions with this office, the Division of Consumer Affairs concurs that provision should be made for filing exceptions. However, the Division remains concerned about the additional work which will be involved. Therefore, OAL has decided to repropose this rule which supersedes the previous proposal, continuing to provide for exceptions within seven days of the date the initial decision was mailed, but limiting the number of pages for those exceptions. OAL believes that parties should be able to express disagreements with the initial decision within three pages.

Given the problems already described—the short time period for decision review and the reduced Division staff—the OAL declines to provide for replies and cross-exceptions. Any party wishing to comment on the judge's decision should do so within the seven-day timeframe. It is impractical to provide a time for a response to those exceptions within the 10 days allotted to the Division Director for a decision.

Social Impact

The reproposed repeal and new rule provides the parties with an opportunity to comment on the initial decision while requiring that the exceptions be filed within an extremely short timeframe. The reproposed repeal and new rule provides parties with greater opportunity to participate in the adjudicatory process and provides the Division with the opportunity to receive comments from the parties while attempting to ensure that the agency still has time to review the matter.

Economic Impact

Parties wishing to avail themselves of the opportunity to file exceptions may have to incur some costs to ensure that the comments are received in a timely manner by the agency. In some cases these costs may include overnight delivery, fax costs or the cost of a personal delivery.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the reproposed repeal and new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As part of an adjudicatory process, the proposed repeal and new rule permits, within a specified timeframe, any party, including small businesses, to file an exception.

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

1:13A-18.2 Exceptions; replies

[No exceptions or replies to the initial decision shall be permitted.]

(a) If a party wishes to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Consumer Affairs, the judge and to all parties. Exceptions must be received by the Division of Consumer Affairs no later than seven days after the date the initial decision was mailed to the parties. Exceptions shall not exceed three pages in length. In all other respects, exceptions shall conform to the requirements of N.J.A.C. 1:1-18.4(b) and (c).

(b) No replies or cross-exceptions shall be permitted.

BANKING

(b)

OFFICE OF REGULATORY AFFAIRS

Consumer Checking Accounts
Proposed New Rules: N.J.A.C. 3:1-19

Authority: N.J.S.A. 17:16N-1, specifically 17:16N-3.
Proposal Number: PRN 1991-620.

A **public hearing** concerning these proposed new rules will be held on January 10, 1992 at 10 A.M. at the following address:
Camden City Hall
City Council Chambers
6th and Market Streets
Camden, New Jersey 08102

Those wishing to attend or to speak are asked to contact the Department by phone at (609) 292-9782 or in writing at the following address.

Submit written comments by January 15, 1992 to:
Robert M. Jaworski
Assistant Commissioner
Division of Regulatory Affairs
Department of Banking
20 W. State Street
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In enacting the Consumer Checking Act (the "Act", P.L.1991, c.210 codified at N.J.S.A. 17:16N-1 et seq., effective July 16, 1991), the Legislature found and declared that increased costs in recent years have made it increasingly difficult for many of the State's consumers, particularly young, low-income and elderly consumers, to afford basic checking services, and that those without access to banking and financial services due to increased costs are forced to operate on a cash-only basis, placing them at greater risk for their personal safety and well-being, and to use relatively high cost check-cashing services to cash social security or welfare benefit checks, thereby undermining the effectiveness of these public assistance programs. N.J.S.A. 17:16N-1.

The Act requires New Jersey Consumer Checking Accounts to be made available to New Jersey residents who request one, although the Department has concluded that a credit union may require a consumer to become a member of the credit union in accordance with the credit union's rules of membership before being required to offer the consumer a New Jersey Consumer Checking Account. The Act further specifies that the accounts are to be used primarily for personal, family or household purposes.

The Commissioner is obligated, by the Act, to establish the features of the accounts in regulation. Depository institutions, including Federally-chartered ones, who wish to offer an account the features of which do not conform to those specified in these rules are entitled under the Act to apply to the Commissioner for approval to offer such account in lieu of the New Jersey Consumer Checking Account defined by the rules.

No depository institution is required by the Act to offer a New Jersey Consumer Checking Account at a cost to customers which is below the cost to the depository institution to provide it. Accordingly, the features of New Jersey Consumer Checking Accounts which would be established by these rules are intended to define an account which will not cost depository institutions more to provide the account than they receive in fees from the customers of those accounts. In the event a depository institution decides to terminate an account because the costs associated with it exceeds revenues, the rules would require the depository institution to notify the Department at least 30 days prior to the discontinuance and to provide data supporting its conclusions.

Under the Act, the Commissioner is obligated to survey the terms and conditions of low cost checking accounts currently available to consumers in New Jersey and to consider those terms and conditions when establishing the features of a New Jersey Consumer Checking Account or approving a non-conforming account for use in lieu thereof. Last summer, in anticipation of this requirement, the Commissioner surveyed all depository institutions in New Jersey to ascertain what types of basic checking accounts they offered and the costs associated with those accounts. The survey was completed in August, 1990.

The responses indicated that about 25 percent of New Jersey's banks, mostly the larger ones, offer a checking account which could be loosely classified as "low cost." These banks operate roughly three-fourths of the commercial bank offices in this State and control more than 60 percent of Statewide commercial bank assets.

The survey defined "low cost accounts" as accounts having any of the following characteristics:

1. Free checking, with the only charge being for the printing of checks, but no more than $0.05 per check.

2. No minimum balance requirement or monthly charge, but with a charge of $0.50 per check.

3. No minimum balance requirement, but with a monthly charge of $1.00 or $1.25, or $1.50 and a charge of $0.25 or $0.15 or $0.20, respectively per check.

4. No minimum balance requirement, but with a monthly charge of $2.00 and and per-check fee schedules as follows:

a. 10 free checks, then $0.25 per check
b. Eight free checks, then $0.75 per check
c. Six free checks, then $0.75 per check
d. Five free checks, then $0.20 to $0.50 per check

5. A monthly charge of $3.00 when the account drops below a specified minimum, but without additional per-check charges.

6. No minimum balance requirement, but with a monthly charge of $3.00, 10 free checks, then $.50 per additional check.

These fee schedules, excluding the totally free checking accounts, would result in monthly charges, for an account on which five or six checks are written monthly, of between $2.00 and $3.00; for seven checks, between $2.00 and $3.50; for eight checks, between $2.00 and $4.00; for 10 checks, between $2.00 and $5.00; and for 15 checks, between $3.00 and $8.75.

Assuming a $0.43 per-check cost to the depository institution, excluding the expense of printing the checks, all of the "low-cost" accounts outlined above would result in at least a marginal profit to the depository institution based upon five checks per month; roughly half would lose money based on eight checks per month; and most would lose money based upon 15 checks per month. If the $0.43 per-check cost to depositories is understated and is nearer to $0.54 per check, none of these so-called "low cost" accounts would be profitable.

On September 3, 1991, the Department published a pre-proposal in the New Jersey register at 23 N.J.R. 2617(a) inviting preliminary comments on the features which "New Jersey Consumer Checking Accounts" should have. The pre-proposal specifically asked for comment on:

(1) The initial deposit amount, if any, necessary to open a New Jersey Consumer Checking Account;

(2) The maximum amount, if any, required as a minimum balance necessary to maintain the account;

(3) The number of checks, if any, that may be used, without charge, to withdraw funds from the account within a periodic cycle;

(4) The number of other withdrawals, if any, that may be made, without charge, by a method other than check in a periodic cycle;

(5) A maximum amount, if any, that may be charged for maintaining the account per periodic cycle;

(6) The maximum number of deposits, if any, that may be made, without charge, in a periodic cycle; and

(7) A maximum amount that may be charged for each transaction in excess of the number of transactions permitted in paragraphs (3), (4) and (6) above.

The comment period for the pre-proposal ended October 3, 1991. The table immediately following contains the responses of the five parties who provided quantitative comments on the features of the accounts (the New Jersey Bankers Association, the New Jersey Savings League, Roma Federal Savings Bank, First Family Federal S&LA, and the New Jersey Public Interest Research Group).

Presented in tabular form, the comments were as follows:

	NJ Bankers Association	NJ Savings League	Roma Fed S&LA	First Family Fed S&LA	PIRG
(1)	$200.00	$100.00	$100.00	$100.00	$10.00
(2)	$200.00	$100.00	"no more than $500.00"	$100.00	0
(3)	5 and 10*	10	5	no limit	8
(4)	Include with checks unless ATM withdrawals	No specific limit, but may charge for ATM use	No limit if minimum balance required	Normal transaction fees (e.g., wire transfers)	No limit
(5)	$5.00	$3.00	$5.00	$3.00 if balance under $100.00	$2.75
(6)	4	No limit if made in person, but may charge for ATM use	No limit	No limit	No limit
(7-3)	$0.50/$1.00*	cost of the transaction	$1.00	none	$0.25
(7-4)	$0.50/$1.00*	none	$1.00	none	none
(7-6)	$0.50/$1.00*	none	$1.00	none	none

*Note: The NJBA committee was split and submitted two recommendations.

Key
(1) The initial deposit amount necessary to open an account.
(2) The minimum balance requirement for maintaining an account.
(3) The maximum number of checks that may be written per month without charge.
(4) The maximum number of monthly non-check withdrawals without charge.
(5) The maximum monthly maintenance charge.
(6) The maximum number of monthly deposits without charge.
(7) The maximum charge for each transaction in excess of the number set forth in (3), (4) and (6) above.

On the basis of these comments, the Department proposes the criteria for New Jersey Consumer Checking Accounts which are set forth in 3:1-19 below. The basic criteria would be (1) $100.00 initial deposit amount to open an account, (2) $25.00 minimum balance required to maintain the account, (3) eight free checks per periodic cycle, (4) Unlimited number of non-check withdrawals per periodic cycle, (5) A $3.00 limit on the periodic cycle service charge, (6) Unlimited number of deposits per periodic cycle, (7-3) $0.50 limit on checks over eight, and (7-5) $5.00 the Department limit on the periodic cycle service charge when the minimum balance falls below $25.00. In arriving at these criteria, the Department first estimated the cost to the depository per month at $0.43 per check, based on responses to the Department's survey of low-cost checking accounts:

5 checks	10 checks	15 checks
$2.15	$4.30	$6.45

On the basis of this per-check cost, the Department estimates the income to the depository from New Jersey Consumer Checking Accounts to be as follows:

5 checks	10 checks	15 checks
$3.00	$4.00	$6.50

In addition to their comments regarding the characteristics of the accounts, the commenters also remarked about other aspects of the law as follows and the Department responded.

The New Jersey Savings League:

(1) Inquired whether qualifying accounts must be called "New Jersey Consumer Checking Accounts" and recommended against putting such wording on the checks of a customer who had this type of account;

The Department thinks that the accounts should be labelled as "New Jersey Consumer Checking Accounts" in advertising brochures and representations to consumers in order to assist them to utilize the accounts. However, this designation should not be placed on the checks themselves as this is not done commonly with other types of checking accounts;

(2) Recommended that the Department of Banking proposed a standardized notice so that there be uniformity in the advertising of such accounts;

The Department thinks it best to allow depository institutions to advertise the accounts in the way they see fit;

(3) Recommended provisions to increase charges automatically in response to rises in the Consumer Price Index.

The Department agrees with this suggestion and has added a provision which would allow such adjustments.

The New Jersey Bankers Association:

(1) Advised that the language in the first full paragraph at the top of page 2 of the pre-proposal is not taken from the Act itself but from an earlier draft of the law;

The Department apologizes for its error in using language which had been deleted from the enacted version of the bill;

(2) Recommended the provision that ATM fees or charges on New Jersey Consumer Checking Accounts should not exceed the depository's usual ATM fees or charges for regular checking account holders, with a similar provision for check and deposit slip charges;

The Department agrees with this suggestion and has provided appropriate provisions;

(3) Recommended that the rules expire in three years rather than five, with fees to be revised in accordance with the Consumer Price Index;

The Department agrees with the provision to have the fees adjustable in accordance with the Consumer Price Index, but it therefore thinks that having the rules expire in three years is unnecessary and inconsistent with the intent of the Act;

(4) Recommended that the statutory language relating to credit unions be clarified so that their New Jersey Consumer Checking Accounts would be stated as available to members only and not to "any New Jersey resident who requests one." The New Jersey Bankers Association was joined in this recommendation by the New Jersey Credit Union Leaque;

The Department agrees with this suggestion and has added an appropriate provision.

The Department asked for, and received, preliminary comments regarding the applicability of the Act to Federally-chartered depositories. Some commenters questioned whether the Act was applicable at all while others suggested that, under principles of Federal preemption, a Federally-chartered depository's primary regulator, rather than the Department, is the appropriate agency to which that depository should apply for approval for non-conforming accounts.

The postion of the Department is that Federally-chartered depository institutions are required to comply with the terms as set forth in the clear language of the statute. However, the Department recognizes the role of Federal regulators in enforcing compliance with the Act. The Department will entertain proposals from both State and Federally-chartered depository institutions regarding seeking approval of non-conforming accounts.

Social Impact

The goal of the legislation is to make available low-cost, basic checking accounts to the residents of this State. The accounts will meet the needs of citizens for checking accounts which can be used to make a small number of transactions for personal, family or household purposes.

Economic Impact

The statute provides that no depository institution is required to offer a New Jersey Consumer Checking Account if the revenue which the depository institution obtains through fees charged to the customer is less than the cost to the institution to provide the account. The intention is to assure that, by being required to offer these accounts, depository institutions are not thereby being required to lose money on them. The proposed rules reiterate this provision.

Regulatory Flexiblity Statement

Because of the nature of the financial services industry, many depository institutions, both large and small, fall within the definition of "small business" as set forth in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Neither N.J.S.A. 17:16N-1 et seq. nor these rules impose any special reporting, bookkeeping, or other compliance requirements on depository institutions except for generating a pamphlet explaining New Jersey Consumer Checking Accounts, N.J.S.A. 17:16N-5. Because depository institutions commonly generate a variety of similar pamphlets in the normal course of business, the production of such a pamphlet for this type of account can be done through existing procedures and will not, therefore, burden the depository institution.

The depository institution is required to keep accurate records of New Jersey Consumer Checking accounts; however, this recordkeeping (for example, counting of transactions) is no more elaborate than is common with checking accounts generally. As these are activities which depository institutions perform normally in the course of their business, they do not represent a special burden associated with this type of account.

As a final way that depository institutions can minimize any burdens of providing the accounts, the statute and the rules provide that they may propose non-conforming, individualized New Jersey Consumer Accounts to the Commissioner for approval to satisfy the requirements of the Act.

Depository institutions are not required to provide a greater value in servicing these accounts than the amount of the fees which they collect in connection with the accounts. In short, if the depository institution can establish that it is losing money providing the accounts, it may cease to offer them after following the procedure outlined in the rules.

For the above reasons, the Department rejected establishing different standards for depository institutions which fall within the definition of "small business."

Full text of the proposed new rules follows:

SUBCHAPTER 19. NEW JERSEY CONSUMER CHECKING ACCOUNTS

3:1-19.1 Definitions

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

"Account agreement" means the agreement governing a New Jersey Consumer Checking Account.

"ATM" means automated teller machine.

"Consumer" means a natural person who resides in this State, except that a credit union may require that the natural person be a member of the credit union in accordance with the credit union's rules of membership.

"Customer" means a consumer who has a New Jersey Consumer Checking Account.

"New Jersey Consumer Checking Account" or "account" means a deposit account established pursuant to N.J.S.A. 17:16N-3 and with respect to which the account holder is permitted to make payments to third parties or others by check.

"Non-conforming account" means a New Jersey Consumer Checking account which does not contain the characteristics set forth in N.J.A.C. 3:1-19.2 but has been individually approved by the Commissioner pursuant to N.J.A.C. 3:1-19.3.

3:1-19.2 Features of New Jersey Consumer Checking Accounts

(a) A New Jersey Consumer Checking Account which is subject to subsection c of N.J.S.A. 17:16N-3 shall have all of the following features:

1. The account agreement shall not require more than $100.00 as an initial deposit amount, except that the account agreement may permit the depository institution to adjust this monetary amount to reflect monthly or other changes in the Consumer Price Index for All Urban Consumers for the United States as a whole, using the figure for the entire year 1992 as a base;

2. The account agreement shall not require the customer to maintain a minimum balance of more than $25.00 in order to maintain the account, except that the account agreement may permit the depository institution to adjust this monetary amount to reflect monthly or other changes in the Consumer Price Index for All Urban Consumers for the United States as a whole, using the figure for the entire year 1992 as a base;

3. The account agreement shall allow the customer to make at least eight withdrawals by check per periodic cycle from the account without charge. This minimum number of withdrawals is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the minimum number shall be adjusted accordingly;

4. The account agreement shall not authorize a charge exceeding $0.50 for each transaction in excess of the number required by (a)3 above, except that the account agreement may permit the depository institution to adjust this monetary amount to reflect monthly or other changes in the Consumer Price Index for All Urban Consumers for the United States as a whole, using the figure for the entire year 1992 as a base;

5. The account agreement shall allow a customer to make unlimited withdrawals by withdrawal slip from the account without charge;

6. The account agreement shall allow a customer to make unlimited deposits into the account without charge;

7. The account agreement shall not authorize a charge for maintaining the account which exceeds $3.00 per periodic cycle or $5.00 in any periodic cycle in which the minimum balance falls below $25.00, except that the account agreement may permit the depository institution to adjust the monetary amounts to reflect monthly or other changes in the Consumer Price Index for All Urban Consumers for the United States as a whole, using the figure for the entire year 1992 as a base. Also, the maximum amount of the charge is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the maximum amount shall be adjusted accordingly;

8. The account agreement shall not authorize a charge to the customer for printing checks for the account which is more than its charge to its regular checking account holders for that service; and

9. Notwithstanding any other limitations on fees in this section, the account agreement may provide that the depository institution may charge customers for ATM usage and for banking services not specified in this chapter if, and to the same degree that, it charges its regular checking account holders for that usage and services.

3:1-19.3 Non-conforming accounts

(a) A depository institution may apply to the Commissioner for approval of any account, which does not conform to the criteria set forth in N.J.A.C. 3:1-19.2, as a New Jersey Consumer Checking Account.

(b) Each application for approval of a non-conforming account shall provide:

1. The initial deposit amount necessary to open the account;

2. The minimum balance required to maintain the account;

3. The maximum number of checks that may be written per month without charge;

4. The maximum number of non-check withdrawals per month without charge;

5. The maximum maintenance charge per month;

6. The maximum number of deposits which may be made per month without charge;

7. The maximum per transaction charge per month for transactions in excess of those specified in (b)3, 4, and 6 above.

8. The length of the periodic cycle of the account; and

9. Any other fees which will be charged the customer.

(c) In deciding whether to approve such an account, the Commissioner shall consider whether the account meets the stated purpose of the Act to make New Jersey Consumer Checking Accounts available to consumers at low cost, and has substantially equivalent characteristics to the account in N.J.A.C. 3:1-19.2.

(d) The Commissioner shall issue a decision on an application for approval of non-conforming accounts within 30 days of receipt of the application.

3:1-19.4 Closing New Jersey Consumer Checking Accounts

(a) A depository institution may refuse to open or may close a New Jersey Consumer Checking Account for the following reasons:

1. For fraudulent activity or overdrafts under the same standards which it applies to holders of its regular checking accounts;

2. If the consumer has a regular checking account or another New Jersey Consumer Checking Account in that depository institution or in any other depository institution;

3. If the consumer makes an intentional material misrepresentation to the depository institution in connection with the account; or

4. If the fees and other revenue obtained from the account are less than the cost to the depository institution to provide the account provided that the depository institution complies with the requirements of (b) through (d) below.

(b) No depository institution is required to offer a New Jersey Consumer Checking Account at a cost to a customer which is less than the cost to the depository institution to provide the account. In computing the cost of the account, the depository institution shall deduct the investment value of deposits in the account.

(c) A depository institution which determines that the revenue which it obtains through fees which it charges to the account holder is less than its cost for offering a New Jersey Consumer Checking Account, and which intends to discontinue offering the account on that basis, shall notify the Department 30 days prior to such discontinuance, and shall submit with such notice the data supporting its determination regarding cost.

(d) A depository institution which discontinues an account pursuant to (c) above shall not thereby be relieved from its statutory obligation to provide a New Jersey Consumer Checking Account to consumers unless it provides data supporting a conclusion by the Commissioner that the depository institution would lose money on any account which would satisfy the requirements of P.L.1991, c.210.

3:1-19.5 Consumer information requirements

(a) A depository institution which is required by P.L.1991, c.210 to offer a New Jersey Consumer Checking Account shall provide reasonable in-person information and assistance to customers regarding New Jersey Consumer Checking Accounts, checking accounts generally, and related financial services.

(b) A depository institution which is required by P.L.1991, c.210 to offer a New Jersey Consumer Checking Account shall post in a conspicuous place in the lobby of each office of the depository institution a sign and make material available in the public area which indicates that the office offers New Jersey Consumer Checking Accounts. The notice and material shall explain the material features and limitations of such an account.

(a)

OFFICE OF REGULATORY AFFAIRS

Notice of Extension of Comment Period
Bank Holding Companies

Proposed Readoption with Amendments: N.J.A.C. 3:13

Take notice that the Department of Banking has extended the comment period until December 22, 1991 for the proposed readoption with amendments of the rules concerning bank holding companies which was published in the October 7, 1991 New Jersey Register at 23 N.J.R. 2904(a).

Submit comments by December 22, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

(b)

OFFICE OF REGULATORY AFFAIRS

Credit Unions

Proposed Readoption: N.J.A.C. 3:21

Authorized By: Jeff Connor, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:13-90.
Proposal Number: PRN 1991-628.

Submit comments by January 15, 1992 to:
Robert M. Jaworski, Assistant Commissioner
Office of Regulatory Affairs
Department of Banking
20 W. State Street, CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 3:21, Credit Unions, expires February 2, 1992. Therefore, the Department is proposing the readoption of these rules concerning credit unions.

The chapter is currently composed of one section, N.J.A.C. 3:21-2.1, which gives State-chartered credit unions parity with Federally-chartered credit unions. Specifically, it provides that State-chartered credit unions may exercise any power, right, benefit, or privilege which is exercised by Federally-chartered credit unions after the expiration of the 30th day following the adoption of the regulation by the appropriate Federal authority unless the Commissioner provides notice that such power is not to be granted to State-chartered credit unions. The Department has determined that the current rule is satisfactory for the general purpose for which it was enacted.

The Department proposed, in the October 7, 1991 edition of the New Jersey Register (23 N.J.R. 2905(a)), new rules which would specify the characteristics of low-income credit unions. The Department expects to adopt those proposed new rules before the final readoption of Chapter 21. The new subchapter 1 may thereby become a part of this readoption.

Social Impact

The parity power which is conferred by N.J.A.C. 3:21-2.1 allows State-chartered credit unions to compete on an equal basis with their Federal counterparts. As a result, they will not be put at a competitive disadvantage by developments in Federal law.

State-chartered credit unions provide banking services to many residents of this State on a non-profit basis. It is important that the competitive position of this industry be maintained.

Economic Impact

Parity helps State-chartered institutions to be competitive with federally-chartered institutions and therefore to preserve the economic vitality of the industry. It also helps State-chartered credit unions to provide a full range of services to their customers and thereby to benefit the economy of the State.

Regulatory Flexibility Statement

All State-chartered credit unions are small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, this rule imposes no burdens on credit unions, but rather provides them powers which they would otherwise not have. Therefore, no further regulatory flexibility analysis is needed.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:21.

(c)

OFFICE OF REGULATORY AFFAIRS

Notice of Extension of Comment Period
Mortgage Bankers and Brokers

Proposed Amendments: N.J.A.C. 3:38-1.9 and 4.1
Proposed New Rules: N.J.A.C. 3:38-1.1 and 3:38-5

Take notice that the Department of Banking has extended the comment period until January 17, 1992 for the proposed adoption of amendments and new rules concerning the licensing requirements for those engaging in mortgage banking activities which were published in the November 18, 1991 New Jersey Register at 23 N.J.R. 3406(b).

Submit comments by January 17, 1992 to:
Robert M. Jaworski, Assistant Commissioner
Office of Regulatory Affairs
Department of Banking
20 West State Street, CN 040
Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION AND ENERGY

(d)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System

Proposed Amendments: N.J.A.C. 7:11-2.2, 2.3 and 2.9

Authorized By: Scott A. Weiner, Chairman, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 58:1B-7.
DEP Docket Number: 047-91-11.
Proposal Number: PRN 1991-621.

In accordance with N.J.A.C. 7:11-2.11(a)4, a **pre-public hearing** meeting concerning this proposal will be held on:
Tuesday, January 7, 1992 at 10:00 A.M.
New Jersey Water Supply Authority Administration Building
Route 31, Clinton, New Jersey 08809

A **public hearing** concerning this proposal will be held on:
Wednesday, February 5, 1992 at 10:00 A.M. to close of comments
Rutgers University Labor Education Center, Room 133A
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey 08903

Submit written comments by March 13, 1992 to:
Deirdre Scudellari, Esq.
Deputy Attorney General, Division of Law
Department of Law and Public Safety, 7th Floor
401 East State Street
Trenton, New Jersey 08625; and
Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in further detail the financial justification for the proposed revised rate schedule.
Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run Round Valley Reservoirs System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1992. It is also proposing to adjust its existing annual debt service assessments on outstanding loans beginning July 1, 1992.

The General Rate Schedule for Operations and Maintenance in N.J.A.C. 7:11-2.2 was last adjusted effective July 1, 1991 (increased from $96.45 to $109.21 per million gallons (mg)) to cover the operation expenses of the System.

Projected operating costs for fiscal year 1993 now indicate that an operations and maintenance rate component of $124.69 will be needed starting July 1, 1992. Most of the increased operations and maintenance expenses are due to the increased cost of employee salary requirements; employee benefits costs; energy costs; and insurance costs. The operations and maintenance expense component sales base of 152.296 million gallons per day (mgd) for Fiscal Year 1992 remains unchanged.

The debt service assessment rate for the 1981 water supply bond funds used to finance the removal of sediment from 32 miles of the Delaware and Raritan Canal was previously adjusted effective July 1, 1991 (Fiscal Year 1992) based on a sales base of 152.226 mg. The Authority anticipates that the applicable sales base for fiscal year 1993 will remain at 152.226 mgd. Application of this sales base to a slight reduction in the required debt service payment results in a decrease (.06) in the per mg rate component from $33.23 to $33.17 per mg for the 1981 bonds (N.J.A.C. 7:11-2.3(c)).

The debt service assessment rate for the 1988 water system revenue bonds issued to finance the Authortiy's current capital improvement program was based on a sales base of 152.226 mgd. The Authority anticipates that the applicable sales base for fiscal year 1993 will remain at 152.226 mgd and the previously scheduled increases in the required debt service component from $44.99 to $55.07 per mg for the fiscal year starting July 1, 1992 and to $56.91 in fiscal years 1994 and 1995 will remain unchanged. A slight decrease to $56.87 is projected for fiscal year 1996 (see N.J.A.C. 7:11-2.3(d)).

Final action on the rate adjustment is scheduled for the April 6, 1992 meeting of the Authority.

Social Impact

The proposed amendments will have minimum social impact. The proposed amendments represent the Authority's efforts to ensure that rates for raw water withdrawn, diverted or allocated from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Complex are equitably assessed and sufficient to provide the revenues required by the Authority.

The 11 billion gallon capacity Spruce Run Reservoir and the 55 billion gallon capacity Round Valley Reservoir in Hunterdon County in conjunction with the 60 mile long Delaware and Raritan Canal in Hunterdon, Mercer, Somerset, and Middlesex Counties provide both active and passive recreational opportunities to the public in addition to a basic raw water supply for approximately 1,200,000 individuals living in central New Jersey.

Economic Impact

The proposed adjustments to the rate schedule will result in a net increase in the total charge for the raw water supplied from the System ranging from $25.50 in fiscal year 1993 to $27.30 in fiscal year 1996 per mg. It is estimated that the annual impact of the proposed wholesale water rate increase on the typical household will amount to $2.55 in fiscal year 1993 increasing to $2.73 in fiscal year 1996 provided these increased costs are passed through by the wholesale water customers without further fees.

Environmental Impact

The adequate financing of systems upkeep and operation, which is provided by the proposed amendments, will result in a positive environmental impact. Properly maintained Authority systems and operations protect not only the water users but also the surrounding environment of the Spruce Run/Round Valley Reservoir and Delaware and Raritan Canal.

The reservoirs and canal also provide habitat for many species of waterfowl and wildlife in an increasingly urbanized region of the State.

The Authority's Raritan Base System is capable of supplying a dependable water supply of 225 mgd per day throughout a re-occurrence of the worst drought of record while still maintaining adequate river flows through release of stored waters to support the ecological systems and wildlife which are dependent upon adequate stream flows in the River Basin.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that these amendments would not impose reporting, recordkeeping or other compliance requirements on small businesses because the amendments affect only the rate charged to users for water purchased from the Authority. The water companies which contract to purchase water from the Authority and which are impacted by these amendments do not qualify as "small businesses" pursuant to N.J.S.A. 52:14B-16 et seq.

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

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) (No change.)

(b) General Rate Schedule for Operations and Maintenance:

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	[$109.21] **$124.69**

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of 151.801 million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallons
[7/1/91] **7/1/92** to 6/30/2002	Million Gallons per Day (MGD)	$13.90

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following Debt Service Assessment rate, based on a sales base of 152.226 million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
[7/1/91] **7/1/92** to 10/30/2006	Million Gallons per Day (MGD)	[$33.23] **$33.17**

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of 152.226

million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
[7/1/91 to 6/30/92	Million Gallons per Day (MGD)	$44.99]
7/1/92 to 6/30/93	Million Gallons per Day (MGD)	$55.07
7/1/93 to 6/30/95	Million Gallons per Day (MGD)	$56.91
7/1/95 to 6/30/96	**Million Gallons per Day (MGD)**	**$56.87**

7:11-2.9 Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	[$109.21] **$124.69** plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

2. For Standby Contracts within the Raritan River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	[$109.21] **$124.69** plus annual debt service assessment rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System

Proposed Amendments: N.J.A.C. 7:11-4.3, 4.4, 4.9 and 4.13

Authorized By: Scott A. Weiner, Chairman, New Jersey Water Supply Authority and Commissioner, Department of Environment and Energy.

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 046-91-11.

Proposal Number: PRN 1991-622.

In accordance with N.J.A.C. 7:11-4.13(a)4, a **pre-public hearing meeting** concerning this proposal will be held on:

Thursday, January 16, 1992 at 10:00 A.M.
New Jersey Water Supply Authority
Manasquan Reservoir System Administration Building
Hospital Road
Wall, New Jersey 07719

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

Thursday, February 13, 1992 at 10:00 A.M. to close of comments
New Jersey Water Supply Authority
Manasquan Reservoir System Administration Building
Hospital Road
Wall, New Jersey 07719

Submit written comments by March 23, 1992 to:

Deirdre Scudellari, Esq.,
Deputy Attorney General,
Division of Law
Department of Law and Public Safety, 7th floor
401 East State Street
CN 402
Trenton, New Jersey 08625; and
Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in further detail the financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1992. It is also proposing to adjust its existing debt service assessment on system loans effective July 1, 1992.

The Operations and Maintenance Expense Component in N.J.A.C. 7:11-4.3 was last adjusted effective July 1, 1991 (decreased from $345.09 to $314.75 per million gallons (mg)) to cover the operation expenses of the System.

Projected operating costs for fiscal year (FY) 1993 indicate that an operations and maintenance rate component of $348.01 will be needed starting July 1, 1992. The projected operations and maintenance expenses for employee salary requirements; employee benefits costs; energy costs; maintenance of equipment; special and professional services; telephone services; and insurance costs have increased for FY '93. In addition, the General and Administrative expenses in the operations and maintenance budget are projected to increase for FY '93. The operations and maintenance expense component sales base will remain unchanged at 16.097 million gallons per day (mgd) for fiscal year 1993.

The debt service assessment in N.J.A.C. 7:11-4.4 will decrease from $718.78 to $718.65 per million gallons on July 1, 1992, increase from $718.65 to $751.32 per million gallons on February 1, 1993, increase from $751.32 to $751.66 per million gallons on July 1, 1993, increase from $751.66 to $784.34 per million gallons on February 1, 1994 and decrease from $784.34 to $784.10 per million gallons on July 1, 1994 in accordance with the debt service coverage schedule specified in the project financing program.

The calculation of the operations and maintenance component as well as the debt service assessments is based upon a contractual sales base of 16.097 million gallons per day as of July 1, 1992.

Existing references to the Board of Public Utilities in the Procedures for Rate Adjustments contained at N.J.A.C. 7:11-4.13 are changed in this proposal to read the Board of Regulatory Commissioners in accordance with Reorganization Plan 002-1991 (see 23 N.J.R. 2811).

Final action on the rate adjustment is scheduled for the April 6, 1992 meeting of the Authority.

Social Impact

The proposed amendments will have a positive social impact and effect. The proposed amendments represent the New Jersey Water Supply Authority's efforts to ensure that rates for the untreated water purchased from the Manasquan Reservoir System are equitably assessed to all purchasers and sufficient to provide the revenues required by Authority.

This four billion gallon capacity reservoir provides a needed water supply to keep pace with the continuing growth in Monmouth County while reducing the dependence of water purveyors on the stressed ground water resources of the region.

Economic Impact

The proposed rate adjustments will result in a total charge for the uninterruptible untreated water supply from the Manasquan Reservoir System of $1,066.66 per million gallons ($348.01 for operation and maintenance plus $718.65 for debt service) starting July 1, 1992 and $1,099.33 per million gallons effective February 1, 1993 ($348.01 for operation and maintenance plus $751.32 per debt service).

The proposed adjustments to the rate schedule will result in a net increase of $33.13 per million gallons in the total charge for the raw water supplied from the System effective July 1, 1992. A planned increase in the debt service payment of $32.67 will occur on February 1, 1993 to provide for 115 percent debt service coverage as required by the project financing agreements. It is estimated that the annual impact of the proposed wholesale water rate adjustment on the typical household will amount to $4.67 provided these increased costs are passed through by the wholesale water customers without further fees.

Environmental Impact

The adequate financing of upkeep and operation of the Manasquan Reservoir System, which is provided by the proposed amendments, will result in a positive environmental impact. Sixty percent of the existing water supply in Monmouth County was derived from stressed ground water resources. The Manasquan Reservoir System relieves the use of a portion of the existing ground water supply and meets the needs of a developing area. This new water supply system has a very important and positive environmental impact since its operation reduces the stress on the valuable ground water resources of the region by providing an alternate surface water supply. By reducing the pumping of ground water, salt water intrusion will be limited and present ground water levels will not be further reduced.

The 30 million gallon per day water supply which the system can provide helps to ameliorate the urgent need to protect the region's threatened ground water resources from further depletion. In addition, the 740 acre Manasquan Reservoir provides for the protection of waterfowl and wildlife in the region through several protected wetland sites for the rearing of waterfowl and wildlife.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that these amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the amendments affect only municipalities and major water purveyors, all of which fail to qualify as small businesses as defined in N.J.S.A. 52:14B-16 et seq.

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

7:11-4.3 Operations and maintenance expense component

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

(c) Operations and maintenance expense component:

Effective Date	Rate/Million Gallons (based upon a 16.097 mg per day sales base)
July 1, [1992] **1992**	[$314.75] **$348.01**

7:11-4.4 Debt Service Cost Component

(a) (No change.)

(b) The following Debt Service rate, based on a sales base of 16.097 million gallons per day, apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
[7/1/91 to 1/31/92 (Coverage 105 percent)	$686.11]
[2/1/92] **7/1/92** to 1/31/93 (Coverage 110 percent)	[$718.78] **$718.65**
2/1/93 to [1/31/94] **6/30/93** (Coverage 115 percent)	[$751.61] **$751.32**
7/1/93 to 1/31/94 (Coverage 115 percent)	**$751.66**
2/1/94 **to 6/30/94** (Coverage 120 percent)	[$784.35] **$784.34**
7/1/94 (Coverage 120 percent)	**$784.10**

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

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of the purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof	[$314.75] **$348.01** plus annual debt service assessment rate established in N.J.A.C. 7:11-4.4.

7:11-4.13 Procedures for rate adjustments

(a) Prior to amending the schedule of rates, charges and debt service assessments established by this subchapter, the Authority shall:

1. Provide notice and an explanation outlining the need for the proposed rate adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the [Board of Public Utilities] **Board of Regulatory Commissioners** and other interested persons at least six months prior to the proposed effective date. This notice and explanation shall be deemed to be part of the record of the proceedings;

2. Provide supporting documents and financial records of the Authority, at the Authority's cost, in support of the proposed adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the [Board of Public Utilities] **Board of Regulatory Commissioners** and other interested persons upon request, and make such documents and records available for review at the Authority's offices in Clinton, New Jersey at the time notice of the proposed amendment to the rates is given. These supporting documents and financial records shall be deemed to be part of the record of the proceedings for purposes of preparing the hearing officer's report required under (a)[7]**9** below;

3. Afford purchasers, the Department of the Public Advocate, Division of Rate Counsel and the [Board of Public Utilities] **Board of Regulatory Commissioners** and other interested persons the opportunity to submit written questions and requests for additional data prior to the time of the meeting required under (a)4 below. The Authority staff shall provide written answers to the questions and supply the additional data requested prior to the meeting;

4. Schedule a meeting with the purchasers, the Public Advocate, Division of Rate Counsel and the [Board of Public Utilities] **Board of Regulatory Commissioners** and other interested persons within 45 days after sending them notice of the proposed amendments to the rate schedule regarding the proposed amendments;

i. At the meeting the purchasers, the Public Advocate, Division of Rate Counsel and the [Board of Public Utilities] **Board of Regulatory Commissioners** and other interested persons will be invited to submit written questions which will be put into the hearing record and which will be answered by Authority at the public hearing;

ii. (No change.)

5. Hold a public hearing on the proposed rate adjustment. One or more members of the Authority will serve as the hearing officer. The public hearing agenda shall include, but not be limited to:

i. An opening statement by the hearing officer;

ii. The Authority's answers to the questions raised prior to the hearing by the purchasers, the Public Advocate, Division of Rate Counsel, the [Board of Public Utilities] **Board of Regulatory Commissioners** and other interested persons;

iii. Oral statements, written statements and any supporting evidence presented by interested persons; and

iv. Questions of the Authority by the purchasers, the Public Advocate, Division of Rate Counsel, the [Board of Public Utilities] **Board of Regulatory Commissioners**, and any interested persons on any aspect of the need for, the basis of, or any provision of the proposed rate adjustment. Follow up questions relative to the answers of the Authority may also be directed to the Authority during the public hearing;

6. Attempt to answer all questions raised at the public hearing. In the event that a response cannot be immediately given at the public hearing, then a written response shall be prepared within 10 working days after the public hearing, and a copy of that written response will be provided to all contractual water purchasers, the Public Advocate, Division of Rate Counsel, [Board of Public Utilities] **Board of Regulatory Commissioners** and attendees at the hearing and made a part of the hearing record;

7. Permit, within 10 working days after receipt of the answer, contractual water purchaser, the Public Advocate, Division of Rate Counsel, the [Board of Public Utilities] **Board of Regulatory Commissioners** and attendees will be permitted to respond in writing to the answers of the staff for the record;

8.-9. (No change.)

(b) (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Annual Adjustment of Solid Waste Fees

Proposed New Rule: N.J.A.C. 7:26-4.6

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1E-18.

DEP Docket Number: 044-91-11.

Proposal Number: PRN 1991-624.

Submit written comments by January 15, 1992 to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

On July 15, 1991, the Department of Environmental Protection and Energy (Department) promulgated amendments to its solid waste fee rules at N.J.A.C. 7:26-4.3, 4.4 and 15.6 (the "1991 fee rule"). The 1991 fee rule established fees based upon the duration and complexity of the Department's activities, as required by the Solid Waste Management Act, N.J.S.A. 13:1E-18. Specifically, the fee for each activity was calculated by multiplying an hourly rate of $52.50 by the time required to perform the activity. That hourly rate is based upon the average salary of Department employees, fringe benefits, indirect costs, operating expenses, and the cost of legal services.

In response to comments on the 1991 fee rule, and in the interest of increasing the Department's accountability for the timeliness of the activities it performs, the Department has recognized that additional changes in the fee schedule are necessary.

The 1991 fee rule had provided for annual automatic increases in the fees, based upon annual changes in the Consumer Price Index. The Department deleted that automatic increase from the rule upon adoption (see 23 N.J.R. 2166(b)).

Instead, the Department will review these fees each year, based upon changes in the Department's costs in performing activities for which fees are charged. Several factors may increase or decrease costs, including, but not limited to, changes in the time the Department requires to perform activities, and changes in the average level of compensation of Department employees working in the Department's solid waste program. The proposed new rule provides the Commissioner with the ability to implement this annual change through the publication of a report, which will set forth any revised fees and describing the changes in the Department's costs upon which the revisions will be based.

The fees for each activity under the annually revised schedule will continue to be calculated as the number of hours required to perform the activity, multiplied by an hourly rate. The determination of the number of hours required to perform an activity will be based upon the Department's timekeeping records for the period which is the subject of the report described above. However, if the Department has not performed an activity enough times within that period to provide sufficient data to support the determination, the Department may base its determination in part upon data from previous years.

The proposed new rule also provides for additional factors to be considered in the Department's adjustment of fees assessed for activities which are to be performed more than once in the period covered by the fee (in contrast to permitting fees which are assessed for the performance of a single step in the permitting process for a single application). For example, the Department assesses annual compliance monitoring fees under N.J.A.C. 7:26-4.3(b), which fees are intended to defray the cost of a number of compliance monitoring inspections to be performed throughout the year. Before the 1991 fee rule was promulgated, the Department lacked the funds to pay the cost of staff at a level sufficient to perform compliance monitoring as frequently as the Department had determined to be necessary. The Department expects that the shortage of staff will temporarily persist, despite the increased revenues under the 1991 fee rule, until additional staff is hired at the level to be supported by those revenues.

For this reason, the Department expects that its data for fiscal year 1992 (beginning July 1, 1991) will show a decrease in the amount of time required to perform compliance monitoring. This decrease will result from the temporarily continuing shortage of staff, rather than from a reduction in the time necessary to perform compliance monitoring. If the Department were to reduce its compliance monitoring fees based upon this data, the effect would be to perpetuate the temporary shortage of staff which caused the data to show a decrease. Therefore, the proposed new rule provides for the Department to adjust the fee to avoid the adverse effects of this type of temporary aberration in its data.

Under the proposed new rule, the hourly rate is based upon the average salary of a Department employee working in the solid waste program (rather than the average salary of a Department employee generally, as under the 1991 fee rule), fringe benefits, indirect costs, operating expenses, and the cost of legal services rendered in connection with the solid waste program. Fringe benefits are calculated as a percentage of the average salary. That percentage rate is set by the Department of the Treasury, based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA. Indirect costs are those costs incurred for a common or joint purpose, benefitting more than one cost objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent, and the Department allocation of the indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. The rate is negotiated annually between the Department and the United States Environmental Protection Agency. Operating expenses include costs incurred in connection with the solid waste program for items such as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management.

Legal services costs are based upon the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's solid waste activities. The Department has assumed that the number of person-hours spent in rendering legal services in connection with each of the types of activities for which fees are assessed is proportional to the number of person-hours which the Division of Solid Waste Management spends on such activities. The 1991 rules apportioned the total cost of legal services in accordance with these proportions, and that cost will continue to be so apportioned under these rules.

To arrive at the hourly rate, the total annual per-employee costs are divided by the average employee's annual "billable hours." This figure is the number of hours which Department employees working in the solid waste program spend annually performing "billable" work for which fees are to be imposed under N.J.A.C. 7:26-4.3, 4.4 and 15.6.

Social Impact

The Department expects that the proposed new rule will have a positive social impact, because the annual review of the solid waste program's fees should increase the accountability of all levels of the Department's management for efficiency in the performance of the activities for which these fees are assessed.

Economic Impact

The economic impact of the procedure for annual review of the Department's fees will depend upon the results of that review each year. Various factors may increase or decrease the fees, including but not limited to improvements in the time the Department requires to perform activities, changes in the average level of compensation of Department employees, and changes in regulatory requirements of the solid waste program. As a result, the Department cannot determine the economic impact of this portion of the proposed new rule at this time.

Environmental Impact

The Department expects that the proposed new rule will continue the positive environmental impact of the 1991 fee rule. By annually reviewing the solid waste program's fees, the Department will be able to maintain a level of fees adequate to pay the costs of the Department's efforts to ensure that solid waste is disposed of in an environmentally sound manner.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rule will not impose recordkeeping or reporting requirements on small businesses (as defined in the Regulatory Flexibility Act). However, if the adjustment of fees in any year under the proposed new rule results in an increase of any fee, the result would be an increase in compliance requirements upon small businesses. The extent of that increase, and the number of small businesses affected, will depend upon the results of each year's adjustment.

The Department believes that exempting small businesses from all or part of a fee increase would undermine the ability of the Department to carry out its duties under the Solid Waste Management Act and would be detrimental to the environment. However, the Department notes that the graduated structure of its solid waste fees imposes proportionally lower fees upon smaller facilities, which are generally least capable of bearing an increase in costs.

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

7:26-4.6 [(Reserved)] **Annual adjustment of fees**

(a) The Department shall adjust the fees for each activity provided in N.J.A.C. 7:26-4.3, 4.4 and 15.6 annually, based upon the following formula:

Fee = (hours required) × (hourly rate)

where "hours required" and "hourly rate" are as set forth in the Annual Solid Waste Fee Schedule Report provided in (b) below.

(b) Each year, the Department shall prepare an Annual Solid Waste Fee Schedule Report. The report shall include the following:

1. The Department's estimate of the number of hours which will be required to perform each type of activity for which fees are assessed under N.J.A.C. 7:26-4.3, 4.4 and 15.6. In formulating the estimate, the Department shall consider the following factors:

i. The Department's timekeeping records for a period of at least nine months, ending no more than six months before the completion of the report;

ii. The Department's timekeeping records from previous years, if the Department determines that it has not performed an activity a sufficient number of times within the period covered by the report to provide data sufficient to reliably determine the hours required to perform the activity;

iii. Any other factors relevant to the estimate, provided that the report explains any such other factors considered, and explains how such factors support the estimate;

iv. If the Department determines that the creation of additional classifications of facilities or activities would result in a substantially more equitable assessment of fees, the Department may establish such additional classifications. The Department's determination shall be in its reasonable discretion, based on its review of the data upon which the report is based. In the report, the Department shall set forth the hours required to perform an activity for such additional classes. This subparagraph (b)1 provides only for the creation of additional classifications of types of facilities or activities for which fees are assessed under the Department's rules, and shall not be construed to provide for the assessment of fees for types of facilities or activities not already contained in the Department's rules;

v. With respect to fees assessed for an activity to be performed more than once in the period covered by the fee (such as an annual compliance monitoring fee assessed for several compliance monitoring inspections to be performed in a one-year period), the data upon which the report is based may show a decrease in the amount of time required to perform an activity, all or part of which decrease results from a lack of Department staff sufficient to perform the activity the expected number of times within the period. In such event, the Department may maintain the fee at the level required to defray the cost of staff sufficient to perform the activity the expected number of times within the period; and

2. A statement of the hourly rate for calculating fees. The hourly rate is the average cost of one hour of Department staff time, calculated according to the following formula:

$$\frac{(AS + FB + IC + OE + LS)}{BH}$$

where:

i. AS equals the average salary of a full-time Department employee working in the Department's solid waste program;

ii. FB equals the fringe benefits of a full-time Department employee working in the Department's solid waste program, calculated as a percentage of the average salary, which percentage is set by the New Jersey Department of the Treasury, and is based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. IC equals indirect costs attributable to a full-time Department employee, calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the sum of AS and FB;

iv. OE equals operating expenses (including without limitation postage, telephone, travel, supplies and data system management) attributable to a full-time Department employee working in the Department's solid waste program;

v. LS equals the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's solid waste activities, divided by the total number of Department employee positions which the Department projects will be funded by the revised fee schedule; and

vi. BH equals the average number of hours which each Department employee working in the Department's solid waste program spends annually performing activities for which fees are to be imposed under N.J.A.C. 7:26-4.3, 4.4 or 15.6.

(c) Promptly after completing the report described in (b) above, the Department shall provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26-4.3, 4.4 or 15.6 within the one-year period covered by the report.

(d) Promptly after making the adjustment of fees pursuant to the report described in (b) above, the Department shall publish in the New Jersey Register a notice of administrative change, pursuant to N.J.A.C. 1:30-2.7(c), setting forth adjusted fees and the operative date thereof. The notice shall state that the report is available, and direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.

(a)

ENVIRONMENTAL REGULATION

Hazardous Waste; Exclusion of Certain Used Chlorofluorocarbons

Proposed Amendment: N.J.A.C. 7:26-8.2

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEPE Docket Number: 045-91-11.

Proposal Number: PRN 1991-623.

Submit comments, identified by the Docket Number above, by February 14, 1992 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection & Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Toxicity Characteristic is one of four characteristics used to identify waste regulated as hazardous under Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C.A §6900 et seq. (RCRA). On March 29, 1990, the United States Environmental Protection Agency (USEPA) replaced the Extraction Procedure (EP) toxicity characteristic with the Toxicity Characteristic (TC) and its corresponding methodology, the Toxicity Characteristic Leaching Procedure (TCLP). (55 F.R. 11798). This adoption also expanded the list of test parameters.

New Jersey, as an authorized state operating pursuant to the RCRA program, revised parallel State regulations. Amendments to N.J.A.C. 7:26-8.2(a), 8.8(d) and 8.12(a) and (b), which were adopted on July 11, 1991, effective August 5, 1991, replaced the EP toxicity test with TCLP and thereby included additional compounds. These additional compounds, as well as the original compounds, are now required to be managed as hazardous wastes if they leach out of wastes under specified laboratory conditions at concentrations which exceed regulatory limits. (see 23 N.J.R. 151(a); 23 N.J.R. 2360(b)).

Upon enactment of the Federal regulation, concerns were raised that the rule's immediate application might cause certain used chlorofluorocarbons (CFC) refrigerants to be regulated as hazardous wastes when they are removed from service for disposal or recycling because they exhibit the newly defined Toxicity Characteristic. Subjecting these CFCs to hazardous waste regulations might promote continued or increased venting instead of collecting and recycling, thus increasing the levels of ozone-depleting substances in the stratosphere. An interim Federal final rule which suspended the Toxicity Characteristic rule for used refrigerants which are recycled was promulgated by USEPA. This exemption is not effective in New Jersey until the State adopts an equivalent rule.

The refrigerants that are eligible for this exemption are those CFCs that are recycled and that were used as the heat transfer fluid in a refrigeration cycle in totally enclosed heat transfer equipment. These CFCs include CFC-11, CFC-12, CFC-114, and the other CFC refrigerants, including HCFCs. Examples of the equipment in which these CFCs may be used include mobile air conditioning systems (for example, those used in mass transit vehicles), mobile refrigeration units (refrigerated trucks and rail cars), and commercial and industrial air conditioning and refrigeration systems. Under the proposed regulations the spent CFCs that are being recycled will not be regulated as a hazardous waste. Thus regulatory requirements applicable to generators, transporters and recyclers of hazardous waste would not be applicable to generators, transporters and recyclers of such used CFCs that are being recycled.

To maintainin its authorization under RCRA to implement its hazardous waste program, the New Jersey Department of Environmental Protection and Energy ("Department") is required to keep its rules equivalent to or more stringent than the Federal regulations. The interim Federal final rule, which excluded the used CFCs in question from the toxicity characteristic rule, relaxed the Federal requirements. Therefore the Department is not required to promulgate a similar exclusion to maintain RCRA authorization. Nonetheless, for the reasons discussed above, the Department believes that such an exclusion is necessary.

Social Impact

The proposed amendment should have a positive social impact, by eliminating a disincentive to recycling of CFCs. Under the proposed amendment, the spent CFCs that are being recycled will not be regulated as a hazardous waste. Thus, regulatory amendments applicable to generators, transporters and recyclers of hazardous waste would not be applicable to generators, transporters and recyclers of CFCs that are being recycled.

Economic Impact

The Department expects the proposed amendment to have a positive economic impact upon generators, transporters amd recyclers of the CFCs which are the subject of the amendment. Without the exclusion of such CFCs from regulation as hazardous waste, such CFCs could be considered hazardous wastes because they may exhibit the characteristic of toxicity. As a result of the exclusion, persons generating, transporting or accepting such CFCs for recycling will not incur costs of compliance with the Department's hazardous waste regulations in connection with those activities.

Environmental Impact

The Department expects that the proposed amendment will have a positive environmental impact. The largest impact from emissions of CFCs comes from the component chlorine's ability to deplete the ozone layer, thereby increasing the amount of ultraviolet radiation reaching the earth's surface. An increase in ultraviolet radiation will result in increased deaths from skin cancer, increased incidence of cataracts, reduction in the function of the body's immune system and damage to crops. CFCs are also suspected greenhouse gases.

Recycling provides an opportunity to delay or reduce the increase in chlorine levels. Estimates based upon a preliminary analysis of proposed recycling programs indicate that one third of all CFCs could be recycled by the turn of the century. Recycling may reduce the peak load of chlorine being discharged into the stratosphere.

USEPA is currently investigating the impact that CFCs which are being recycled at the present time may have on the ozone layer. Since these chemicals are difficult to destroy, it is likely that they will eventually be released at a later time. The impact of this eventual release on peak chlorine concentrations is also being evaluated. It is likely that delayed or reduced release of CFCs due to recycling over the next 30 to 40 years will lower the peak of chlorine concentration.

Regulatory Flexibility Statement

The proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq. The proposed amendment would instead exclude certain CFCs from regulation as hazardous wastes. Accordingly, no regulatory flexibility analysis is required.

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

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous wastes for the purposes of this chapter:

1.-26. (No change.)

27. Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is recycled for further use.

(b) (No change.)

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Requirements for Foster Care

Proposed New Rules: N.J.A.C. 10:122B

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4C-4(h) and 30:4C-26a.

Proposal Number: PRN 1991-565.

Submit comments by January 15, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules" project or OPTR project, was initiated by the Division to subject those policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rulemaking process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Operations Policy to Rules (OPTR) project began in May, 1989, and involves advisory bodies which include family and child advocates, DYFS field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project has been a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process will result in a thorough and full-scale study, reevaluation and revision of existing Division policies, procedures and practices.

The OPTR project involves a "core" Advisory Group which is invited to participate in all OPTR meetings regardless of topic; specific subject matter groups which are invited to attend those OPTR meetings during which their specific topic areas are discussed; and other invitees who have a general interest in the matters being considered. Subject matter groups are developed and members are named to those groups as a new topic area is reached in the OPTR process. To date, subject matter groups have been established for foster care issues, case management issues, and protective services issues. Regardless of the group in which an individual is listed, he or she may attend and participate in any of the meetings or discussions of the OPTR Group.

OPTR Advisory Group members and other invitees are sent notices of all OPTR meetings, and all the materials to be discussed at those meetings. Subject matter group members are provided with materials and notice of meetings at which topics concerning their subject matter are to be discussed. OPTR meetings are held at least monthly. Most OPTR Advisory Group and subject matter group members have been very active in attending and participating in these meetings. The recommendations of the OPTR Group is achieved through consensus; therefore, the inclusion of an individual's name on the following lists should not be construed to mean his or her approval or acceptance of every part of the proposed rules.

The "core" OPTR Advisory Group has been involved in the entire OPTR process since its inception, with the addition or deletion of members who have resigned and been replaced. The OPTR Advisory Group includes the following representatives:

Charlotte Bednarsh	Statewide Parents Association for Children's Effort
James B. Boskey, Esq.	DYFS Board of Trustees
Carl Bowman, Esq.	Gloucester County Child Placement Review Board
Marc Cherna	Assistant Director, Policy, Planning and Support, DYFS—chair
Kathryn A. Clark, Esq.	Administrative Practice Officer, DYFS
Gregory Clarke	New Jersey Association of School Social Workers
Elizabeth S. Cole	Elizabeth S. Cole Associates
Eileen Crummy	Case Practice Specialist, Central Regional Office, DYFS
Bernard Dondiego (until 6/91)	Executive Director
George Van Meter (after 6/91)	New Jersey Foster Parents Association
Corinne Driver	DYFS Board of Trustees
Martin Finkel, D.O.	Assistant Professor of Pediatrics, University of Medicine and Dentistry of New Jersey
Gloria Ford	Atlantic County Child Placement Review Board
Robin Frey	Legal Services of New Jersey
Celine Glagola	Association for Retarded Citizens of New Jersey
Nancy Goldhill, Esq.	Legal Services of New Jersey
Carol Grant	Special Assistant for Division Affairs, Department of Human Services
Alisha Griffin	Program Operations, DYFS
David Harris	Executive Director, Greater New Brunswick Day Care Center
Angelica Harrison	President, County Welfare Directors' Association of New Jersey
Arnold Herman	Director, Foster Friends, Inc.
Lynn Jones	Plaid House
Al Kirschmeir	Legislative Liaison, Child Placement Review Advisory Council
Barbara Kraeger	Supervisor, Manual Unit, DYFS
Sue Kullman (until 6/91)	President, New Jersey Foster
Norma Lampe (after 6/91)	Parents Association
Carol Lesniowski	Child Placement Review, Administrative Office of the Courts
Jim Louis	Director, Law Guardian, Department of the Public Advocate
Judith Schrim Mack	DYFS Board of Trustees
John McKinstry	State Programs Specialist, Office of Human Development Services, United States Department of Health and Human Services, New York Region
Nancy McNeil-Drum	Supervisor, Operational Policy and Procedures Unit, DYFS
Melville D. Miller, Jr., Esq.	President, Legal Services of New Jersey
Wilbert Mitchell	Respond, Inc.
Joyce Mohamoud	Executive Director, Parents Anonymous
Jesse Moskowitz	Assistant Director, Intergovernmental Affairs, DYFS
Edward O'Connor	Executive Director, National Association of Social Workers of New Jersey
Cindy Parks	Substitute Care Unit, DYFS
Paul P. Pintella	President, New Jersey State Council of Urban Leagues
Celia Rechtman	Assistant Chief, Bureau of Research, Evaluation and Quality Assurance, DYFS
Joseph Renne	New Jersey Association of Chiefs of Police
Nancy Reyes	DYFS Board of Trustees
Ramon Rivera	LaCasa de Don Pedro
Dianne Robinson	Child Placement Review, Administrative Office of the Courts
Nicholas R. Scalera	Director, Division of Youth and Family Services
Barry Silverstein	Regional Planner, Southern Regional Office, DYFS

Judy Stiver	Administrative Assistant to the Director, DYFS
Edward Testa	County Welfare Directors' Association of New Jersey
Edward Tetelman	Director of Legal and Regulatory Affairs, Department of Human Services
Julie M. Turner	Executive Director, New Jersey Association of Children's Residential Facilities
Lydia Valencia	Puerto Rican Congress of New Jersey
Marlene Verniero	Northern Regional Office, DYFS
Jeanne Warnock	Executive Director, Family Intervention Services
Pamela Wentworth	Manual Unit, DYFS
George Williams	Burlington County Welfare Board
Jacquelyn Williams	Program Coordinator, Family Services of Burlington County
Raymond M. Wolfinger	Office of Legal and Regulatory Liaison, Department of Human Services
Cecilia Zalkind	Assistant Director, Association for Children of New Jersey

The OPTR members of the subject matter group on Foster Care are:

Jack Abbott	Southern Regional Office, DYFS
Jessie Broadbent	Foster parent, Mercer County
Bobbi Cohen	Middlesex County Supervisor's Office, DYFS
Elsa Collandres	Foster parent, Passaic County
Mary Conyers	Foster parent, Essex County
Carolyn Cook	Foster parent, Union County
Marita Cook	Southern Regional Office, DYFS
Virginia Coon	Substitute Care Unit, DYFS
Meg Deegan	Ocean District Office, DYFS
Phyllis Enet	Bergen District Office, DYFS
Carol Fine	Foster parent, Burlington County
Florence Forte	Bergen District Office, DYFS
Chuck Hiddeman	Cape May District Office, DYFS
Laurie Johnson	Jersey City District Office, DYFS
Janet Laufenberg	Camden North District Office, DYFS
Irene Merynda	Central Regional Office, DYFS
Mary Parkinson	Passaic Administrative Unit, DYFS
Linnie Penn	Essex Administrative Unit, DYFS
Barbara Pistoia	Atlantic District Office, DYFS
Linda Slinski	Union Administrative Unit, DYFS
Susan Soweski	Monmouth County Supervisor's Office, DYFS
Grace Staats	Foster parent, Somerset County
Mary Sterling	Foster parent, Morris County
Kathy Young	Camden Adolescent District Office, DYFS

The OPTR members of the subject matter group on Protective Services are:

Denise Abergo	Plainfield District Office, DYFS
Julie Blacker	Bergen District Office, DYFS
Bill Brosky	Warren District Office, DYFS
Patricia Casey	Operations Support, DYFS
Thomas Crook	Institutional Abuse Unit, DYFS
Lynn Crue	Western Monmouth District Office, DYFS
Mary Beth Field	Somerset District Office, DYFS
Janet Laufenberg	Camden North District Office, DYFS
Ken Lowry	Central Passaic District Office, DYFS
Fred Lowe	Bureau of Research, DYFS
Susan Manion	Institutional Abuse Unit, DYFS
Octavia Melendez, Esq.	Deputy Attorney General
Marsha Membrino	Deputy Attorney General
Ramona Montes	Burlington District Office, DYFS
James Mulvihill	Assistant Attorney General
Lorraine Pascal	Perth Amboy District Office, DYFS
Sister Gloria Perry	Camden North District Office, DYFS
Michael Richman	Operations Support, DYFS
Deborah Roberts	Salem District Office, DYFS
Nina Roller	Burlington District Office, DYFS
Jean Ross	Administrative Hearing Unit, DYFS
Candace Scaglione	Northern Passaic District Office, DYFS
Caryl Scherer	Ocean District Office, DYFS
Trudi Thornton	New Jersey Education Association
Andrea Torres	Bayonne District Office, DYFS
John Warms	New Jersey Education Association

The OPTR members of the subject matter group on Case Management are:

Barbara Kerr	Adoption Resource Center—North, DYFS
Lisa Landsman	Deputy Attorney General
Edward Reistetter	Bureau of Revenue Department, DYFS
Lorene Wilkerson	Manual Unit, DYFS
Judi Woike	Adoption Resource Center—Central, DYFS
Rose Zeltser	Adoption Field Operations, DYFS

Other invitees to the OPTR meetings include the following:

Paul Alexander	CWA Local 1038
Robert Angelo	Executive Director, AFSCME
George Krevet	CWA Local 1037
Nellie Willis	President, AFSCME Local 2318

The proposed new rules of the Division's requirements for foster care, and the three concurrent proposals, N.J.A.C. 10:122C, Approval of Foster Homes, N.J.A.C. 10:122D, Foster Care Services, and N.J.A.C. 10:122E, Removal of Foster Children and Closure of Foster Homes, published elsewhere in this issue of the New Jersey Register, are products of the OPTR project. Rather than merely codifying the existing Division Field Operations Manual on Foster Care Services, the OPTR Advisory Group approached the issue by determining the way they thought the Division should provide such services. The results are these proposals, which vary significantly from previous Division policy as contained in the Field Operations Manual on Foster Care Services. This manual was never part of the Administrative Code, but for informational purposes, the changes from the manual to the new rules proposed in N.J.A.C. 10:122B are here summarized. The changes appurtenant to each successive proposed new chapter are summarized at the start of each respective proposal:

- Responsibilities of the Division are clarified throughout the proposed rules.
- It is stated that these rules create no right to be a foster parent, and that an employer-employee relationship is not created when a person becomes a foster parent. N.J.A.C. 10:122B-1.2(b).
- "Dispositional conference" is defined. N.J.A.C. 10:122B-1.4.
- "Primary caretaker" is defined, and specific requirements related to the approval of the foster home are added. N.J.A.C. 10:122B-1.4.

The Field Operations Manual on Foster Care Services contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.). The Field Operations Manual on Foster Care Services will remain in existence but will be revised to reflect these proposed new rules upon adoption.

The Division's Field Operations Manual on Foster Care Services covers many aspects. The Division proposes to put this extensive material into the New Jersey Administrative Code as an introductory chapter, in which general provisions applying to all the chapters in the series are stated and all the terms to be used throughout the series of chapters to follow are defined, and subsequent chapters on specific foster care service areas. The introductory chapter is these proposed new rules, N.J.A.C. 10:122B, Requirements for Foster Care. The subsequent chapters on foster care services will all be in the series following N.J.A.C. 10:122B, such as the concurrently proposed N.J.A.C. 10:122C, Approval of Foster Homes, N.J.A.C. 10:122D, Foster Care Services, and N.J.A.C. 10:122E, Removal of Children and Closure of Foster Homes. Projected future chapters include a planned N.J.A.C. 10:122F, Para-foster Care and Placement with Relatives.

A summary of the proposed new rules follows:

N.J.A.C. 10:122B-1.1 gives the source of the Division's authority to establish standards.

N.J.A.C. 10:122B-1.2 states the purpose of the chapter.

N.J.A.C. 10:122B-1.3 states the scope of the chapter.

N.J.A.C. 10:122B-1.4 gives the definitions used in this chapter.

N.J.A.C. 10:122B-1.5 gives information about when the Division may limit services.

Social Impact

This chapter gives the definitions to be used throughout the rules on foster care services, and also provides for service limitations, should restrictions on services become necessary in the future. As no service limitations have yet been imposed, or are under consideration at the present, the social impact of future service limitations cannot be judged at this time. However, should it ever become necessary to impose service limitations, the social impact thereof will be explained when the notice of the limitation is published in the New Jersey Register.

The definitions, in and of themselves, have no social impact independent of the rules proposed for the succeeding chapters, N.J.A.C. 10:122C, Approval of Foster Homes, N.J.A.C. 10:122D, Foster Care Services, and N.J.A.C. 10:122E, Removal of Foster Children and Closure of Foster Homes.

Economic Impact

The Division does not anticipate that any economic impact will result from these proposed rules, which state the definitions to be used throughout the series of chapters on foster care, and provide a mechanism for public notification should limitations on delivery of services become necessary in the future. These rules will not require any capital improvements, or expenditures for staff or equipment on the part of the Division or any individual. Any training required to familiarize Division staff with these rules will be part of ongoing staff development.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The proposed new rules state the definitions to be used throughout the series of chapters on foster care services, and provide a process for the announcement of service limitations, should such limitations become necessary in the future.

Full text of the proposal follows:

CHAPTER 122B
REQUIREMENTS FOR FOSTER CARE

SUBCHAPTER 1. GENERAL PROVISIONS

10:122B-1.1 Authority

Pursuant to N.J.S.A. 30:4C-4(h) and 30:4C-26a, the Division of Youth and Family Services, Department of Human Services, is authorized to establish standards for foster homes which are used by the Division for the foster care placement of children under its supervision.

10:122B-1.2 Purpose

(a) The purpose of this chapter is to define certain words and terms used throughout the chapters on foster care services which follow, so as to provide standardization and ease of accessibility to the user of the chapter. The purpose of this series of chapters on foster care services is to ensure that each child requiring foster care shall reside in a safe home with a nurturing substitute family who can meet the child's individual needs.

(b) The purpose of this chapter does not:

1. Create an employer/employee relationship between the Division and an approved foster parent; and

2. Create any right to be a foster parent, apart from that which may exist under statute or case law.

10:122B-1.3 Scope

(a) The provisions of this chapter and this series of chapters shall apply to all persons approved by the Division to provide foster care services and to each household member; to all persons making application to the Division to be foster parents for the general placement of children and to each household member; and to each division representative responsible for studying, reevaluating or approving foster parents and their families. Any person who resides either full-time or part-time in the home shall be considered a household member.

(b) The regulatory framework of this series of chapters on foster care services which, as of the effective date of this chapter, N.J.A.C. 10:122B, includes this chapter and N.J.A.C. 10:122C, Approval of Foster Homes, N.J.A.C. 10:122D, Foster Care Services and N.J.A.C. 10:122E, Removal of Foster Children and Closure of Foster Homes is intended to be expanded to include other chapters on foster care services, all of which will be in the series of N.J.A.C. 10:122B et seq.

10:122B-1.4 Definitions

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

"Adult" means a person 18 years of age or older.

"Case goal" means a specific goal selected for a person receiving services from the Division which defines and guides case activity to maintain or achieve an appropriate permanent plan for a child.

"Child" means a person under 18 years of age.

"Corporal punishment" means any type of physical punishment.

"Department" means the New Jersey Department of Human Services.

"Dispositional conference" means a formal review of a Division decision, which is made by Division administrative personnel not involved in making or approving the original decision.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Division representative" means a professional employee of the Division of Youth and Family Services.

"Division director" means the Director of the Division of Youth and Family Services.

"Foster child" means a child under the care or custody of the Division of Youth and Family Services who is placed in a foster home because he or she cannot live with his or her own family due to neglect, abuse or other circumstances, and who is either under 18 years of age or who meets the criteria set forth in N.J.S.A. 9:17B-2(f).

"Foster home" means a private residence approved by the Division for the temporary substitute family care of children.

"Foster parent" means any person approved by the Division for the general placement of children in his or her own home. Unless otherwise indicated, "foster parent" includes those persons who have applied to be foster parents.

"Foster parent applicant" means any person who has applied to be a foster parent.

"Goal" means the result toward which effort is directed.

"Household member" means an adult or child, other than the foster parent or foster child, who resides full-time or part-time in the foster parent's household.

"Office manager" means a Division employee charged with the direction of a field office of the Division.

"Primary caretaker" means an adult household member who provides care for a foster child regularly or for significant periods of time.

10:122B-1.5 Service limitations

(a) The Division shall provide needed services within the limits of legislative appropriations to all eligible foster children and their families in similar circumstances. The provision of services shall also be subject to limitations due to actual ability of the division to provide such services directly or by purchasing such services from appropritе privately sponsored agencies or institutions.

(b) The demand for social services frquently exceeds the funds available to provide them. Therefore, in accordance with N.J.S.A. 30:4C-13, the Division Director may establish Division-wide service limitations based upon the need to focus fine resources to serve those individuals most in need. Service limitations shall be published within 90 days of imposition in the Public Notices section of the New Jersey Register.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Approval of Foster Homes

Proposed New Rules: N.J.A.C. 10:122C

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4C-4(h) and 30:4C-26a.

Proposal Number: PRN 1991-596.

Submit written comments by January 15, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, NJ 08625-0717

The agency proposal follows:

Summary

The proposed new rules, addressing the Division's foster home standards and the study and approval of foster homes, are a product of the Operations Policy to Rules project, or OPTR project. The proposed new rules derived from the existing Division Field Operations Manual on Foster Care Services.

The Division's Field Operations Manual on Foster Care Services covers many aspects. The Division proposes to put this extensive material into the New Jersey Administrative Code as an introductory chapter, in which general provisions applying to all the chapters in the series are stated and all the terms to be used throughout the series of chapters to follow are defined, and subsequent chapters on specific foster care service areas.

The introductory chapter is the concurrently proposed N.J.A.C. 10:122B, Requirements for Foster Care. The subsequent chapters on foster care services will all be in the series following N.J.A.C. 10:122B, such as this proposal, N.J.A.C. 10:122C, Approval of Foster Homes, and the concurrently proposed N.J.A.C. 10:122D, Foster Care Services and N.J.A.C. 10:122E, Removal of Children and Closure of Foster Homes. Projected future chapters include a planned N.J.A.C. 10:122F, Para-foster Care and Placement with Relatives. Also planned for inclusion in the Code are the rates of reimbursement mentioned in this chapter, that is, the rates that the Division will pay for the care and supervision of a foster child under an approved plan for child care arrangements (N.J.A.C. 10:122C-1.12), the rates that the Division will pay for medical examinations when a foster parent applicant's income falls below 150 percent of the Federal Poverty Income Guidelines (N.J.A.C. 10:122C-2.4(b)), the rates of reimbursement for transportation for special needs (N.J.A.C. 10:122C-1.13(e)), and the rates of reimbursement for transportation, parking and babysitting costs incurred by foster parent applicants in pre-service training (N.J.A.C. 10:122C-2.7).

The OPTR Advisory Group approached the issue of incorporating the materials in the Field Operations Manual on Foster Care Services into the New Jersey Administrative Code by determining the way they thought the Division should provide such services. The result is this proposal, which varies significantly from previous Division policy as contained in the Field Operations Manual on Foster Care Services. This manual was never part of the administrative code, but for informational purposes, the changes from the manual to the proposed new rules are here summarized:

- It is clarified that a person who resides in the foster home part-time is a member of the household. N.J.A.C. 10:122C-1.1.
- A requirement has been deleted that a foster parent must be at least 10 years older than the foster child, and a provision that a foster parent may be 18 to 21 years of age, if the foster parent's spouse or partner is at least 21 years of age, has been added. N.J.A.C. 10:122C-1.5.
- Each child is to have all appropriate inoculations. N.J.A.C. 10:122C-1.6(g).
- A requirement that a foster parent application must be rejected if anyone in the home has been convicted of a crime of violence has been changed to require rejection of any applications showing a crime of violence against a child or a family member, or a crime of sexual nature. N.J.A.C. 10:122C-1.7(c), see also 2.13(b).
- Specific provisions related to marital status have been generalized. N.J.A.C. 10:122C-1.8.
- The total number of children allowed in the foster home has been raised from five to six as long as the requirements of the State Uniform Construction Code are met. An exception to this provision allows, under certain circumstances, the placement of no more than eight children in a foster home, for no more than three months. The special approval of the regional administrator for program operations is needed rather than the approval of the office manager. N.J.A.C. 10:122C-1.9.
- A provision has been revised that stated that an adolescent foster child may not require child care while the foster parent is at work, to a provision that the plan for supervision of a foster child is to be appropriate to the age and needs of the child, and the child care plan is to be reviewed at the internal placement review. N.J.A.C. 10:122C-1.12.
- A requirement that a foster parent not use words or actions which inflict pain or are emotionally damaging to a foster child has been added. N.J.A.C. 10:122C-1.13(b).
- A requirement that the Division representative obtain the school transfer card and that the foster parent register the foster child in school has been added. N.J.A.C. 10:122C-1.13(c).
- Considerations regarding a foster parent applicant's adjustment to the community and the applicant's standards of living have not been included in the proposed new rules, because they were too subjective.
- Time requirements for the foster parent to notify the Division of changes have been added. N.J.A.C. 10:122C-1.15(f), (g) and (h).
- Regarding sleeping space, a foster child must sleep in a bedroom. A provision, that two siblings of the same sex could share a double bed, has been removed. Also removed has been a provision that no more than two children may share a bedroom. The bedroom shall be of adequate size, with ventilation and access. N.J.A.C. 10:122C-1.16.
- A provision that the foster home shall comply with all State and local laws regarding occupancy of a dwelling, health, and fire standards, including the Uniform Construction Codes in N.J.A.C. 5:23, has been added. The septic system must work, and each foster home must have a smoke detector on each floor, a fire extinguisher, central heat and the temperature of the foster home during waking hours when a foster child is present must be at least 65 degrees Fahrenheit. N.J.A.C. 10:122C-1.17.
- The Division will respond to all foster parent applicant inquiries within one week, and confirmation of pre-service training will be mailed within one week of receipt by the Division. N.J.A.C. 10:122C-2.1.
- Certain restrictions on Division employees as foster parents have been eliminated. N.J.A.C. 10:122C-2.2.
- Each potential primary caretaker must complete all forms. N.J.A.C. 10:122C-2.3(b), see also 14.
- A provision that the Division will pay for medical examinations at a standard rate when a foster parent applicant's income falls below 150 percent of the Federal Poverty Income Guidelines has been added. N.J.A.C. 10:122C-2.4(b).
- Applicants must provide at least one personal reference who has known the applicants for five years and one who has been a neighbor within the last six months. N.J.A.C. 10:122C-2.5(a).
- The foster parent applicant must disclose the criminal convictions of any household member over the age of 14. N.J.A.C. 10:122C-2.6(c).
- A requirement that each potential primary caretaker complete the pre-service training program has been added, a provision that the training last at least 10 hours has been removed, and a provision that the training be offered monthly in various locations has been added. N.J.A.C. 10:122C-2.7.
- A requirement that each foster parent applicant be present during the home visit has been added. N.J.A.C. 10:122C-2.8(b).
- The provision that the foster home study disposition be made within one week of obtaining all information has been added. N.J.A.C. 10:122C-2.9(b).
- A requirement that an application be rejected if significant information is falsified has been added. N.J.A.C. 10:122C-2.13(b)3.
- A requirement that an application be rejected if information comes to the Division that a foster parent applicant or household member has a finding of domestic violence against him or her has been added. N.J.A.C. 10:122C-2.13(d).
- A time frame of 10 working days has been added when the Division must notify a foster parent of the outcome of the reevaluation. N.J.A.C. 10:122C-2.14(b).
- A requirement that a foster home be closed if information comes to the Division that a foster parent or household member has a finding of domestic violence has been added. N.J.A.C. 10:122C-2.15(b).

• Approval of the Division and agreement by the foster parent to comply with the standards is needed for a foster child to remain in a foster home whenever standards are not met. N.J.A.C. 10:122C-2.17.

• When a foster parent does not comply with the standards per his or her agreement with the Division, a foster child may remain in the foster home only with approval of the regional administrator. N.J.A.C. 10:122C-2.18.

The Field Operations Manual on Foster Care Services contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.). The Field Operations Manual on Foster Care Services will remain in existence but will be revised to reflect these proposed new rules upon adoption.

A foster family is the primary temporary placement for a child who cannot remain at home because his or her family is unable to care for the child. Foster care services, which are provided through a partnership between the Division of Youth and Family Services and a foster family, enable a child to remain in the community and receive the benefits of a family environment so that the child's physical, emotional and social development can proceed with as little disruption as possible.

The Division is responsible for ensuring that each child requiring foster care resides in a safe and secure home with substitute parents who can meet the child's individual needs.

As such, the Division approves foster parents based upon careful study, evaluation and the application of basic standards to assess the quality of the home environment and the ability of the foster care applicant to provide care for a foster child.

It is recognized that there are many different methods of child rearing, and that there are unique factors involved in foster parenting. The standards used are related to the ability of a prospective foster parent to care for a foster child. All persons applying to be foster parents are evaluated in relation to these standards.

The overall assessment of the foster parent applicant with respect to the foster home standards requires consideration of all information obtained during the study process which pertains to the applicant and other household members. The primary sources of this information are the foster parent applicant, home visits, medical references, personal, employment, and school and day care references and criminal history and internal Division records checks.

In order to monitor the quality of a foster home after approval, the Division also conducts an annual reevaluation of the foster home based on the foster home standards (N.J.A.C. 10:122C-2.14).

A summary of the proposed new rules follows:

N.J.A.C. 10:122C-1.1 gives the purpose of the chapter.

N.J.A.C. 10:122C-1.2 gives the scope of the chapter.

N.J.A.C. 10:122C-1.3 references the definitions used in this chapter.

N.J.A.C. 10:122C-1.4 provides the standards for compliance.

N.J.A.C. 10:122C-1.5 states the age requirements for foster parents.

N.J.A.C. 10:122C-1.6 details personal and family requirements for foster parents and other household members.

N.J.A.C. 10:122C-1.7 states the requirements on criminal and child abuse and neglect history.

N.J.A.C. 10:122C-1.8 deals with the marital status of foster parents.

N.J.A.C. 10:122C-1.9 states requirements as to family size.

N.J.A.C. 10:122C-1.10 gives requirements regarding the citizenship of foster parents.

N.J.A.C. 10:122C-1.11 gives the standard regarding the religious practices of a foster child and a foster parent.

N.J.A.C. 10:122C-1.12 describes the supervision and care of a foster child when a foster parent works outside the home.

N.J.A.C. 10:122C-1.13 gives a foster parent's responsibilities to a foster child.

N.J.A.C. 10:122C-1.14 states the relationship of a foster family to the community.

N.J.A.C. 10:122C-1.15 details the relationship between a foster parent and the Division.

N.J.A.C. 10:122C-1.16 gives the standards for the sleeping space for a foster child.

N.J.A.C. 10:122C-1.17 provides the standards for life safety factors.

N.J.A.C. 10:122C-2.1 states the requirements for the Division's response to an inquiry about becoming a foster parent.

N.J.A.C. 10:122C-2.2 provides that a Division employee may become a foster parent.

N.J.A.C. 10:122C-2.3 gives the forms to be completed by a foster parent applicant.

N.J.A.C. 10:122C-2.4 provides the standards for medical references.

N.J.A.C. 10:122C-2.5 gives the requirements for personal, employment, school and day care and child care references, as appropriate.

N.J.A.C. 10:122C-2.6 details the record check procedures.

N.J.A.C. 10:122C-2.7 provides for pre-service training.

N.J.A.C. 10:122C-2.8 states the requirements for the home visit.

N.J.A.C. 10:122C-2.9 explains the procedures for the disposition of the foster home study.

N.J.A.C. 10:122C-2.10 gives the standards for foster home approval.

N.J.A.C. 10:122C-2.11 allows for foster home provisional approval, under certain conditions.

N.J.A.C. 10:122C-2.12 describes the withdrawal of a foster parent application.

N.J.A.C. 10:122C-2.13 gives the standards on foster home rejection and waivers.

N.J.A.C. 10:122C-2.14 allows for the reevaluation of a foster home.

N.J.A.C. 10:122C-2.15 provides the standards for closure of a foster home at reevaluation.

N.J.A.C. 10:122C-2.16 states the actions the Division is to take when a foster home does not meet the standards after reevaluation.

N.J.A.C. 10:122C-2.17 gives the procedures to be followed if the foster parent agrees to meet the standards after a reevaluation.

N.J.A.C. 10:122C-2.18 states the actions the Division is to take when a foster home does not comply with the written agreement.

Social Impact

A positive social impact is to be expected as a result of applying a uniform, comprehensive process and set of standards to assess a prospective foster family or to evaluate a foster home which is in use. A child who needs foster care is assured of a safe and nurturing environment. The public may have confidence that the expense involved in placing a child in foster care is an investment in a child's future. In addition, the Division's staff will have concrete Statewide standards and a study and approval process to use in assessing foster parents.

While the proposed new rules do not change the process in current practice of approving or reevaluating foster homes, changes have been made to the standards by which families are currently evaluated. These changes have the effect of making the standards more concrete and measurable.

Economic Impact

Approximately 3,000 currently approved foster families and families which apply to become foster families each year are affected by the promulgation of these new rules.

These proposed new rules standardize the way foster homes are evaluated and reevaluated throughout the State. The rules also specify the situations in which foster parents may request a further review of a Division decision, and the process which may occur. Both of these changes should have a positive effect on foster parents and foster parent applicants, as they will be assured equitable treatment by the Division. The promulgation of the right to request further review of a Division decision and notification of this right may result in an increased number of reviews conducted by various Division staff members.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq Therefore, a regulatory flexibility analysis is not required. The proposed new rules describe the standards and procedures required to be a foster parent approved by the Division of Youth and Family Services for the placement of children.

Full text of the proposed new rules follows:

CHAPTER 122C
APPROVAL OF FOSTER HOMES

SUBCHAPTER 1. FOSTER HOME STANDARDS

10:122C-1.1 Purpose

The purpose of this chapter is to ensure that each child requiring foster care shall reside in a safe home with a nurturing substitute family who can meet the child's individual needs. Any person who resides either full-time or part-time in the home shall be considered a household member.

10:122C-1.2 Scope

(a) The provisions of this chapter shall apply to all persons approved by the Division to provide foster care services and to each household member; to all persons making application to the Division to be foster parents for the general placement of children and to each household member; and to each Division representative responsible for studying reevaluating or approving foster parents and their families.

(b) These rules provide a process for a foster parent applicant and the Division to determine whether an applicant and the applicant's family meet the Division's standards to provide suitable foster care for children, provide a process for the annual reevaluation of each foster home previously approved, assist the Division in carrying out its responsibilities for children in placement, and use the agency's services for the best interests of children and families.

10:122C-1.3 Definitions

The definitions in N.J.A.C. 10:122B, Requirements for Foster Homes, are hereby incorporated into this chapter by reference.

10:122C-1.4 Compliance

(a) Unless provisional approval is granted under the provisions of N.J.A.C. 10:122C-2.11, a prospective foster family shall comply with all standards in this chapter which can be assessed prior to approval and the placement of a child. The foster family also shall agree to comply with those standards in this chapter which cannot be assessed until after approval and the placement of a child.

(b) Once approved, the foster family shall continue to comply with all standards in this chapter or meet the provisions of N.J.A.C. 10:122C-2.17 and 2.18.

10:122C-1.5 Age

(a) The foster parent shall be 21 years of age or older and shall provide verification of age. The office manager may waive the age requirement for a foster parent who is between 18 and 21 years of age, if the spouse or partner of the foster parent is 21 years of age or older and living in the home.

(b) There shall be no upper age limit for foster parents.

10:122C-1.6 Personal and family requirements

(a) The foster parent shall be able to care effectively for a foster child. The Division shall make this determination by a review of personal and professional references; observation of the foster parent's interactions in the pre-service training; observation during the home visit of the foster parent's interaction with household members; and discussion with the foster parent. The Division shall assess the following areas:

1. Motivation for taking a foster child into the home;
2. Relationships among immediate and extended family members;
3. Expectations of children;
4. Impact a foster child might have on the family's functioning and the resources available to moderate that impact;
5. Attitude of the foster parent applicant's own children toward accepting a foster child;
6. Foster parent's willingness to accept and care for a foster child despite the child's possible limitations, changing needs and problems;
7. Foster parent's understanding of the positive and negative aspects of foster parenthood;
8. Foster parent's willingness to work through problems and difficult behavior with a foster child;
9. Foster parent's willingness to advocate for a foster child's needs;
10. Foster parent's willingness to accept a foster child's relationship with his or her family and the need to promote the positive aspects of such a relationship;
11. Foster parent's utilization of community resources; and
12. Foster parent's willingness to help a foster child return to his or her own home or be adopted.

(b) Each foster parent applicant and household member shall provide the Division with a medical reference completed by a physician.

(c) A foster parent must be free of any physical, mental or emotional illness which, in the judgment of the Division, would impair his or her ability to assume and carry out the responsibilities of a foster parent.

(d) A handicap in and of itself shall not disqualify an individual from eligibility as a foster parent.

(e) Each foster parent applicant and household member shall be free of serious contagious diseases which may put a foster child at risk.

(f) A foster parent or other household member shall not abuse alcohol or drugs.

(g) Each child living in the foster home shall have all age appropriate inoculations.

(h) The Division shall evaluate the effect of any disability or disease on the family's ability to care for a foster child.

(i) The foster parent shall provide the necessities of life for the foster parent's family.

(j) The foster parent shall have income or other means of financial support that makes the family economically independent of the expected foster care maintenance payment.

(k) The foster parent shall use all the money received in the name of the foster child for that foster child's care.

10:122C-1.7 Criminal and child abuse and neglect history

(a) A foster parent or household member shall not evidence personal conduct that may present a potential danger to the foster child.

(b) A foster parent or household member shall not have caused risk or injury to a child through abuse or neglect.

(c) A foster parent or household member shall not have been convicted of a crime of violence against any child or against a family member or a crime of sexual nature or any other act of a similarly serious nature.

(d) A foster parent or household member shall not have been convicted of being a disorderly person on the basis of an act involving violence against any child or against a family member or any other act of a similarly serious nature.

10:122C-1.8 Marital status of a foster parent

(a) A foster parent may be married, co-habiting, single, separated, widowed or divorced.

(b) When a couple lives together, both partners shall be considered to be foster parents who shall meet the standards contained in this chapter.

10:122C-1.9 Family size

(a) The foster family shall be able to provide sufficient time and attention to each foster child placed in their home without causing other family members' needs to go unmet, causing the quality of care to be substantially diminished, or over-burdening the foster parent.

(b) The Division representative and the foster family shall agree mutually on the number of foster children who may be placed in the foster home. The determination shall be based upon the following criteria:

1. The home shall meet requirements of the State Uniform Construction Code, N.J.A.C. 5:23, when more than five foster children live in the home. The specific approval of the Assistant Director of Program Operations of the Divsion of Youth and Family Services is required for the total number of foster children in the foster home to exceed five;
2. The foster home is large enough to accomodate the number of foster children and meets the standards of N.J.A.C. 10:122C-1.16, concerning sleeping space;
3. The foster family has met and continues to meet the needs of each foster child placed in the home; and
4. The foster family has the ability to meet the needs of each additional foster child needing placement.

10:122C-1.10 Citizenship

(a) A foster parent may be a citizen of any country.

(b) If not a United States citizen, a foster parent applicant shall present a visa or U.S. Immigration and Naturalization Service documentation as evidence of legal residency. The Division shall consider how long the foster parent applicant is authorized to remain in this country to determine if the applicant can complete the approval process and serve as a foster parent.

10:122C-1.11 Religion

(a) The foster parent may be of any religion or be of no religion.

(b) The foster parent's religious practices shall not interfere with a foster child receiving medical care.

(c) The foster parent and the Division representative shall establish a plan to provide the foster child with reasonable opportunities to exercise religious practices in accordance with the foster child's preference and the wishes of the parents.

10:122C-1.12 Foster parent's employment and supervision or child care for the foster child

(a) Either or both foster parents may be employed.

(b) If a single foster parent is, or both foster parents are, employed outside the home, the foster parent shall develop with the Division representative, as part of the case plan, a plan for the care and supervision of each foster child. The plan shall be appropriate to the age and needs of the foster child and shall be subject to supervisory approval.

1. If the plan is to use a day care center or a family day care home, the day care center shall be licensed, according to N.J.A.C. 10:122, and the family day care home shall be registered, according to N.J.A.C. 10:126 and N.J.A.C. 10:126A.

2. If the plan is approved, the Division shall pay for child care arrangements as outlined in the case plan, according to established rates.

3. The foster parent shall provide the Division representative with a telephone number through which the foster parent can be reached at work in an emegency, where possible.

(c) The participants of the Division's internal placement review shall review the child care plan.

10:122C-1.13 Foster parent's responsibilities to a foster child

(a) A foster parent shall have the ability to provide for a foster child's basic nutritional, developmental, educational, and health needs. The Division shall provide the foster parent with information on nutrition and child health needs through consultation and training. The foster parent shall be responsible for arranging to meet the child's health needs, including an annual medical and dental checkup, as agreed to with the Divison.

(b) The foster parent shall use fair, reasonable, and consistent discipline to enhance or modify behavior, based on an understanding of the individual foster child's needs, behavior and stage of development. The foster parent shall not use corporal punishment or words or actions which inflict pain or are emotionally damaging to a foster child as a form of discipline. The Division shall provide the foster parent with consultation and training about appropriate disciplinary practices.

(c) If there is a need for the foster child to transfer to a different school, the Division representative shall obtain the school transfer card promptly and give it to the foster parent. The foster parent shall register the foster child in school, as negotiated with the Division representative, and ensure that the foster child attends regularly according to school regulations. The foster parent shall encourage good study habits, be involved with the foster child's academic progress, attend school conferences and meet with school personnel when there are problems or for periodic reviews. The foster parent shall advise the Division representative about the child's academic progress. The foster parent shall request that the Division representative attend school conferences and other meetings with school personnel when necessary.

(d) A foster parent, with the assistance of the Division representative, shall support and encourage the foster child to engage in recreational and social activities appropriate to the age, interests and abilities of the foster child.

(e) A foster parent shall provide or arrange for the routine transportation needs of a foster child. The Division representative shall identify with the foster parent a foster child's special transportation needs, if any, and how they will be met. Transportation for special needs which is provided by the foster parent shall be reimbursed by the Division with prior office manager approval. Transportation for special needs may include transportation for the treatment of physical, emotional, mental or cognitive conditions or to comply with a court summons or court order.

(f) The foster parent shall ensure the opportunity for the continuity of the cultural and ethnic growth and cultural and ethnic education of any foster child placed in his or her home.

(g) The foster parent shall cooperate with any activities as specified in the case plan, see, for example, N.J.A.C. 10:122C-1.12(b), for the foster child such as counseling, therapy or court sessions or visits with the foster child's family.

10:122C-1.14 Relationship of the foster family to the community

The foster family shall indicate to the Division the components of their support system, such as family members, friends and neighbors.

10:122C-1.15 Relationship between a foster parent and the Division

(a) The foster parent and the Division representative shall develop and maintain a cooperative relationship.

(b) The foster parent shall demonstrate reasonable and mature attitudes toward professional figures and institutions, as determined by a review of references and an assessment of the foster parent's interactions in the pre-service training and during the home visit(s).

(c) The foster parent shall be bound by the same standards of confidentiality regarding a foster child and his or her family as the Division and its employees. The Division shall inform the foster parent of the standards of confidentiality contained in N.J.S.A. 9:6-8.10a and 45 CFR 205.50.

(d) The foster parent and the Division representative shall advise each other of any vacation plans, emergencies, unusual occurrences or significant problems involving the foster child.

(e) The Division representative shall provide the foster parent with a means of access to the Division on a 24-hour basis.

(f) The foster parent shall notify the Division of any change in address, telephone number, living situation, employment or number of persons residing in the household, whenever possible, prior to the change or immediately thereafter. The Division shall assess the changes using the standards set in this subchapter. Any new primary caretaker or spouse of a foster parent shall be required to complete pre-service training within four months of becoming a household member.

(g) The foster parent shall notify the Division within one working day of any change in the health of a foster parent or household member which may adversely affect the foster family's ability to care effectively for a foster child.

(h) The foster parent shall notify the Division representative within one working day of any civil or criminal charges brought against the foster parent, foster child or any household member.

(i) The foster parent shall comply with the Division's system for receipt of reimbursement. The Division shall comply with the system for payment of reimbursement. The foster parent and the Division shall comply with the provision of the agreement between the foster family and the Division, see N.J.A.C. 10:122C-2.10, Foster home approval.

(j) The foster parent shall participate with the Division representative in establishing the role of the foster parent in working with the parent to achieve the case goal, including parent-child and sibling visitation, and how the Division shall support the foster parent in fulfilling his or her role.

10:122C-1.16 Sleeping space

(a) The foster parent shall provide each foster child with his or her own bed which is located in a bedroom, along with adequate space for personal possessions.

(b) When a foster child shares a bedroom with one or more children, the bedroom shall be of adequate size to accommodate the number of children sleeping there, with adequate ventilation and clear access to and from the room.

(c) The foster parent shall allow no foster child to sleep in the same room with a child of the opposite sex, when any of the children, including the foster child, is more than five years old.

(d) The foster parent shall allow no foster child over the age of two to share a bedroom with an adult, except temporarily during periods of illness or in emergencies.

10:122C-1.17 Life safety factors

(a) The foster parent shall maintain all indoor and outdoor areas of the foster home in a safe and sanitary manner which does not create any condition of poor hygiene or physical hazard. The foster parent's home shall comply with all local and State laws, including the State Uniform Construction Code, N.J.A.C. 5:23, regarding occupancy of a dwelling and health and fire standards. When a foster home is in a building designated as R-1 or R-2, three or more family living units, as designated by the State Uniform Construction Code, the building shall have:

1. A Certificate of Occupancy; and
2. A fire safety certificate.

(b) The Division representative shall assess sanitary and safety conditions in all areas of the home, including basements, attics, grounds and outbuildings.

(c) The foster parent shall ensure that each basement or attic which is used as a bedroom for a foster child is in compliance with all standards for indoor safety and sanitation, as listed in this section, and, in addition, shall meet the following requirements:

1. Two independent means of exist shall exist, at least one of which is an operable window or door suitable for emergency escape or rescue which leads directly outside;
2. The area shall have finished surfaces on walls, floors, ceilings, etc.;
3. A minimum of one window per room shall open for ventilation and shall have screening; and
4. The room shall have an area of no less than 70 square feet with at least one dimension no less than seven feet. The room shall have a height of no less than seven feet.

(d) The foster parent's daily practices regarding indoor sanitation and safety shall meet the following standards:

1. Insect or rodent infestation shall not be evident;
2. Major plumbing, drains, sewer lines, and septic systems shall be operable. Hot and cold running water shall be available in the residence;
3. Garbage shall be kept in receptacles. Garbage storage and removal from the house shall not present a health risk;
4. Indoor and outdoor pets, kept by the foster family, shall not present a health risk or danger to a child. The foster parent shall provide proof that each cat and dog has a current vaccination against rabies;
5. The home shall have at least one smoke detector on each floor, an operable five pound ABC fire extinguisher, and an unobstructed means of exit in case of fire. Combustible and flammable materials shall not be stored adjacent to or near a furnace or other heat source or accumulated in the attic, basement or other parts of the residence in an unsafe manner;
6. Emergency telephone numbers shall be posted by the telephone;
7. Lighting shall be sufficient to prevent accidents. There shall be no observable electrical hazards;
8. The home shall have a stove and refrigerator which are clean and in working order;
9. Firearms, other weapons and potentially dangerous implements shall be stored in a locked area out of the reach of children. Poisons, drugs and dangerous cleaning supplies shall be labeled and stored in places inaccessible to children;
10. Windows in living and sleeping areas shall be intact and allow for adequate ventilation. Doors and windows used for ventilation shall have screening;
11. The foster home shall have central heat. The temperature in the living areas used by any foster child shall be maintained at a minimum of 65 degrees Fahrenheit during waking hours when any foster child is present;
12. Paint on interior surfaces shall not be flaking, peeling or chipped;
13. The home shall be generally clean, in good repair and free of clutter which would present a hazard; and
14. All areas or equipment which present a high risk for accidents shall be safeguarded.

(e) The foster parent's daily practices regarding outdoor sanitation and safety shall meet the following standards:

1. Garbage shall be kept in receptacles, with organic garbage kept covered. Garbage storage shall not present a health risk;
2. The exterior of the residence shall provide protection against infestation from rodents, insects, etc.;
3. The land, including the outdoor play area, shall be free of standing surface water;
4. Each pet or domestic animal shall not present a health risk or danger to any child;
5. Paint on exterior surfaces which are accessible to any child shall not be flaking, peeling or chipped;
6. The exterior of the residence shall be generally free of hazards and clutter. Entrance ways and stairways shall be lighted. Each stairway, balcony, landing and porch shall be maintained to minimize the possibility of tripping or falling; and
7. Every outdoor area and piece of equipment which present a high risk for accidents shall be safeguarded.

(f) The foster home shall be accessible to the Division representative by motor vehicle. A foster family shall have a telephone in the residence so that the Division can contact the foster family directly and immediately when necessary.

SUBCHAPTER 2. STUDY AND APPROVAL OF FOSTER HOMES

10:122C-2.1 Inquiry requirements

(a) The Division shall respond to an inquiry from any individual who requests information about becoming a foster parent within one week of receipt by the Division.

(b) As part of the response, the Division representative shall collect and record identifying information from the individual, provide the individual with the basic standards for becoming a foster parent, screen the individual and offer to schedule the individual for pre-service training.

(c) When the individual indicates an interest and the Division representative has no reason to screen out the individual, the Division representative shall mail to the individual, within one week of contact, a written confirmation of the initial pre-service training session.

(d) When the individual does not attend the first pre-service training session, the Division representative shall mail him or her an invitation to the next initial pre-service training session.

10:122C-2.2 Division employees and relatives as foster parents

(a) A Division employee or a Division employee's relative may apply to become a foster parent. For the purpose of this subsection, the term "relative" is defined as a person connected to a Division employee by blood, marriage, or adoption.

(b) The study of an employee's home shall be conducted by the county office which serves the geographic area where the employee lives, except when the employee works in that office. In this situation, the county office in an adjacent county shall conduct the study of an employee's home.

(c) The Division shall take every measure to prevent any undue influence by the Division employee on the study process and decision-making, as well as to prevent the appearance of influence.

10:122C-2.3 Forms to be completed

(a) During the initial phase of the study process the Division representative shall give the applicant the following forms which the applicant or household member shall complete accurately (see Appendix, incorporated herein by reference);

1. An application to provide foster care, if not given previously;
2. Release of information forms for State and Federal criminal history checks;
3. Release of information forms for a local criminal history check, when obtainable;
4. Release of information forms to obtain the following references; personal, medical, employment, school and day care, child

care and any other placement agency with whom the applicant is affiliated; and

5. A home study form.

(b) Each applicant and potential primary caretaker shall complete release of information forms, as indicated in (a) above.

(c) Each new household member who is identified as a potential primary caretaker shall complete release of information forms for personal, employment, school and day care and child care references.

(d) These forms, which are incorporated herein by reference as an Appendix, are not reproduced herein but are available from:

Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

10:122C-2.4 Medical reference

(a) The applicant shall provide a medical reference from a physician on each applicant and household member. The Division shall send a medical reference form to each physician, which shall request the following information:

1. Whether the individual is free from serious contagious disease;

2. Whether the individual has any conditions or residual effects resulting from a particular disease;

3. Whether the individual is in good physical health;

4. The inoculations given to each child living in the home;

5. To the physician's knowledge, whether the individual is in good emotional health;

6. To the physician's knowledge, whether the individual uses any substance, such as tobacco, alcohol or drugs, in a way which affects his or her ability to function;

7. Whether the individual should not care for or associate with a foster child;

8. How long the individual has been a patient of the physician; and

9. The date the physician last examined the individual.

(b) The applicant may request reimbursement of the cost of a physical examination necessary to provide the information required in this section. The office manager shall approve reimbursement at a rate determined by the Division, if the family has a verified income below 150 percent of the Federal Poverty Income Guidelines, as published in the Federal Register, and the examination is not available free of charge.

(c) The foster parent shall provide the Division with a medical reference completed by a physician for each new household member.

10:122C-2.5 Other references

(a) Each applicant and potential primary caretaker shall provide three personal references from persons unrelated to the applicants. Applicants from the same household may provide the same personal reference, provided that the reference has knowledge of both applicants.

1. At least one personal reference shall have known the applicant for five years.

2. At least one personal reference shall have been a neighbor of the applicant within the last six months.

(b) Each applicant and potential primary caretaker shall provide employment, school and day care, and child care references, as appropriate, including a reference from any other placement agency with whom the applicant is or has been affiliated. The Division shall send a reference request to each entity named.

1. If the applicant states that a current job reference will jeopardize the applicant's employment status, the applicant shall provide a reference from a previous employer.

2. If a previous employer is not available, the applicant shall provide a reference from an appropriate alternative such as a former teacher or the applicant's supervisor in a volunteer activity.

(c) The Division shall obtain all references and assess all information obtained.

10:122C-2.6 Record checks

(a) The Division shall arrange for or take fingerprints for State and Federal criminal history checks, pursuant to N.J.S.A. 30:4C-26.8, to be conducted for each applicant and each adult household member. The Division shall obtain State and Federal criminal history checks for each new adult household member including all children who reach 18 years of age.

(b) The Division may request a local criminal history check on each foster parent applicant and adult household member. The Division may request a local criminal history check for each new adult household member.

(c) The foster parent shall disclose any criminal convictions of any household member, 14 years of age or older.

(d) The Division shall keep confidential all information obtained regarding the applicant and each household member.

(e) The Division shall conduct a review of its internal records to determine whether the foster parent applicant or any household member has neglected or abused a child.

10:122C-2.7 Pre-service training

(a) Each foster parent applicant and adult household member who is identified as a potential primary caretaker shall complete the pre-service training and evaluation program.

(b) The Division shall conduct pre-service training on a monthly basis in various locations throughout the State.

1. The Division shall develop the standardized pre-service training curriculum used.

2. The Division may provide the pre-service training at the applicant's home if the applicant demonstrates a compelling need to receive the training in his or her home.

(c) A professional Division representative shall conduct the pre-service training program and shall utilize an experienced foster parent who is approved by the Division as a co-trainer, as resources permit.

(d) During the initial phase of the pre-service training, the Division representative shall provide information about the standards for becoming a foster parent, the home study process, the foster home resource needs of the Division, and the Division's policies and procedures related to foster care, as specified in this chapter. The pre-service training shall include an explanation of the difference between the Division's foster care and adoption programs and the Division's requirements for becoming a foster parent, as outlined in N.J.A.C. 10:122C-1 and 2.

(e) The applicant and Division representative shall mutually assess the applicant's interest and ability to become a foster parent during the pre-service training program.

(f) The applicant may file for reimbursement for transportation, parking and babysitting costs incurred by the applicant which are directly related to attendance at the pre-service training sessions. The Division shall establish rates of reimbursement for this purpose. The applicant may file for reimbursement after completing the entire pre-service training program. The applicant may file for reimbursement after completing the entire pre-service training program.

10:122C-2.8 Home visit

(a) The Division representative shall visit the applicant's home at least one time as part of the study process.

(b) Each applicant and every household member shall be present at the home visit.

(c) During the home visit, the Division representative shall:

1. Assess compliance with the sleeping space and life safety standards, as outlined in N.J.A.C. 10:122C-1.16 and 1.17;

2. Interview each household member who is not participating in the pre-service training;

3. Discuss any inconsistencies or concerns by any party regarding any information gathered during the assessment process;

4. Verify identifying information about each family member and household member listed on the application;

5. Discuss the type of child acceptable and the impact of foster care on the family; and

6. Discuss any other questions raised by the applicant or any household member.

10:122C-2.9 Foster home study dispostion

(a) The Division representative and supervisor shall determine whether to approve, provisionally approve, reject or consider the application withdrawn.

(b) The determination shall be made through a supervisory conference held within one week of:

1. Obtaining all references and forms;
2. Completing the pre-service training; and
3. Completing the home visit.

10:122C-2.10 Foster home approval

(a) The Division shall approve a foster home when the foster parent applicant and each primary caretaker completes the mandatory pre-service training and study process, and the family meets all foster home standards.

(b) The Division shall send the foster parent applicant a formal written notice of acceptance as a foster parent for one year, subject to annual reevaluation. The foster parent shall sign an agreement with the Division (see Appendix).

10:122C-2.11 Foster home provisional approval

(a) The Division office manager or county supervisor may grant provisional approval to a foster home when all components of the home study process are completed but only one parent of a two-parent or two-primary caretaker family has completed mandatory pre-service training and no approved home is available and appropriate for the placement of a child.

1. The Division representative shall make a home visit prior to the placement of a foster child in order to discuss the placement with the parent or caretaker who has not completed the training.

2. The second parent or primary caretaker shall attend and complete the training within three months.

3. If the second parent or primary caretaker fails to complete the training during the three month exception period, no other foster child shall be placed and the foster home shall be closed when the original placement ends, unless the second parent or primary caretaker has subsequently completed the training.

(b) The Assistant Director of Program Operations may grant provisional approval of a foster home for up to six months or until the Federal criminal history record check is received, whichever is sooner, per N.J.S.A. 30:4C-26.8, only when:

1. There is a compelling need to utilize the specific home for the placement of a specific child;

2. The Federal criminal history check has been pending for more than 45 days or the fingerprints for the Federal criminal history check have been rejected and resubmitted;

3. All the other foster home standards and requirements of the study and approval process have been met;

4. The results of the State criminal history record check have not revealed a criminal history; and

5. The applicants and other adult household members have signed affidavits swearing that they do not have a criminal history.

(c) The office manager or county supervisor may grant provisional approval of a foster home before the abatement of minor life safety hazards, see N.J.A.C. 10:122C-1.17, provided that the foster parents can provide assurances that interim safety measures will be taken and that hazards will be corrected within 30 days of notification by the Division of the violations.

(d) The Division representative shall notify the foster parent in writing of the conditions of the provisional approval.

10:122C-2.12 Foster home withdrawal

(a) A foster parent applicant may withdraw his or her application at any time during the study and approval process.

1. The Division shall consider that the applicant has withdrawn if he or she fails to respond to at least two invitations to attend group training sessions.

2. The applicant may withdraw due to a decision that it is not in his or her best interest to continue.

(b) The Division shall give the applicant a formal written notice acknowledging the withdrawal and informing the applicant that he or she may reapply at any time.

10:122C-2.13 Foster home rejection and waivers

(a) The Division may reject an applicant at any time during the study process. The decision is made in a supervisory conference. An applicant shall be rejected if the applicant does not meet the requirements of this chapter.

(b) An applicant shall be rejected immediately under the following circumstances:

1. The Division's records indicate that the applicant or anyone living in the applicant's household has caused risk or injury to a child through neglect, abuse or emotional trauma;

2. The applicant or any household member has been convicted of a crime of a sexual nature or a crime of violence against any child or a family member or a disorderly persons offense involving similar acts or any other act of a similarly serious nature; or

3. The applicant falsifies or intentionally provides significant misleading information or omits significant information to the Division about himself or herself or any household member or who allows a household member to do the same.

(c) An applicant shall not be rejected automatically when the applicant or a household member has a criminal conviction not listed in (b)2 above. The criminal record shall be discussed with the applicant or the involved household member. The criminal record shall then be evaluated in relation to the ability of the applicant to care for, protect and influence a foster child. Based upon the affirmative recommendation of both the office manager and the regional administrator, the Division Director shall decide whether to approve the application of a foster parent who:

1. Has a criminal record, but who is not rejected immediately according to (b)2 above; or

2. Has a household member who has a criminal record, but who is not rejected immediately according to (b)2 above.

(d) Should information come to the Division during the study process that a foster parent applicant or household member has a finding of domestic violence pursuant to N.J.S.A. 2C:25-1 et seq. against him or her, the Division shall reject the applicant.

(e) The Division representative shall inform the applicant in writing of a rejection, summarizing the reasons for rejection, based on the standards set in this chapter, and informing the applicant that he or she may request a review of the decision by the office manager or the county supervisor responsible for the foster child within one month of receiving the letter. If the applicant requests such a review, the office manager or the county supervisor responsible for the foster child shall review the decision and make a recommendation to the regional administrator whether to uphold or change that decision. The regional administrator shall make the decision and inform the applicant in writing of the decision, summarizing the reasons for the decision, based on the standards set in this chapter, within one month of the applicant's request. The regional administrator's decision is the final administrative determination of the Division.

10:122C-2.14 Reevaluation of a foster home

(a) A Division representative shall reevaluate annually each approved foster home based on the standards in this chapter. The reevaluation of an employee's foster home shall be conducted by the county office which supervises the employee's foster home, except when the employee works in that county office. In this situation, the county office in an adjacent county shall conduct the reevaluation.

(b) The Division representative shall notify the foster parent within 10 working days in writing of the outcome of the reevaluation and of the right to request a meeting with administrative personnel to discuss the outcome if the foster parent does not agree with the reevaluation.

10:122C-2.15 Closure at reevaluation

(a) When the Division reevaluates a foster home which does not meet the requirements of N.J.A.C. 10:122C-1.7 regarding disorderly persons offenses or crimes of violence or of a sexual nature, or other act of a similarly serious nature, or in which the foster parent or any household member has caused injury through child abuse or neglect, the Division shall close the foster home.

(b) Should information come to the Division that a foster parent or household member has a finding of domestic violence pursuant to N.J.S.A. 2C:25-1 et seq. against him or her, the Division shall close the foster home.

(c) The Division may close the foster home when it determines that the foster parent has falsified or intentionally provided significant misleading information or omitted significant information or has allowed a household member to do so.

(d) The Division may close a foster home when it determines that the foster home does not meet any of the requirements of this chapter. See N.J.A.C. 10:122E, Removal of Foster Children and Closure of Foster Homes.

10:122C-2.16 Division action when a foster home does not meet standards after reevaluation

(a) When the Division reevaluates a foster home which does not meet the provisions of this chapter, other than those covered in N.J.A.C. 10:122C-2.15(a), the Division shall assess if there is immediate danger to any foster child placed in the foster home, if the foster child should be removed and assess whether the foster home should be closed or whether the foster family may be able to correct the violations and meet the standards within six months or less.

1. The Division shall provide protection to each child in the home, as necessary.

2. The Division may use available allocated funds to assist the foster family to meet the foster home standards when a foster child is placed in the foster home or refer the foster family to appropriate community resources to retain the foster home as a placement resource.

10:122C-2.17 Agreement to meet standards after reevaluation

(a) After assessing that there is no danger to any foster child and that it is possible for the foster family to meet the standards contained in this chapter, with office manager approval, the Division and the foster parent shall agree in writing on a time frame for meeting the standards, which shall not exceed six months. The Division shall make no additional placements until the standards in this chapter are met.

1. Approval of the office manager is required to permit a foster child to remain in the foster home during this time.

2. Approval by the Division Director shall be required to permit a child to remain in the foster home when the criminal history or child abuse and neglect standards are not met. See N.J.A.C. 10:122C-1.7 and 2.13(b). This approval shall be based on a determination by the office manager and regional administrator that it is in the foster child's best interest to remain in the foster home.

10:122C-2.18 Division action when a foster home does not comply with written agreement

(a) The Division representative shall close the foster home if the foster family does not meet the standards set in this chapter at the end of the time frame stated in the written agreement. See N.J.A.C. 10:122C-2.17(a). The Division representative shall send written notice to the foster parent stating the reasons for closing the home.

(b) Approval by the regional administrator shall be required to permit a foster child to remain in the foster home if the foster home does not meet the standards of this chapter in accordance with the written agreement. This approval shall be based on a determination by the office manager that it is in the foster child's best interests to remain in the foster home. The Division shall not place any more foster children in the foster home unless the foster home meets all the standards of this chapter.

1. The Division representative shall notify the foster parent in writing of the conditions under which the foster home will be permitted to remain open.

2. The Division shall inform the foster parent in writing that he or she may request a meeting with the office manager if the foster parent disagrees with the conditions under which the foster home will be permitted to remain open. If the foster parent requests such a meeting, the office manager shall hold a meeting, make a decision and notify the foster parent in writing of the decision, the reasons for the decision, and that to appeal the decision, the foster parent may request a meeting with the regional administrator. If the foster parent requests a meeting with the regional administrator, the regional administrator shall hold a meeting and shall make the decision and notify the foster parent in writing of the regional administrator's decision and the reasons for the decision within one month of the foster parent's request.

APPENDIX

FORMS

The following forms to be completed by the foster care applicant (see N.J.A.C. 10:122C-2.3) or the applicant and DYFS (see N.J.A.C. 10:122C-2.10) are incorporated by reference in this chapter:

Authorization for Release of Information, DYFS 26-15 (rev. 8/85)
Employment Reference, DYFS 5-24 (new 5/85)
Background Check Consent Form, DYFS 5-31 (new 1/86)
The Home Study, DYFS 5-26 (new 5/85) (English)
DYFS 5-26A (new 5/85) (Spanish)
Police Reference, DYFS 5-25 (rev. 9/88)
Personal Reference, DYFS 5-6a (rev. 5/85) (English)
DYFS 5-6a(A) (rev. 4/86) (Spanish)
School/Day Care Reference, DYFS 5-2e (rev. 4/86)
Medical Reference, DYFS 5-2c (rev. 5/85)
Foster and Adoptive Home Study Application, DYFS 5-2 (rev. 4/86)
Child Care Reference, DYFS 14-202(f) (new 4/86)
Foster Family Care Agreement, DYFS 5-5 (rev. 6/90) (English)
DYFS 5-5A (rev. 6/90) (Spanish)

While these forms are not reproduced in the Administrative Code, they are available from DYFS or from the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 049, Trenton, New Jersey 08625.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Foster Care Services

Proposed New Rules: N.J.A.C. 10:122D

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4C-4(h) and 30:4C-26a.

Proposal Number: PRN 1991-595.

Submit comments by January 15, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules" project, or OPTR, was initiated by the Division to subject those policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rulemaking process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The OPTR project involves an advisory body of 90 members, which includes family and child advocates, foster parent associations, Legal Services, the Public Advocate, the Association for Children of New Jersey, DYFS field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project has been a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process has resulted in a thorough and full-scale study, reevaluation and revision of existing Division policies, procedures and practices.

This proposal, addressing the Division's services to children in foster home placement and visits between the foster child and the foster child's family, is a product of the OPTR project. Rather than merely codifying the existing Division Field Operations Manual on Foster Care Services, the OPTR Group approached the issue by determining the way they thought the Division should provide such services. The result is these proposed new rules, which vary significantly from previous Division policy as contained in the Field Operations Manual on Foster Care Services. This manual was never part of the administrative code, but for information purposes, the changes from the manual to the proposed new rules are here summarized:

- The purposes of visitation are stated. N.J.A.C. 10:122D-1.1.
- A statement that visits occur at least once every two weeks but no less than once every three weeks has been deleted in favor of a statement that for most children in foster care, the goal is to hold a visit every week, unless otherwise limited. N.J.A.C. 10:122D-1.1(b).
- A statement that the visitation plan may exclude specific persons from having visits has been included. N.J.A.C. 10:122D-1.4(b).
- The statement that sibling visits may take place with parental visits or separately is new. N.J.A.C. 10:122D-1.4(d).
- All time frames related to completion of the visitation plan are new. N.J.A.C. 10:122D-1.5(a) and (b), also N.J.A.C. 10:122D-1.7.
- The statements that the visitation plan is developed with the foster child, relatives, former foster family, siblings and their representatives, and that each section of the visitation plan may be negotiated separately, are new. The statement that foster parents are encouraged to participate in developing the visitation plan is also new. N.J.A.C. 10:122D-1.5(d) and (f).
- A statement that participants in the visitation plan and their representatives receive a copy of the plan in writing has been added. N.J.A.C. 10:122D-1.6.
- The goal of the visits and the date and time of visits will be included in the visitation plan. Indicating how and by whom contact is initiated has been removed from the visitation plan. N.J.A.C. 10:122D-1.8(a).
- A statement that visits shall take place in the least restrictive, most comfortable setting possible has been added. Limitations as to when a Division office may be used for visitation have been added. N.J.A.C. 10:122D-1.9(a) and (c).
- A statement that visits shall be unsupervised unless the Division or family court finds a need for supervision has been added. Also added is a requirement that the plan contain the reason why supervision is required. Reasons for needing supervised visits are included. N.J.A.C. 10:122D-1.10(b) and (c).
- Also added is a provision allowing for contract visitation providers. N.J.A.C. 10:122D-1.11(b).
- Specific circumstances have been added limiting when a Division representative may provide visitation supervision. N.J.A.C. 10:122D-1.11(c).
- A statement that the Division representative will participate in visits for the purpose of case assessment and planning replaces a statement that the Division representative will arrange a method to obtain information when someone else supervises. N.J.A.C. 10:122D-1.12.
- A statement that the Division shall provide the child's transportation and shall provide or pay for the parent's transportation when the parent lives in New Jersey and is unable to provide it replaces a statement that the parent will provide transportation, unless another plan is agreed to. N.J.A.C. 10:122D-1.13(a) and (b).
- A standard that the frequency and duration of visits be consistent with the purpose of the visits has been added. N.J.A.C. 10:122D-1.14(a)2.
- A statement that special consideration be given to the need for preschool children to have frequent visits has been added. N.J.A.C. 10:122D-1.14(a)3.
- A standard that overnight and weekend visits shall be scheduled frequently replaces a monthly schedule of overnight and weekend visits. N.J.A.C. 10:122D-1.14(a)4.
- A statement that a visit shall be rescheduled when it was missed because the Division representative or the person providing supervision could not participate has been added. N.J.A.C. 10:122D-1.14(a)6.
- Five points to use in determining if visits will be harmful to the foster child have been added. N.J.A.C. 10:122D-1.15(a)1i.-v.
- A statement that visits are limited due to the foster child's request has been limited to those situations where the goal is not family reunification. N.J.A.C. 10:122D-1.15(a)2.
- A provision has been added which permits reduction of visits based on the parent's chronically missing visits. N.J.A.C. 10:122D-1.15(a)4.
- Material about planning visits when the goal is adoption has been removed. N.J.A.C. 10:122D-1.15.
- A statement that the supervisor shall approve or disapprove any reduction in frequency of visits has been added. N.J.A.C. 10:122D-1.15(b).
- A statement that the Division shall assist the family to eliminate causes for the limitation of visits has been added. N.J.A.C. 10:122D-1.15(d).
- The use of the local and regional dispositional conference has been broadened to include disagreement about any aspect of the visitation plan. N.J.A.C. 10:122D-1.16.
- The first four statements in the purpose section of subchapter 2 are new. N.J.A.C. 10:122D-2.1(a)1.-4.
- A provision has been added that, in addition to visiting the foster child within one week of placement, the Division representative must also visit the parent and foster parent. N.J.A.C. 10:122D-2.4(b).
- A provision has been added that the Division must develop an educational record only for foster children subject to State laws governing compulsory education. N.J.A.C. 10:122D-2.6(b).
- A provision has been added that it is the Division's responsibility to ensure that the foster child is enrolled in school. N.J.A.C. 10:122D-2.6(f)1.
- The term "self-sufficiency" has replaced the term "life skills training." The age at which a plan must be developed has been moved from "before the completion of 8th grade" to "age 16." N.J.A.C. 10:122D-2.7(b).
- A provision that the Division must refer a foster child to resources for post-secondary education, as requested by the foster child, has been added. N.J.A.C. 10:122D-2.7(f).
- A process for disagreement resolution has been added. N.J.A.C. 10:122D-2.8(d).

The Field Operations Manual on Foster Care Services contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.). The Field Operations Manual on Foster Care Services will remain in existence but will be revised to reflect these proposed new rules upon adoption.

A foster family is the primary temporary placement for a child who cannot remain at home because his or her family is unable to care for the child. Foster care services, which are provided through a partnership between the Division of Youth and Family Services and a foster family, enable a child to remain in the community and receive the benefits of a family environment so that the child's physical, emotional and social development can proceed with as little disruption as possible.

Children in foster care should visit with their families in most situations. These proposed new rules specify how visits are planned and carried out. The responsibilities of each party are discussed. The process for resolution of disagreements about any aspect of the visitation plan or service provision is specified.

All children in foster care are entitled to certain services—case management, health care, education and self-sufficiency (when age appropriate). It is the Division's responsibility to determine the foster child's additional, individual service needs and to arrange for them to be met, as services are available.

A summary of the proposed rules follows:

N.J.A.C. 10:122D-1.1 states the purpose of subchapter 1, the purposes of visitation, and information about the frequency and duration of visits.

N.J.A.C. 10:122D-1.2 states the scope of subchapter 1.

N.J.A.C. 10:122D-1.3 gives the definitions used in subchapter 1.

N.J.A.C. 10:122D-1.4 states the requirements for the visitation plan.

N.J.A.C. 10:122D-1.5 gives the standards for developing the visitation plan including the time frames for plan development and revision, and who will participate in plan development.

N.J.A.C. 10:122D-1.6 states who will receive the visitation plan.

N.J.A.C. 10:122D-1.7 provides for renegotiation of the visitation plan.

N.J.A.C. 10:122D-1.8 lists the components of the visitation plan.

N.J.A.C. 10:122D-1.9 lists suitable locations for visits.

N.J.A.C. 10:122D-1.10 describes whether anyone will supervise the visits.

N.J.A.C. 10:122D-1.11 describes who may supervise visits, if necessary.

N.J.A.C. 10:122D-1.12 gives the role of the Division in visits.

N.J.A.C. 10:122D-1.13 provides for transportation for the foster child, parent and others.

N.J.A.C. 10:122D-1.14 lists standards to be reflected in the visitation plan.

N.J.A.C. 10:122D-1.15 lists reasons when visits may be limited.

N.J.A.C. 10:122D-1.16 gives the recourse of the dispositional conference when there is disagreement about any aspect of the visitation plan.

N.J.A.C. 10:122D-2.1 states the purpose of subchapter 2.

N.J.A.C. 10:122D-2.2 states the scope of subchapter 2.

N.J.A.C. 10:122D-2.3 gives the definitions for subchapter 2.

N.J.A.C. 10:122D-2.4 specifies the case management services provided by the Division.

N.J.A.C. 10:122D-2.5 specifies what health care services must be provided and what records must be kept for a foster child.

N.J.A.C. 10:122D-2.6 lists the role of the Division in educational services, the role of the foster parent, and the educational records which must be kept by the Division.

N.J.A.C. 10:122D-2.7 requires that a plan to develop self-sufficiency skills in adolescent foster children be written and carried out.

N.J.A.C. 10:122D-2.8 states that other individualized services needed by a foster child shall be arranged by the Division, as needed and as available. This section also indicates the recourse available when there is disagreement about service provision.

Social Impact

There is a positive social impact anticipated from adoption of these proposed new rules. DYFS will now guarantee with more specificity than ever before that children in foster care are entitled to certain services (case management, health care, education, and self-sufficiency training for adolescents). DYFS also takes responsibility for arranging for other services which may be needed for a particular child, as those services and resources to provide them are available. This information will now be available to the foster parents and others who advocate on the foster child's behalf.

These proposed new rules will ensure equitable provision of required services throughout the State and the availability of a uniform process for handling disagreements.

The anticipated social impact of the rules regarding visitation is to increase the duration and frequency of visits between foster children, their parents, siblings and other interested relatives. The Division's most recent research (1987) indicates that foster children visited with their parents about 18 times per year. These rules set up a goal of weekly visits, which is more than two and one-half times the average rate of visitation previously practiced.

These proposed new rules also set strict standards for when visits can be supervised by a Division representative or another person. This will aid in increasing the frequency of visits, since Division representatives will not routinely be present.

These proposed new rules specify the responsibilities for each party regarding visitation. Each party involved will know clearly what his or her responsibilities are. Each party will be treated fairly in planning and carrying out the visitation plan. The process for resolving disagreements is also specified so that each party may know his or her rights to the resolution process.

Economic Impact

The proposed new rules on services to children in foster home placement should have no economic impact on the foster child, foster parent or parent. The required services of case management, health care, education and self-sufficiency are currently provided to all foster children as age appropriate. The cost of these services to local, State and Federal governments is now part of the budgets of the Division, the Division of Medical Assistance and Health Services and local school districts throughout the State. The 1991 budget amount for training adolescents currently or formerly in out of home placement in self-sufficiency skills is $1,426,320. There is no way to ascertain the percentage of costs for the other services which relate to foster children. There is no reason to think that these amounts will change because of adoption of these proposed new rules.

The rules on providing other services to foster children are written so as to not require the expenditure of money above budgeted amounts. While the Division pays for numerous services for foster children, such as homemaker, day care and psychological evaluations and therapy, the Division does not keep records which specify how much money is spent on these services for foster children.

Visitation is already part of the Division's on-going responsibility. Part of the case planning done by casework staff is to plan visitation. Additional staff time is devoted to transporting and supervising visits. There is no way to ascertain what percentage of the budget supports these specific activities.

These rules add new requirements that the Division shall provide or pay for the child's transportation and the parent's or other relatives' transportation for visits if he or she cannot provide it for himself or herself. The rates that the Division will pay for such transportation will be included in the proposal on the rates which are mentioned in N.J.A.C. 10:122C, that is, the rates that the Division will pay for the care and supervision of a foster child under an approved plan for child care arrangements (N.J.A.C. 10:122C-1.12), the rates that the Division will pay for medical examinations when a foster parent applicant's income falls below 150 percent of the Federal Poverty Income Guidelines (N.J.A.C. 10:122C-2.4(b)), and the rates of reimbursement for transportation, parking and babysitting costs incurred by foster parent applicants in pre-service training (N.J.A.C. 10:122C-2.7). Costs for such transportation may, at some point, be limited if a service limitation, under the proposed N.J.A.C. 10:122B-1.5, is imposed. There may be an increased demand for transportation as a result of these rules, which will have to be taken into account in preparing future budgets.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The proposed new rules describe the services provided to children in foster home placement and the policy and procedures on visitation between a foster child and the foster child's family.

Full text of the proposed new rules follows:

CHAPTER 122D
FOSTER CARE SERVICES

SUBCHAPTER 1. VISITS BETWEEN THE FOSTER CHILD AND THE FOSTER CHILD'S FAMILY

10:122D-1.1 Purpose

(a) The purpose of this subchapter is to ensure that each child placed in a foster home approved by the Division shall have the opportunity to visit with parents, siblings and interested relatives. Visits with parents, siblings and other relatives may serve to:

1. Reinforce the foster child's identity;
2. Promote the foster child's need for stability and consistency;
3. Maintain or establish family relationships;
4. Assess the parent's and other relative's motivation and ability to care for the foster child; and
5. Provide an opportunity to model appropriate parenting behavior and skills.

(b) The frequency and duration of visits is dependent on the purpose of the visits, the case goal and case plan and practical considerations of all parties. Visits which are frequent and of long duration are beneficial for most children placed in foster care and facilitate movement toward achieving the case goal of family reunification. The frequency and duration specified in each foster child's visitation schedule is a professional social work decision which shall be made by the Division with full input from all those affected by the visitation plan. Unless otherwise limited by conditions set forth in N.J.A.C. 10:122B-1.5 and N.J.A.C. 10:122D-1.15, for most children in foster care, the goal is to hold a visit every week for a period as long in duration as possible.

10:122D-1.2 Scope

The provisions of this subchapter shall apply to each foster child, his or her parents, siblings, interested relatives, foster family, and the Division.

10:122D-1.3 Definitions

The definitions in N.J.A.C. 10:122B-1.4 are hereby incorporated in this subchapter by reference.

10:122D-1.4 Visitation plan

(a) A written visitation plan shall be developed to identify the type and frequency of visits to be instituted for every child in foster care unless otherwise directed by the court.

(b) The visitation plan may exclude specific persons from having visits.

(c) The visitation plan shall give full consideration to the foster child's safety.

(d) The visitation plan shall include visits with siblings, if any. Sibling visits may take place with parental visits or separately.

10:122D-1.5 Developing the visitation plan

(a) The visitation plan for the first visit shall be developed and written prior to the date of placement or as soon as possible after the placement.

(b) The visitation plan for ongoing visits shall be completed within five working days of the initial date of placement.

(c) The visitation plan shall be evaluated and adjusted as needed and submitted in time for the first 45 day Child Placement Review, pursuant to N.J.S.A. 30:4C-50 et seq.

(d) The visitation plan shall be developed through negotiation and agreement by the Division representative, the parents, the foster child, and other parties involved, such as relatives, a former foster family interested in visiting the foster child, siblings, and their representatives.

(e) Sections of the visitation plan shall be negotiated separately with the siblings or their representatives and other interested relatives.

(f) The Division representative shall encourage the foster parent to participate in developing the visitation plan.

(g) The foster parent shall be consulted for information pertinent to visitation.

10:122D-1.6 Distribution of the visitation plan

The Division representative shall give a copy of the visitation plan to the parent, the foster parent, the foster child, when of an appropriate age, and other parties, including siblings, who are involved in developing the visitation plan, and their representatives.

10:122D-1.7 Renegotiation of the visitation plan

(a) The Division shall renegotiate the visitation plan with all parties involved no less often than every six months.

(b) The Division shall also renegotiate the visitation plan:

1. When the case goal changes;
2. When circumstances change; or
3. Whenever any of the parties to the plan requests renegotiation.

10:122D-1.8 Components of the visitation plan

(a) The visitation plan shall include the following:

1. The goal of the visits;
2. The location of visits;
3. The frequency and regularity of visits;
4. Who will participate in the visits;
5. The roles of participants other than the foster child;
6. Who will provide needed transportation;
7. The date and time of visits;
8. The length of visits;
9. Whether the visit will be supervised, and, if so, by whom; and
10. What each party shall be expected to do in order to change or cancel a visit.

10:122D-1.9 Locations for visits

(a) Visits shall take place in the least restrictive, most comfortable setting possible. For example, visits may take place in the home of the parents, relatives or friends or in other suitable locations.

(b) Visits may also take place in the foster home, with the foster parent's permission.

(c) Visits may take place in a Division office when:

1. Necessary to protect the foster child;
2. For the convenience of those participating in the visit; or
3. When other suitable locations are not available.

10:122D-1.10 Determination of whether visit is to be supervised

(a) The parent or other visitors and the Division representative shall discuss the need for supervised visits at the time the visitation plan is negotiated or renegotiated.

(b) Unless the Division or the Family Court finds a need for supervision, visits shall be unsupervised.

(c) If visits will be supervised, the plan shall contain a statement of the reason supervision is required. Reasons for the supervision of visits may include:

1. Facilitating interactions between the parent and the foster child;
2. Modeling positive parenting behavior;
3. Mediating conflict between the parent and the foster child; and
4. Providing protection for the foster child.

10:122D-1.11 Supervision of visits

(a) Family, friends or others with whom the visitor and foster child feel comfortable may provide supervision with the agreement of all parties.

(b) Providers with whom the Division has contracts to supervise visitation may also be utilized.

(c) A Division representative may supervise visitation only under the following circumstances:

1. The Division finds that supervision by the Division is necessary to protect the foster child;
2. Supervision is needed and there is no other person appropriate to provide it;
3. The parent or foster child wants supervision by the Division;
4. The Division does not have enough information to determine that supervision is not needed; or
5. The Division does not have enough information to determine that the individual suggested by the parent or others to provide supervision is acceptable.

10:122D-1.12 Division participation in visits

(a) Where the Division is not involved in supervising visitation, a Division representative shall participate in visits as necessary to formally assess the progress of visits and family relationships for the purpose of case planning.

(b) Whenever possible, the Division representative shall inform the participants in the visit in advance when he or she will participate.

10:122D-1.13 Transportation for visits

(a) The Division shall provide or arrange for transportation of the foster child to the visit.

(b) The Division shall provide or pay for transportation when the parent or other relative lives in New Jersey and verifies that he or she cannot obtain or pay for his or her own transportation.

10:122D-1.14 Standards for the visitation plan

(a) Except as limited in N.J.A.C. 10:122D-1.15(a), the visitation plan shall establish that:

1. The first visit between the foster child and parent shall be scheduled to occur as soon as possible, within five working days of the date of initial placement;
2. The frequency and duration of the visits shall be consistent with the purpose of visits as set forth in N.J.A.C. 10:122D-1.1;
3. The frequency and length of each visit shall be based upon the needs of the foster child, the parent, and other involved parties. Special consideration shall be given to the need for pre-school foster children to have frequent visits since their sense of time is different than that for older children or adults;
4. Overnight and weekend visits with the family shall be scheduled to occur frequently when the family can assume the increased child care responsibility and when the plan is to return the foster child to them;
5. Holiday visits shall be negotiated and addressed in the plan; and
6. When a scheduled visit is missed due to the inability of the person providing supervision or the Division representative not being able to participate in the visit, the visit shall be rescheduled whenever and as soon as possible.

10:122D-1.15 Reasons to limit visits

(a) A reduction to the visitation schedule may be made for any of the following reasons:

1. The visit will be physically or psychologically harmful to the foster child even with supervision. This determination shall be based on:

i. A Division representative's direct observation of harm or potential harm;

ii. A report of harm to the Division in which the harm has been verified by a Division representative;

iii. A mental health therapist's recommendations;

iv. A pending or ongoing Division investigation of allegations that the foster child has been harmed by the visitor; or

v. The foster child's report of a harmful or potentially harmful situation;

2. The foster child requests limited visits when the case goal is not family reunification, whether or not the visits are seen as harmful;

3. The parent requests limited or no visits despite the Division's efforts to explain the importance of visiting and the Division's offer to assist in arranging the visits;

4. The parent chronically misses scheduled visits despite the Division's efforts to advise of the importance of attending visits for the parent and the foster child; or

5. A court order prohibits visits or specifies a different schedule of visits.

(b) A supervisor shall review and approve or disapprove any reduction in the frequency or duration of visits.

(c) The Division representative shall inform the parent, foster child, and any other affected person in writing of the reason for the reduction.

(d) The Division shall assist the family or other parties to eliminate the causes for the limitation of visits when the conditions can be changed in order to increase the visits.

10:122D-1.16 Disagreements

(a) When a parent disagrees with a provision of a visitation plan adopted by the Division that results in a denial, suspension, reduction or termination of visitation, the parent shall be informed in writing by the Division representative that he or she has a right to appeal, pursuant to the procedures set forth in N.J.A.C. 10:122D-2.8(d), (e) and (f), except that in cases involving this subchapter the foster parent will not be involved in the appeal process.

(b) When a foster parent disagrees with a visitation plan, he or she shall be informed in writing by the Division representative that he or she may request a review by the office manager. Upon the request of the foster parent, the office manager shall meet with the foster parent, shall make a decision and shall notify the foster parent in writing of the decision and the reasons for the decision.

SUBCHAPTER 2. SERVICES TO CHILDREN IN FOSTER HOME PLACEMENT

10:122D-2.1 Purpose

(a) The purpose of this subchapter is to identify the services that the Division shall provide to a child in foster home placement in order to:

1. Provide the foster child with safe home care;

2. Meet the foster child's physical, psychological, and other developmental needs;

3. Assure the foster child's well-being;

4. Help the child to understand the reasons for his or her foster home placement, the case goal, and to adjust to being a child in a foster home; and

5. Achieve the case goal.

10:122D-2.2 Scope

The provisions of this subchapter shall apply to each foster child, his or her foster family, his or her family and the Division.

10:122D-2.3 Definitions

The definitions in N.J.A.C. 10:122B-1.4 are hereby incorporated into this subchapter by reference.

10:122D-2.4 Case management

(a) The Division representative shall have face-to-face and other contact with the foster child, foster parent, parent and other interested parties according to established schedules which are written in the case plan in order to:

1. Develop, implement and update a case plan by assessing case needs, identifying services to meet those needs, including the role and responsibility of each party regarding the services, and establishing the case goal and assessing progress toward achieving the case goal in a timely manner;

2. Provide advocacy and support services to all parties, within program and fiscal parameters;

3. Assist the foster child and foster family to establish and maintain an ongoing and supportive relationship for the duration of the foster child's placement;

4. Update the foster child, foster family, parents and other parties on the progress toward achieving the case goal;

5. Facilitate visits in accordance with the case plan between the foster child, parent, siblings and other interested relatives. See N.J.A.C. 10:122D-1, Visits between the foster child and the foster child's family; and

6. Meet the requirements of the Child Placement Review Act, N.J.S.A. 30:4C-50 et seq.

(b) The Division representative shall have face-to-face contact with the parent, when applicable, foster parent and foster child within one week of the foster child's placement in the foster home.

10:122D-2.5 Health care services

(a) The Division shall assure that each child in foster home placement receives appropriate and necessary health care, including mental health services.

(b) For each child initially entering foster home placement, the Division shall obtain a medical examination at the time of placement. The Division shall establish a health care record for each foster child and shall provide the foster parent with a health care record which documents health information concerning the foster child, including, but not limited to:

1. The names and addresses of the foster child's health care providers;

2. A record of the foster child's immunizations;

3. The foster child's known medical problems, if any;

4. The foster child's medications, if any; and

5. The foster child's allergies, if any.

(c) The Division shall maintain a health care record for each foster child. The Division shall review and update the foster child's health record at the time of each placement into a foster home and shall provide the updated record to the foster parent.

(d) The Division shall assure that the foster child receives a medical and a dental examination at least annually after the initial medical examination performed at the time of placement. The type and frequency of the examinations shall be based on the foster child's age and medical needs.

(e) The foster parent shall be responsible for arranging and providing care to meet the foster child's health needs, including, but not limited to, medical and dental examinations as agreed to with the Division, and shall provide the Division with information concerning the foster child's health care and needs.

(f) The Division shall share health care information concerning the foster child with the foster child's parents and the foster parents.

10:122D-2.6 Educational services

(a) The Division representative shall assure that every child in foster home placement receives an education appropriate to his or her abilities as provided for under State laws governing compulsory education and education for disabled children.

(b) The Division shall develop an education record for each child initially entering foster home placement, who is subject to the State laws governing compulsory education, see N.J.S.A. 18A, generally. This record shall include, but not be limited to:

1. The names and addresses of the foster child's educational providers;

2. The foster child's grade level performance;

3. The foster child's school record; and

4. Assurance that the foster child's placement in the foster home takes into account proximity to the school in which the foster child was enrolled at the time of placement.

(c) The Division shall provide the foster parent with the foster child's education record at the time of initial placement.

(d) The Division shall review and update the foster child's education record at the time of each placement into a foster home and shall provide the updated record to the foster parent.

(e) The foster parent shall:

1. Make every effort to ensure that the foster child attends school regularly;

2. Encourage good study habits;
3. Monitor the foster child's academic progress; and
4. Inform the Division of the foster child's academic progress.

(f) The Division representative shall:

1. Ensure that the foster child is enrolled in school, if age appropriate. If necessary, the Division representative shall give the foster parent authorization to enroll the foster child in school;
2. Maintain and update the education record regarding the foster child's progress in school;
3. Coordinate, as appropriate, activities among the school personnel, the foster parent, and the parent;
4. Inform the parent of the foster child's school progress and of the parent's right and responsibility to be involved in the foster child's education; and
5. Refer the foster child for a child study team evaluation, as needed, in accordance with N.J.A.C. 6:28-3.3(g), Referral.

10:122D-2.7 Self-sufficiency of adolescent foster child

(a) The Division representative, in consultation with the foster parent, the foster child, the parent and other significant adults, shall develop a written plan to prepare the foster child for self-sufficient living and shall reevaluate the plan at least yearly.

(b) The plan shall be developed for each child in foster home placement;

1. Within six months of the date of placement for those entering foster home placement at age 16 or older; or
2. No later than age 16, for those already in foster home placement.

(c) The plan shall be based upon an assessment of the foster child's strengths, resources, interests and needs.

(d) The plan shall outline the necessary skills the foster child must master to achieve self-sufficiency and the responsibilities of the Division and other parties to assist the child to develop these skills.

(e) The Division representative shall identify at least one significant adult in the foster child's life who will function as an adult advisor to the foster child to assist in the development of the plan and the life skills needed by the foster child. The adult advisor may be the foster parent.

(f) The Division representative shall refer the foster child to resources for post-secondary educational opportunities, as requested by the foster child and in accordance with N.J.S.A. 9:17B-2.

10:122D-2.8 Other services to children in foster home placement

(a) In addition to the basic services of case management, food, clothing, shelter, education, health care, and self-sufficiency, the Division may use other services which meet a foster child's individual needs.

(b) When specific service needs are identified, the Division representative shall arrange for appropriate community resources to provide the service to the foster child in a timely fashion, as the services are available.

(c) When there are insufficient child welfare services available to meet the foster child's needs, the Division is responsible for encouraging and promoting the development of the needed services in accordance with the provisions of N.J.S.A. 30:4C-1, 3 and 4.

(d) When there is a decision to deny, reduce, suspend or terminate an available service, the parent or foster parent shall be informed in writing by the Division representative of the reasons for the decision, that the parent or foster parent has a right to appeal, and that to excerise that right, the parent or foster parent may request a local dispositional conference. Upon the request of a parent or foster parent who disagrees with the decision to deny, reduce, suspend or terminate services the office manager responsible for the foster child shall hold the local dispositional conference. The office manager shall make a decision and shall inform the parent and the foster parent in writing of the decision, the reasons for the decision, and that if the decision results in a denial, suspension, reduction or termination of a service, the parent or the foster parent has a right to appeal this decision, and that to exercise this right, the parent or the foster parent may request that the regional office hold a regional dispositional conference.

(e) Upon the request of the parent or foster parent who disagrees with the results of the local dispositional conference, the regional administrator shall hold a regional dispositional conference, make a decision and inform the parent or foster parent in writing of the decision and the reasons for the decision. When the decision of the regional dispositional conference results in a denial, reduction, suspension, or termination of services, the regional administrator shall also inform the parent or foster parent in writing that the parent and foster parent has a right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, Administrative hearings.

(f) Notwithstanding the provisions of (d) or (e) above, if the services denied, reduced, suspended or terminated have been the subject of a court order or are pending the decision of a court, the parent or foster parent who disagrees with the denial, reduction, suspension, or termination of services shall be informed in writing by a Division representative that the parent or foster parent may request local and regional dispositional conferences, but that such conferences are not required, and that, at the option of the parent or foster parent, they may bring the matter directly before the court. There is no right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, if the services denied, reduced, suspended or terminated have been the subject of a court order or are pending the decision of a court.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Removal of Foster Children and Closure of Foster Homes

Proposed New Rules: N.J.A.C. 10:122E

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services

Authority: N.J.S.A. 30:4C-4(h) and 30:4C-26a

Proposal Number: PRN 1991-593.

Submit written comments by January 15, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, N.J. 08625-0717

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules" project or OPTR project, was initiated by the Division to subject those policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rule-making process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Operations Policy to Rules (OPTR) project began in May, 1989, and involves advisory bodies which include family and child advocates, DYFS field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project has been a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process will result in a thorough and full-scale study, reevaluation and revision of existing Division policies, procedures and practices.

This proposal, addressing the Division's procedures for removing foster children from foster homes and closing foster homes, is a product of the OPTR project. Rather than merely codifying the existing Division Field Operations Manual on Foster Care Services, the OPTR Advisory Group approached the issue by determining the way they thought the Division should provide such services. The result is this proposal, which varies from previous Division policy as contained in the Field Operations Manual on Foster Care Services. This manual was never part of the New Jersey Administrative Code, but for information purposes, the changes from the manual to the proposed new rules are here summarized:

• The statement about the Division's removing by force a foster child from a foster home without the consent of the foster parent, has been removed. N.J.A.C. 10:122E-1.1.

• When a foster child may be removed from a foster home due to child abuse being substantiated, the decision making authority is specified at the level of office manager, and the office manager may consult with the Institutional Abuse Investigation Unit when that unit conducted the investigation. Also, the decision to allow a foster child to remain in the foster home will be made only upon the office manager's positive recommentation to the Division Director. N.J.A.C. 10:122E-2.1.

• The requirement to document the decision to remove or not to remove a foster child in an emergency and to inform all interested parties is expanded to cover all emergency situations. N.J.A.C. 10:122E-2.1(f) and (g).

• A foster child may be removed from the foster home for the additional reason that the foster family has a pattern of violating Division rules. N.J.A.C. 10:122E-2.2(a)5.

• A statement that the parent of a foster child may request his or her removal from the foster home has been added. N.J.A.C. 10:122E-2.2(d).

• Requirements that the parent shall be interviewed when the parent has requested that his or her child be removed from a foster home in a non-emergency situation and that the parent shall be notified of the Division's decision have been added. N.J.A.C. 10:122e-2.3(a) and (e).

• A requirement that the Division must notify all interested parties 30 days in advance when a foster child will be removed to achieve the case goal, has been added. N.J.A.C. 10:122e-2.3(b).

• The requirement that the Division inform the parent of the need to change the child's placement has been expanded to accommodate all situations. N.J.A.C. 10:122e-2.3(c).

• The requirement to decide whether to remove a foster child within five days, upon the foster child's or parent's own request, has been added. N.J.A.C. 10:122E-2.3(e).

• A requirement that the Division remove foster children when anyone in the foster home has a finding of domestic violence or has been convicted of a crime of violence or a disorderly persons offense based on an act of violence against any child or family member or a crime of a sexual nature or any other act of a similarly serious nature has been added. N.J.A.C. 10:122E-2.4(a).

• Considerations prior to removal will now include the relationship between the foster child and the foster family, the foster child's expressed wishes, and the location of the foster child's siblings. N.J.A.C. 10:122E-2.5(a).

• The requirement for the Division to notify parents and other relatives who visit when a foster child needs to be removed or has been removed in an emergency has been expanded to include all situations. N.J.A.C. 10:122E-2.6(a).

• Notification of removal to the Child Placement Review Board has been added to be consistent with N.J.S.A. 30:4C-61.1 N.J.A.C. 10:122E-2.6(c).

• A requirement has been added that a Division representative must inform other Division representatives who supervise foster children in the foster home when he or she has removed a foster child from the foster home. N.J.A.C. 10:122E-2.6(d).

• A requirement that the Division must notify the foster parent of a foster child's removal and the reasons therefor if the foster child was not removed directly from his or her physical care has been added. N.J.A.C. 10:122E-2.6(e).

• The statement, that the Division's primary responsibility is to ensure the foster child's safety in determining whether to remove, has been deleted. N.J.A.C. 10:122E-2.7(a).

• The use of the dispositional conference has been expanded to encompass all situations in which a foster parent or foster child disagrees with a Division decision about removing a foster child. An option to invite the Institutional Abuse Investigation Unit, if appropriate, has been added. The statement, that when the foster child requests removal and the Division denies the request, the foster child must wait in the foster home up to two weeks for a conference, has been removed. N.J.A.C. 10:122E-2.7(b).

• The foster parent's right to an administrative review when a foster child who has been in the home continuously for two years or more is limited to those situations where the goal for the foster child is adoption. N.J.A.C. 10:122E-2.7(c)1.

• A foster home shall be closed when someone in the home has a finding of domestic violence or has been convicted of a crime of violence or of a disorderly persons offense involving violence against any child or against a family member or of a crime of a sexual nature or of any act of a similarly serious nature, instead of the previous requirement that a decision would be made about removal when someone in the home has a criminal conviction. N.J.A.C. 10:122E-3.1(a)5 and 3.7(a).

• New reasons for closing a foster home have been added: the foster home has been inactive for one year, the foster home or family has not met the provisions of N.J.A.C. 10:122C-2.18, Division action when a foster home does not comply with written agreement, within the established time frame or the foster family moves out-of-State. Initiation of an active protective services case on the foster parents' own children was removed as a reason for closure. N.J.A.C. 10:122E-3.1(a)7, 8 and 9.

• Before closing a foster home, the Division shall now also consider the foster parent's desire to continue to be a foster parent. N.J.A.C. 10:122E-3.2(a)1.

• A statement that a foster parent may request that his or her foster home be closed for any reason has been added. N.J.A.C. 10:122E-3.3(a).

• A statement that the Division shall determine, in consultation with the foster parent, whether current foster children will remain or new foster children placed has been added. N.J.A.C. 10:122E-3.3(e).

• A statement, that the office manager may consult with the Institutional Abuse Investigation Unit when deciding whether to close a foster home where a child has been abused, has been added. Four additional points to consider in making the decision have also been added. N.J.A.C. 10:122E-3.4(a)4, 5, 6 and 7.

• The term "breach of DYFS policy" has been changed to "violation of Division rules." N.J.A.C. 10:122E-3.5.

• The level of authority for deciding to continue use of a foster home which does not comply with the Foster Home Standards has been raised from the office manager to the regional administrator. N.J.A.C. 10:122E-3.6(c).

• A statement that the Division shall close a foster home in which someone has been convicted of certain crimes has been added. In determining whether to make an exception to this rule, the successful completion of a course of rehabilitation or treatment related to the offense has been added as a point to consider. N.J.A.C. 10:122E-3.7(a) and (b)4.

• When a foster parent has falsified information, the statement that the Division shall assess whether the falsification contributed to risk of harm to a foster child has been added. Falsification on a document other than the application has been added as a consideration. N.J.A.C. 10:122E-3.8(a) and (a)2.

• A statement that the Division shall assist the foster family to ameliorate conditions which preclude them from accepting a foster child has been added. N.J.A.C. 10:122E-3.9(b).

• A section on closing a foster home when the foster family has moved out of New Jersey has been added. N.J.A.C. 10:122E-3.10.

• When the Division notifies the foster family about a decision regarding closure, a summary of actions taken by the Division to preclude closure is included. A statement that the office manager shall notify other Division representatives about the decision regarding closure has been added. N.J.A.C. 10:122E-3.11(a)3 and (b).

• The description of dispositional conferences has been expanded. The local office may invite the Institutional Abuse Investigation Unit to attend. The foster parent's ability to appeal a decision made by the Division Director to the Appellate Division has been added. The foster parent's ability to request an administrative review when his or her home is closed due to a lack of compliance with the Foster Home Standards has been removed. N.J.A.C. 10:122E-3.12(b) and (c).

The Field Operations Manual on Foster Care Services contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.). The Field Operations Manual on Foster Care Services will remain in existence but will be revised to reflect these proposed new rules upon adoption.

This proposal is part of the foster care series, which begins with N.J.A.C. 10:122B, Requirements for Foster Homes, and includes N.J.A.C. 10:122C, Approval of Foster Homes and N.J.A.C. 10:122D, Foster Care Services.

A foster family is the primary temporary placement for a child who cannot remain at home because his or her family is unable to care for the child. Foster care services, which are provided through a partnership between the Division of Youth and Family Services and a foster family, enable a child to remain in the community and receive the benefits of a family environment so that the child's physical, emotional and social development can proceed with as little disruption as possible.

The Division is responsible for ensuring that each child requiring foster care resides in a safe and secure home and with substitute parents who can meet the child's individual needs. The purpose of these rules is to continue to protect foster children by assuring that each foster home remains safe and secure after the initial approval while treating foster parents in a fair and equitable manner.

Substantiated cases of child abuse and neglect are mentioned prominently in the proposed rules, for example see N.J.A.C. 10:122E-2.1. The Division plans shortly to propose a chapter, N.J.A.C. 10:129A, Child Protective Services Determinations and Investigations of Abuse and Neglect, which has also been developed through the OPTR process. This chapter will explain what is meant by substantiated cases of child abuse and neglect, and conditions under which such records are kept, and may be expunged.

A summary of the proposed rules follows:

N.J.A.C. 10:122E-1.1 gives the source of the Division's authority to establish standards.

N.J.A.C. 10:122E-1.2 states the purpose of these rules.

N.J.A.C. 10:122E-1.3 states the scope of these rules.

N.J.A.C. 10:122E-1.4 references the definitions used in these rules.

N.J.A.C. 10:122E-2.1 gives the reasons why an emergency removal may be requested and the Division's procedures when an emergency becomes known to the Division.

N.J.A.C. 10:122E-2.2 gives the reasons why a non-emergency removal may be requested and who may request a non-emergency removal.

N.J.A.C. 10:122E-2.3 states the procedures a Division representative must complete when a non-emergency removal is indicated.

N.J.A.C. 10:122E-2.4 states what the Division will do when a foster parent or household member is convicted of a crime or disorderly persons offense or has a finding of domestic violence.

N.J.A.C. 10:122E-2.5 lists the considerations which the Division must use when deciding whether to remove a foster child from a foster home and when deciding whether to return a child already removed because of a child abuse allegation.

N.J.A.C. 10:122E-2.6 lists who must be notified when a foster child will be or has been removed.

N.J.A.C. 10:122E-2.7 lists the ways in which the Division and the foster parent may handle disagreements about removing a foster child.

N.J.A.C. 10:122E-3.1 lists the reasons a foster home can be closed.

N.J.A.C. 10:122E-3.2 lists the matters the Division must consider before closing a foster home.

N.J.A.C. 10:122E-3.3 describes the procedure that the Division must follow when a foster parent requests that his or her foster home be closed.

N.J.A.C. 10:122E-3.4 lists the matters which the Division must consider when child abuse has been substantiated in a foster home.

N.J.A.C. 10:122E-3.5 states the process followed by the Division when a foster family has violated Division rules.

N.J.A.C. 10:122E-3.6 states the process followed by the Division when a foster family does not meet the requirements of N.J.A.C. 10:122C-1, the Foster Home Standards.

N.J.A.C. 10:122E-3.7 states the process followed by the Division when a foster parent or household member has been convicted of a crime or disorderly persons offense or has a finding of domestic violence.

N.J.A.C. 10:122E-3.8 states the process followed by the Division when a foster parent provides the Division with false information.

N.J.A.C. 10:122E-3.9 states the process followed by the Division when a foster home has been inactive for one year.

N.J.A.C. 10:122E-3.10 states the process followed by the Division when a foster family moves out-of-State.

N.J.A.C. 10:122E-3.11 indicates who must be notified when a foster home is being closed and what information is included in the notice.

N.J.A.C. 10:122E-3.12 lists the ways in which the Division and the foster parent can address disagreements about closing a foster home.

Social Impact

A positive social impact is expected from these rules. Most importantly, these rules offer the means to protect children placed in foster care by using and retaining only foster homes which continue to meet the Division's standards. Foster families who no longer wish to serve or those who are incapable of providing adequate care are eliminated from the pool of approved foster homes.

The proposed new rules may also benefit the approximately 3,000 foster families in New Jersey by insuring that the Division treat foster parents in an equitable way by using uniform standards for decision-making. The foster parents' rights during the removal of a foster child and the closing of the foster home are specified, as is the process for removal and closure.

Economic Impact

The economic impact of these proposed rules is already part of the Division's budget. It is primarily the cost of Division personnel which includes those who work with foster parents around issues which may lead to the removal a foster children or closure of the home, and those who conduct the investigations of abuse allegations in foster homes. The percentage of staff time used for these activities is not among the data which is collected by the Division.

The Division has a specific item in the budget, known as the foster care crisis fund. One of the purposes for which the fund may be used is to pay for specific expenses to prevent the removal of a foster child from his or her foster home. The total amount of this item is $218,000 in the 1990-91 budget. These rules will not increase or decrease the demand for this money.

These rules may affect each approved foster home, currently about 3,000 homes. Almost all foster homes have a foster child removed and all foster homes are eventually closed.

There should be no economic impact on the foster home of removing of foster child, in that all funds provided by the Division are for the care and maintenance of the foster child, and not to augment the foster family's income.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The proposed new rules describe the standards and procedures for the removal of foster children from foster homes and for the closure of foster homes.

Full text of the proposal follows:

CHAPTER 122E
REMOVAL OF FOSTER CHILDREN AND CLOSURE OF FOSTER HOMES

SUBCHAPTER 1. GENERAL PROVISIONS

10:122E-1.1 Authority

Pursuant to N.J.S.A. 30:4C-4(h) and 30:4C-26a, the Division of Youth and Family Services, Department of Human Services, is authorized to establish rules for the removal by the Division of a foster child from a foster home and for the closure of a foster home. Under the above statute, the Division has the discretionary authority to remove a foster child from a foster home at any time with or without the consent of the foster parent, parent or foster child.

10:122E-1.2 Purpose

(a) The first purpose of this chapter is to describe when it is appropriate for the Division to remove a foster child from a foster home. A foster child may be removed from a foster home in order to protect the foster child from risk of harm, to ensure that the case goal is implemented, and to ensure that the interests of the Division, the foster child, the parents and the foster parent are considered.

(b) The second purpose is to ensure that quality foster home resources are retained for the placement of children. Accordingly, clear guidelines are provided for the closure of a foster home when circumstances exist or develop which indicate that the foster parents cannot provide proper and safe care to children placed in the home or do not wish to continue to provide foster care.

10:122E-1.3 Scope

The provisions of this chapter shall apply to each foster child, his or her family, each foster family approved by the Division and the Division.

10:122E-1.4 Definitions

The definitions in N.J.A.C. 10:122B-1.4 are hereby incorporated in this chapter by reference.

SUBCHAPTER 2. REMOVING THE CHILD FROM THE FOSTER HOME

10:122E-2.1 Removal in emergency situations

(a) The Division representative shall remove a foster child from a foster home when the Division determines that the foster child is at imminent risk of harm in the foster home.

(b) When abuse or neglect of any child in a foster home is substantiated, the office manager may consult with the Institutional Abuse Investigation Unit of the Division, when that unit conducted the child abuse and neglect investigation.

(c) When abuse or neglect of any child in a foster home is substantiated, the office manager shall:

1. Determine whether to remove any foster child in the foster home and, if necessary, direct a Division representative to remove the foster child; or

2. Recommend to the Division Director that a foster child continue to be placed in the foster home, based upon the consideration set forth in N.J.A.C. 10:122E-2.5(a).

(d) A foster parent may request an emergency removal of a foster child and the Division shall remove the foster child when:

1. The foster child is at risk of harm if he or she remains in the foster home; or

2. The foster family is at risk of harm if the foster child remains in the foster home.

(e) A foster parent may request an emergency removal of a foster child when the foster family is experiencing a personal emergency and is unable to make alternate appropriate plans for the foster child. The Division shall respond promptly and shall remove the foster child when necessary.

(f) A foster child may request emergency removal from his or her foster home and the Division shall remove the foster child when the foster child is at imminent risk of harm in the foster home.

(g) In all emergency cases, the Division shall document in the foster child's case record and the foster home record, the decision to remove or not remove the foster child and shall inform the foster parent, the foster child, the parents and other interested parties of the outcome.

10:122E-2.2 Removal in non-emergency situations

(a) The Division may remove a foster child from a foster home for any of the following reasons:

1. The foster child's case goal is furthered or achieved by the move or a court order is being followed, for example, return to family, placement in an adoptive home or uniting a foster child with siblings.

2. The foster child has a need which cannot be met by the current foster family.

3. There is documented evidence that the foster family engages in behavior which is detrimental to any foster child.

4. There is documented evidence that the foster family disagrees with the approved case plan and repeatedly fails to cooperate with the Division or to make the foster child available for visits or services which are part of the approved case plan, despite the Division's attempts to involve the foster family in remediating the situation.

5. The foster family has a pattern of violating any Division rules, which may have a negative impact on any foster child, despite attempts by the Division to ensure compliance.

(b) A foster parent may request that a foster child be removed, giving the Division 15 days notice to make suitable alternate arrangements. The foster parent shall state the reason for the request.

(c) A foster child may request to be removed from a foster home. The foster child shall state the reason for the request.

(d) The parent of a foster child may request that the foster child be removed from the foster home. The parent shall state the reason for the request.

10:122E-2.3 Procedures prior to a non-emergency removal

(a) Prior to a non-emergency removal, the Division representative shall interview the foster child, the foster parent, and any appropriate collateral contacts, including the parent, to determine:

1. Information from the foster child about any problems with the placement and his or her preferences;

2. Information from the foster parent about any problems with the placement and his or her preferences;

3. Information from the parent about any problems with the placement and his or her preferences, when the parent requests removal; and

4. Whether support services can remedy the problem.

(b) The Division representative shall inform the foster child, the foster parent, the parent, and any appropriate contacts at least 30 days prior to the move when the foster child will be removed to further or achieve the case goal or as soon as possible when a court order is being followed.

(c) The Division representative shall inform the parent of the need to change placement, if he or she is available.

(d) The Division representative shall remove the foster child within 15 days of the foster parent's request.

(e) When the foster child or parent has requested removal, the Division representative shall discuss the request with supervisory staff. The Division shall make the decision within five days of the request. The Division representative shall inform the foster child or parent of the decision and shall remove the foster child within 15 days of the original request when it is determined that removal will occur.

(f) The Division representative shall document in the child's record and foster home record, the decision to remove or not remove the foster child, including the reasons.

10:122E-2.4 Removal due to criminal conviction or domestic violence

(a) The Division shall remove the foster children from the foster home when any foster parent or household member has a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq., or when any foster parent or household member has been convicted of a crime of violence or a disorderly persons offense on the basis of an act of violence against any child or against a family member, or of a crime of a sexual nature or of any other act of a similarly serious nature.

(b) The office manager shall determine whether to remove the foster children from the foster home when any foster parent or household member has been convicted of a criminal or disorderly persons offense involving crimes not cited in (a) above, or to recommend to the Division Director that the foster children continue to be placed in the foster home. The determination shall be based upon the criteria listed in N.J.A.C. 10:122E-2.5(a).

10:122E-2.5 Considerations in deciding whether or not to remove

(a) The Division shall consider the following points when deciding whether to remove a foster child, in emergency and non-emergency situations:

1. The age of the foster child;
2. The length of stay in this foster home;
3. The relationship between the foster child and the foster family;
4. The number and impact of prior moves on the foster child;
5. The foster child's adjustment to the extended foster family and community;
6. The foster child's expressed wishes;
7. The foster family's history with the Division and of successful parenting;
8. The availability of support services to maintain the placement;
9. The willingness of the foster family and the foster child to work to overcome problems;
10. The abused or neglected child's injuries for which neither the foster family nor the abused or neglected child can offer a reasonable explanation;
11. The foster family's cooperation or lack of cooperation with any child abuse and neglect investigation;
12. The abused or neglected child's allegations or report of the situation; and
13. The location of the foster child's siblings and the ability to keep them together or reunite them or facilitate visits.

(b) A foster child may be removed temporarily from a foster home before or during a child abuse or neglect investigation. If the allegation of child abuse or neglect is not substantiated, the Division shall use the criteria listed in (a) above to determine whether the foster child who has been removed will be returned to the foster home.

10:122E-2.6 Notification

(a) The Division representative shall notify each parent who retains legal rights to the child and any relative who visits, when the foster child will be removed or has been removed in an emergency.

(b) The Division representative shall notify the Deputy Attorney General responsible for the case when a foster child will be removed or has been removed in an emergency when:

1. The foster child is the subject in a case in litigation; or

2. Commencement of guardianship litigation for the foster child is imminent.

(c) The Division representative shall notify the Child Placement Review Board and the family part of the Chancery Division of the Superior Court when there is a change in placement of any foster child known to the court. The Division representative shall notify the foster child's Law Guardian, if any, when the foster child is removed from a foster home.

(d) The Division representative who removes the foster child shall notify each other Division representative who supervises a foster child in the foster home about the removal.

(e) The Division representative shall inform the foster parent immediately of the removal and the reasons for removal if the foster child was not removed directly from his or her physical care. The Division representative shall also inform the child's parent as soon as possible after the child is placed. If there is a difference of opinion between the foster parent and the Division regarding the removal, the Division representative shall inform the foster parent and the parent in writing of the reasons for the decision, whether the foster parent may have the right to appeal, and that to appeal the removal, the procedures in N.J.A.C. 10:122E-2.7 shall be followed.

10:122E-2.7 Disagreements

(a) The Division representative, the foster child and the foster family shall try to resolve any disagreement before the foster child is removed, unless an emergency removal is necessary.

(b) When a foster parent disagrees with a decision to remove the foster child, the foster parent shall be informed in writing by a Division representative whether the foster parent has a right to appeal the decision and that the foster parent may request a local dispositional conference. Upon such request, the office manager shall hold a local dispositional conference, inviting the Institutional Abuse Investigation Unit, if appropriate. The office manager shall make a decision and shall inform the foster parent, in writing, of the decision, the reasons for the decision and that, to appeal the decision the foster parent may request a regional dispositional conference. The office manager shall inform the parent, in writing, of the results of the conference and the reasons for the decision, if the foster child is removed from the foster home.

(c) Upon the request of a foster parent who disagrees with the results of the local dispositional conference, the regional administrator shall hold a regional dispositional conference. The regional administrator shall make a decision and shall inform the foster parent, in writing, of the decision, the reasons for the decision, and that, if the foster parent is eligible under (d) below, the foster parent has a right to further reviews. If the foster parent is not eligible under (d) below, the foster parent shall be advised that the regional administrator's decision is a final administrative determination of the Division.

(d) A foster parent who disagrees with the results of the regional dispositional conference has a right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, Administrative Hearings, to contest the removal of a foster child, if the foster child has been in the foster home continuously for two years or more and if the foster child is not being returned to the parent. See N.J.S.A. 30:4C-26.7.

(e) Notwithstanding the provisions of (b) through (d) above, if the placement of the foster child after removal is the subject of an existing court order or is pending the decision of a court, the foster parent who disagrees with the removal of a foster child shall be informed in writing by a Division representative that the foster parent may request local and regional dispositional conferences, but that such conferences are not required, and that, at the option of the foster parent, he or she may bring the matter directly before the court. There is no right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, if the placement of the foster child after removal has been the subject of a court order or is pending the decision of a court.

SUBCHAPTER 3. CLOSURE OF A FOSTER HOME

10:122E-3.1 Reasons for closure of a foster home

(a) The Division shall close a foster home when it is determined that the foster home cannot provide proper and safe care to children or is no longer a viable placement resource for children.

(b) The determination for closure shall be based upon at least one of the following:

1. The foster parent requests that the home be closed;

2. The Division substantiates abuse or neglect of a child in the foster home by a foster parent or household member;

3. The foster family violates any Division rule through action or inaction which may cause or has caused physical or emotional harm to a foster child;

4. The foster family does not meet the requirements of N.J.A.C. 10:122C, Approval of Foster Homes;

5. A foster parent or household member has a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq., or is convicted of a crime or disorderly persons offense of violence against any child or against a family member or a crime of a sexual nature or any other act of a similarly serious nature;

6. The Division learns that the foster parent has given false information on the foster home application or other documents which impacts on the Division's ability to assess or reassess the foster home;

7. The foster home has been inactive for a period of one year;

8. The foster family has not met the standards agreed to by the end of an established time frame. See N.J.A.C. 10:122C-2.18(a), Division action when a foster home does not comply with written agreement; or

9. The foster family moves out of the State of New Jersey.

10:122E-3.2 Considerations for closing a foster home

(a) Before closing a foster home, the Division shall consider the reasons for the proposed closure, the Division's role in those circumstances and the feasibility of maintaining the home as a resource, and shall specifically consider the following:

1. The foster parent's desire to continue foster parenting;

2. Recommendations concerning closure made by Division representatives and others who have knowledge of the foster family based upon formal consultation and discussion, including those directly responsible for the supervision of the children placed in the foster home and responsible for the assessment of the foster home;

3. The circumstances surrounding the incident or conditions that led to the proposed closure, including any mitigating factors and any contributions that the Division may have made to creating, perpetuating or exacerbating the situation;

4. The willingness of the foster family to work with the Division to ameliorate factors contributing to the problem, and the feasibility of doing so;

5. The foster family's history with the Division as it relates to their cooperativeness, forthrightness, ability to resolve problems based upon previous problems in the foster home, and history of successful parenting;

6. The quality of care provided to current and former children placed in the foster home;

7. The length of time that the children currently in foster care have been in the foster home; and

8. The potential impact of closure and removal on the well-being of any foster child currently placed in the foster home, based upon consultation with all Division representatives directly responsible for providing supervision to the foster children.

(b) Whenever the Division considers closing a foster home and children are in placement at the time, a determination is made whether to remove all or some of the children in placement prior to the final decision concerning closure based upon the provisions of N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

10:122E-3.3 Request for closure by the foster parent

(a) A foster parent may request that his or her foster home be closed at any time and for any reason.

(b) When the foster parent requests that his or her foster home be closed, the Division shall determine the basis for the request and whether assistance can be provided by the Division to ameliorate the condition or circumstances which led to the request for closure.

(c) The Division representative shall discuss with the foster family how the circumstances which led to the request for closure might be remedied.

(d) The Division shall close the foster home upon the request of the foster parent, if the foster parent chooses not to continue in the program after this discussion.

(e) If the foster parent chooses to continue in the program, the Division shall determine, in consultation with the foster parent, whether additional placements will be made or current children in placement will be removed during the period in which the foster parent's concerns are being addressed. This determination shall be based on the foster family's ability and willingness to provide proper care for foster children during this period.

(f) The Division may make, with the foster family's approval, referrals for appropriate services or provide direct services to the foster family, during this period.

10:122E-3.4 Closure due to substantiated abuse or neglect in the foster home

(a) When it has been substantiated that any child in the foster home has been abused or neglected by the foster parent or a household member, the office manager may consult with the Institutional Abuse Investigation Unit of the Division when that unit conducted the investigation and determine whether to close the foster home or to recommend to the Division Director that the foster home continue to be used for the placement for children. The determination shall be based upon:

1. The circumstances of the abuse or neglect as described in the protective service investigation report;

2. The specific type of abuse or neglect;

3. Documentation of previously reported incidents of abuse or neglect, whether or not substantiated, and the circumstances pertaining to the incidents;

4. Special circumstances which caused the abuse or neglect and whether these are not likely to be repeated;

5. The feasibility of addressing problems in the foster home that led to the abuse or neglect;

6. The remedial action which may be taken by the foster family or the Division to resolve the problems; and

7. The considerations set forth in N.J.A.C. 10:122E-3.2.

(b) Only the Division Director may approve the continued use of a foster home for the placement of children when abuse or neglect of a child in the foster home has been substantiated. This approval may be given only when conditions which led to the abuse or neglect have been resolved. See N.J.A.C. 10:122C-2.17, Agreement to meet standards after reevaluation.

10:122E-3.5 Closure due to violation of Division rules

(a) The Division may close a foster home when any Division rule has been violated by the foster family and the violation impacts on the care or potential care of a child in the home.

(b) The Division shall assist the foster family to resolve a violation, when possible.

(c) The office manager shall decide whether to close the foster home based upon the nature of the violation, its impact or potential impact on foster children in the home and the considerations set forth in N.J.A.C. 10:122E-3.2.

10:122E-3.6 Closure due to non-compliance with foster home standards

(a) The Division may close a foster home when the foster home does not meet the requirements of N.J.A.C. 10:122C, Approval of Foster Homes.

(b) The Division may assist the foster family to meet the standards in order to preserve the foster home as a placement resource. See N.J.A.C. 10:122C-2.16, Division action when a foster home does not meet standards after reevaluation.

1. The Division representative shall determine whether the noncompliance impacts on the proper care and safety of children currently in placement and determines whether removal is warranted in accordance with N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

2. The Division representative shall inform the foster parent verbally and in writing of the standard that is not being met.

3. The Division representative shall identify with the foster parent methods to achieve compliance with the standard. The Division and foster family shall develop a written agreement which outlines the actions necessary to achieve compliance, including time frames which shall not exceed a six month period. The Division may assist the foster family to achieve compliance by providing information and referral services and special funding. See N.J.A.C. 10:122C-2.16 and 2.17.

4. The Division shall close the foster home when the home does not achieve compliance in accordance with the written agreement, unless the provisions of N.J.A.C. 10:122C-2.18(b) are met.

(c) The Division regional administrator may approve continued use of a foster home which does not comply with the written agreement to enable a foster child to continue placement in the foster home. This approval shall be based upon the provisions of N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

10:122E-3.7 Closure due to criminal conviction or domestic violence

(a) The Division shall close a foster home when a foster parent or household member has a finding of domestic violence, as defined in N.J.S.A. 2C:25-1 et seq., or has been convicted of a crime of violence or a disorderly persons offense on the basis of an act of violence against any child or against a family member or a crime of a sexual nature or any other act of a similarly serious nature.

(b) The office manager shall determine whether to close a foster home when a foster parent or household member has been convicted of a criminal or disorderly persons offense involving other crimes not cited in (a) above or to recommend to the Division Director that the home continue to be used for the placement of children. The determination shall be based upon:

1. The nature of the crime or disorderly persons offense committed and possible impact of the offense on the care and safety of foster children in the home;

2. The amount of time that has passed since the crime or disorderly persons offense was committed;

3. Whether the crime or disorderly persons offense was an isolated or repeated incident;

4. Whether the foster parent or household member successfully completed some course of rehabilitation or treatment related to the criminal or disorderly persons offense; and

5. The age of the person when the crime or disorderly persons offense was committed.

(c) Only the Division Director may approve continued use of the foster home when a foster parent or household member has been convicted of a criminal or disorderly persons offense as cited in (a) above.

10:122E-3.8 Closure due to false statement made on the foster home application

(a) The Division may close a foster home at any time when the Division determines that information provided by the foster parent on the application or some other document is false and the information is pertinent to the Division's assessment or reassessment of the foster home.

1. The Division representative shall discuss the false information with the foster parent in order to obtain an explanation of how and why the false information was provided.

2. The Division shall assess the information provided to determine whether the falsification contributes to the harm or risk of harm to a foster child placed in the home.

(b) The office manager shall be responsible for approving continued use of the foster home when a foster parent has falsified information on the application or other document. The office manager shall give consideration to the provisions of N.J.A.C. 10:122E-3.2.

10:122E-3.9 Closure due to foster home being inactive for a period of one year

(a) The Division may close a foster home when no placements have been made in the foster home for a period of one year because either:

1. The foster family has requested no placements; or

2. They have repeatedly rejected placements of the type requested.

(b) The Division shall make reasonable efforts to assist a foster family to ameliorate conditions which discourage or preclude the foster family from accepting children for placement.

10:122E-3.10 Closure due to foster family moving out of the State of New Jersey

(a) The Division shall close a foster home when the foster family moves out of the State of New Jersey, unless:

1. Provisions have been made for a foster child already in the foster home to move with the foster family; or

2. The requirements of the N.J.S.A. 9:23-10 through 17, Interstate Compact on Children, have been met.

10:122E-3.11 Notice of outcome of consideration for closure

(a) The Division shall inform the foster family in writing when a determination has been made to close the foster home, or the foster home has been considered for closure and a determination has been made to keep the foster home open with or without remedial actions. The notification shall include:

1. The anticipated date of closure, when applicable;

2. The reason for closure or consideration for closure;

3. A summary of actions taken by the Division to preclude closure, when applicable;

4. Identification of remedial actions required and the persons responsible for these in order for the foster home to remain open, when applicable; and

5. Information about appealing the decision to close the foster home.

(b) The office manager shall inform verbally and in writing each Division representative who either supervises a foster child in the foster home or is responsible for ongoing assessment of the home when a decision is made to either close a foster home or special approval is given to keep a foster home open.

10:122E-3.12 Disagreements

(a) The Division representative and the foster family shall try to resolve any disagreement before a foster home is closed.

(b) When a foster home is closed, the Division representative shall inform the foster parent in writing of the decision to close the foster home, the reasons for closing the home and that the foster parent may request a local dispositional conference.

(c) Upon the request of a foster parent who disagrees with the office manager's decision to close his or her foster home, the office manager shall hold a local dispositional conference, inviting the Institutional Abuse Investigation Unit of the Division, if appropriate, and including the foster parent. The office manager shall make a decision and shall inform the foster parent in writing of the decision, the reasons for the decision, and that, to appeal the decision, the foster parent may request that the regional office hold a regional dispositional conference.

(d) Upon the request of a foster parent who disagrees with the decision of the office manager, the regional administrator shall hold a regional dispositional conference, shall make a decision and shall inform the foster parent in writing of the decision and the reasons for the decision. The decision of the regional administrator is the final administrative determination of the Division.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

General Provisions of Initial Response and Service Delivery

Proposed New Rules: N.J.A.C. 10:133

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4C-11 et seq., specifically 30:4C-44, and N.J.S.A. 9:6-8.8 et seq., specifically 9:6-8.15.

Proposal Number: PRN 1991-594.

Submit comments by January 15, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review, revise and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules," or OPTR, project was initiated by the Division to subject those policies which have wide-spread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rule-making process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The OPTR project involves an advisory body of 90 members, which includes family and child advocates, foster parent associations, Legal Services of New Jersey, the Department of the Public Advocate, the Association for Children of New Jersey, DYFS field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project has been a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process will result in a thorough and full-scale study, reevaluation and revision of existing Division policies, procedures and practices. This proposal and the two that follow, addressing the Division's initial response policies, are products of the OPTR project.

The Division's Field Operations Manual on Initial Response covers some of the child welfare services provided by the Division. The Division proposes to put this extensive material into the New Jersey Administrative Code as an introductory chapter, in which general provisions applying to all the chapters in the series are stated and all the terms to be used throughout the series of chapters to follow are defined, and as subsequent chapters on specific child welfare service areas. This proposal constitutes the introductory chapter N.J.A.C. 10:133, Initial Response and Service Delivery General Provisions. The subsequent chapters on child welfare services will all be in the series of N.J.A.C. 10:133, for example the concurrently proposed N.J.A.C. 10:133A, Initial Response, and N.J.A.C. 10:133B, Information and Referral, published elsewhere in this issue of the New Jersey Register. Projected future chapters include eligibility and assessment (N.J.A.C. 10:133E), support (N.J.A.C. 10:133F), and confidentiality (N.J.A.C. 10:133G).

Additionally, rather than merely codifying the existing Division Field Operations Manual on Initial Response, the OPTR Advisory Group approached the issue by determining the way they thought the Division should respond when contacted for services. This effort resulted in these proposed new rules, which vary from previous Division policy as contained in the Field Operations Initial Response Manual. The variations appearing in this chapter include an explanation and expansion of the rights of applicants and clients, especially the right to be informed of Division responsibilities, the right to refuse any voluntary services unless ordered by the court, and the right to consult a lawyer; the Division is to inform the referral source of Division responsibilities and services.

The Field Operations Manual on Initial Response, which contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.), will be revised to reflect these new rules upon their adoption.

A summary of the proposed rules follows:

N.J.A.C. 10:133-1.1 states the purpose of this chapter and this series of chapters.

N.J.A.C. 10:133-1.2 states the scope of this chapter and this series of chapters.

N.J.A.C. 10:133-1.3 defines the relevant terms relating to Division of Youth and Family Services initial response and service delivery policy, to be used throughout this series of chapters.

N.J.A.C. 10:133-1.4 explains who may apply for child welfare and protective services from DYFS, how they shall apply, what information they shall receive from DYFS, their rights of confidentiality and non-discrimination, their right to request an administrative hearing or review when disagreements occur, their right to be informed of Division responsibilities and resources, their right to participate in service plans and agreements, and their right to consult a lawyer.

N.J.A.C. 10:133-1.5 states the responsibilities of applicants and clients to provide necessary information, including financial information, and to report any change in family circumstances in order to receive DYFS services.

N.J.A.C. 10:133-1.6 details the responsibilities of the Division in explaining DYFS involvement to the family, helping to ensure that children are protected, explaining what is expected of a family receiving DYFS services, and providing only those services agreed upon unless there is a court order.

N.J.A.C. 10:133-1.7 states that the Division shall provide needed services within the limits of legislative appropriations to all eligible children and families in similar circumstances, subject to limitations due to actual ability of the Division to provide such services directly or by purchasing such services from appropriate privately sponsored agencies or institutions, and requires the publication of any service limitations in the New Jersey Register.

N.J.A.C. 10:133-1.8 outlines the procedures an applicant or client may follow to resolve disagreements with the Division, including conferences with a supervisor or office manager, administrative reviews, and administrative hearings.

Social Impact

The proposed new rules present the general provisions and definitions to be used throughout the subsequent chapters on delivery of services. The collecting and presenting of all general provisions and definitions in one introductory chapter will assure standardization in the use of terminology and assist the user of the New Jersey Administrative Code (N.J.A.C.) in locating definitions. These rules also serve to clarify Division initial response policy and the rights and responsibilities of applicants and clients, making this information more accessible and understandable to the general public of New Jersey who request information and services from the Division. Also, the Division shall provide needed services within the limits of legislative appropriations to all eligible children and families in similar circumstances. The provision of services shall be subject to limitations due to actual ability of the Division to provide such services directly or by purchasing such services from appropriate privately sponsored agencies or institutions. Any future service limitations must be published in the New Jersey Register. This will provide a mechanism for formalized, public notification should service limitations ever become necessary.

Child advocates, regional and district office staff, and other agency representatives participated in developing these rules through the OPTR process. The Division expects that these new rules, and especially the changes in these proposed rules from existing DYFS policy relating to applicant and client rights, will result in better understanding of rights and responsibilities.

This introductory chapter will be revised to include additional definitions and provisions of a general nature as more chapters in the series on Initial Response and Service Delivery are developed and proposed. Thus, these rules should be more useful and are more responsive to the needs and wishes of the regulated public.

Economic Impact

The Division does not anticipate that any economic impact will result from these proposed rules, which state the definitions to be used throughout the series of chapters on initial response and service delivery, provide a mechanism for public notification should limitations on delivery of services become necessary in the future, and state client and applicant rights and responsibilities, as well as Divisional responsibilities. These rules will not require any capital improvements, or expenditures for staff or equipment on the part of the Division or any individual. Any training required to familiarize Division staff with these rules will be part of ongoing staff development.

Regulatory Flexibility Statement

Neither the Division nor the public requesting Division services are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed new rules do not impose reporting, recordkeeping or compliance requirements on small businesses. Therefore a regulatory flexibility analysis is not necessary. The proposed rules state the definitions to be used throughout the series of chapters on initial response and service delivery, provide a mechanism for public notification should limitations on delivery of services become necessary in the future and state client and applicant rights and responsiblities, as well as Divisional responsibilities.

Full text of the proposal follows:

CHAPTER 133
INITIAL RESPONSE AND SERVICE DELIVERY GENERAL PROVISIONS

SUBCHAPTER 1. GENERAL PROVISIONS

10:133-1.1 Purpose

(a) The purpose of the series of chapters on initial response and service delivery is to describe certain services provided by the Division, the processes used by the Division to determine what actions to take in response to a referral or application for those services, what applicants and clients may expect of the Division, and any standards and requirements for applicants, clients, and the Division related to those services.

(b) The purpose of this chapter is to provide certain general provisions and to define certain words and terms to be used throughout the chapters on initial response from the Division and service delivery by the Division which follow, so as to provide standardization and ease of accessibility to the user of the New Jersey Administrative Code.

10:133-1.2 Scope

The provisions of this chapter and this series of chapters apply to all Division representatives, all applicants for services from the Division, all clients receiving services from the Division, all persons referred for Division services, and all persons making referrals to the Division.

10:133-1.3 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Abused or neglected child" means a child:

1. Less than 18 years of age:

i. Whose parent or guardian inflicts, or allows to be inflicted upon such child, physical injury by other than accidental means, which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

ii. Whose parent or guardian creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;

iii. Whose parent or guardian commits or allows to be committed an act of sexual abuse against the child;

iv. Whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his or her parent or guardian to exercise a minimum degree of care:

(1) In supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so, or though offered financial or other reasonable means to do so; or

(2) In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;

v. Who has been willfully abandoned by his or her parent or guardian;

vi. Upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to herself or himself, others or property; or

vii. Who is in an institution other than a day school, and:

(1) Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being; or

(2) Has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

2. No child who in good faith is under treatment by spiritual means alone, through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall for this reason alone be considered to be abused or neglected.

"Applicant" means a person, either adult or minor, who requests services from the Division, for himself or herself or his or her family; or a person referred by another person or agency for non-protective services. For the purposes of N.J.A.C 10:133 through 133G, the term "applicant" does not include those people who request or need information only, nor does it include persons applying to become foster parents, adoptive parents or other providers of service.

"Assessment" means the gathering of informaiton, evaluation of the information gathered to determine the client's service needs, and the determination of who shall provide the needed services.

"Child" means any person less than 18 years of age, except as otherwise provided by N.J.S.A. 9:17B-2f.

"Child welfare services" or "welfare services" or "services" means consultation, counseling, and referral to or utilization of available resources, for the purpose of determining and correcting or adjusting matters and circumstances which are endangering the welfare of a child, and for the purpose of promoting his or her proper development and adjustment in the family and the community; also, as defined under Title IV-B of the Social Security Act, 42 U.S.C. 620 et seq., as from time to time amended.

"Client" means any person including an applicant receiving a service from the Division or any person referred to the Division for services.

"Collateral contact" means a contact made with a person other than the referral source or those who are subject(s) of the referral in order to collect additional information.

"Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

"Director" means the Director of the Division of Youth and Family Services in The Department of Human Services.

"Dispositional conference" means a formal review of a Division decision, which is made by Division administratives personnel not involved in making the original decision.

"Division" or "DYFS" means the Division of Youth and Family Services in the Department of Human Services.

"Division representative" means a professional or paraprofessional employee of the Division of Youth and Family Services.

"Foundling" means an infant or young child found abandoned, who cannot be identified and whose family cannot be identified.

"Information only" means the provision of information in response to an inquiry, when the person making the inquiry is not alleging or in any way indicating that a child is an abused or neglected child.

"Information and referral" means the activity of informing an applicant or person referred for Division services about services available from public and private sources, based on a determination of need, knowledge of Division and community resources, and follow up where indicated.

"Parent" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care.

"Parent or guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school.

"Referral" means a verbal or written statement made to the Division by a referral source which indicates a possible need for a child protective service investigation or child welfare services for a child or family.

"Referral source" means a relative, agency, association, public official, or anyone having a special interest in a child or family, or the child himself or herself who makes a referral or application to the Division.

"Response" means all those activities conducted by the Division between application or referral and the initiation of an assessment or child protective service investigation and includes the provision of any services needed on an emergency basis.

"Screening" means the introductory information gathering activity which takes place during the initial contact or during contact subsequent to a referral or request for services regarding a client between the Division and the applicant or the referral source and collateral contacts to determine whether the referral or application for service is appropriate for the Division.

10:133-1.4 Rights of applicants and clients during initial response

(a) Any person who currently resides in New Jersey shall have the right to apply for any child welfare services or child protective services provided by the Division.

(b) Any person within New Jersey may apply for child welfare services or protective services as specified in N.J.S.A. 30:4C-11.

(c) Anyone requesting in person to apply for services shall be given the opportunity to do so immediately.

(d) An applicant or client may orally or in writing authorize a representative to speak and act on his or her behalf. If the applicant or client is incompetent or incapacitated or in an emergency, the application may be signed for him or her by someone determined by the Division to be able to act responsibly on his or her behalf, including a Division representative. The Division shall help the client, applicant, or representative complete the application, if necessary.

(e) The applicant, client, or representative requesting or requiring services shall have the right to make application in writing.

(f) The applicant, client, or representative shall receive a copy of the completed application.

(g) The applicant or client shall receive written information about:

1. The Division's authority to provide service and conduct protective service investigations;
2. Services available through the Division;
3. The Division's mission;
4. The role of the Division representative;
5. The rights of applicants and clients including their right to consult an attorney;
6. The availability of administrative reviews and notices of appeal;
7. The definition of an abused or neglected child;
8. The purpose and general procedures for a child protective service investigation;
9. The purpose and general procedures for an assessment;
10. Parental financial responsibilities when receiving Division services;

11. How to reach the Division by telephone during normal working hours and after working hours; and
12. Child Placement Review and internal placement reviews when placement has been requested or is otherwise indicated.

(h) The applicant or client shall have the right to have the information collected about his or her family considered confidential. The applicant has a right to know that information will be released, only with his or her written consent or a court order. In addition, he or she has the right to know that he or she may have access to information about his or her family not otherwise protected by law, for example, under N.J.S.A. 9:6-8.10a, or 42 U.S.C. 5101 et seq.

(i) The Division shall not discriminate against an applicant or client on the basis of race, color, national origin, handicapping condition, gender, religion, or marital, parental, or birth status.

(j) The applicant, client or referral source, if a request is made, shall have the right to receive a written disposition from the Division as soon as practical but not later than 45 calendar days from date of application or referral.

(k) Each applicant or client shall be informed of:
1. The Division's responsibilities, as listed in N.J.A.C. 10:133-1.6;
2. Eligibility factors used by the Division;
3. The Division's legal responsibility to investigate certain referrals;
4. Other resources in the community or courses of action, which might meet his or her needs;
5. Why the Division is involved with him or her and the family, if the person did not ask for help;
6. What the Division expects from him or her and the child; and
7. What services can be provided.

(l) An applicant or client shall have the right to have the rules of this chapter followed.

(m) The applicant or client shall have the right to refuse any involvement or services not wanted, unless a court order requires the Division to provide them, and the court order requires the applicant or client to utilize the service.

10:133-1.5 Responsibilities of applicants and clients

(a) A person applying for or receiving certain social services shall provide information necessary to determine his or her eligibility for social services including requested financial information.

(b) A person applying for or receiving social services shall report within seven days to the Division representative any changes in the number or relationship of family members, changes in address or residence, changes in financial circumstances, changes in employment or any other change in circumstances which may affect eligibility for services.

10:133-1.6 Responsibilities of the Division

(a) The Division, through a Division representative, is responsible for:
1. Explaining why the Division is involved with a family;
2. Helping ensure that the family's children are protected;
3. Telling the applicant what is expected from him or her and his or her children;
4. Explaining to the family the procedures to obtain the services requested;
5. Providing only those services agreed upon unless there is a court order or otherwise authorized in N.J.S.A. 30:4C-12 and 15 and N.J.S.A. 9:6-8.18 and 29;
6. Listening and offering to help find solutions to problems;
7. Discussing progress on a regular basis;
8. Informing the client of changes in services that may affect the family;
9. Explaining when and under what circumstances the Division will terminate its involvement with the family;
10. Explaining what collateral contacts will be made and for what purpose; and
11. Explaining that, depending upon the service received and the client's financial circumstances, the client may have a responsibility to reimburse the agency or pay directly for the service.

10:133-1.7 Service limitations

(a) The Division shall provide needed services within the limits of legislative appropriations to all eligible children and families in similar circumstances. The provision of services shall also be subject to limitations due to actual ability of the Division to provide such services directly or by purchasing such services from appropriate privately sponsored agencies or institutions.

(b) The demand for social services frequently exceeds the funds available to provide them. Therefore, in accordance with N.J.S.A. 30:4C-13, the Division Director may establish Division-wide service limitations based upon the need to focus finite resources to serve those individuals most in need. Service limitations shall be published within 90 days of imposition in the Public Notices section of the New Jersey Register.

10:133-1.8 Appeals

(a) An applicant or client who disagrees with an action taken by a Division representative may ask to speak with the supervisor and, if the disagreement is unresolved, with the office manager.

(b) An applicant whose request for Division services has been denied, or a client who is informed that services will be denied, reduced, suspended or terminated, shall be informed in writing by the Division representative of the reasons for the decision, that he or she has a right to appeal the decision, and that to exercise that right he or she may request a local dispositional conference. Upon such a request, the office manager shall hold a local dispositional conference, make a decision, and shall inform the applicant or client in writing of the decision and the reasons for the decision. When the decision of the local dispositional conference results in a denial, reduction, suspension, or termination of services, the office manager shall also inform the applicant or client in writing that the applicant or client has a right to a regional dispositional conference.

(c) Upon the request of an applicant or client who disagrees with the results of the local dispositional conference, the regional administrator shall hold a regional dispositional conference. The regional administrator shall make a decision, shall inform the applicant or client in writing of the decision and the reasons for the decision. When the decision of the regional dispositional conference results in a denial, reduction, suspension, or termination of services, the regional administrator shall also inform the applicant or client in writing that the applicant or client has a right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, Administrative hearings.

(d) Notwithstanding the provisions of (b) and (c) above, if the services denied, reduced, suspended, or terminated are the subject of an existing court order or are pending the decision of a court, the applicant or client who disagrees with the decision to deny, reduce, suspend or terminate such services shall be informed in writing by a Division representative that the applicant or client may request local and regional dispositional conferences, but that such conferences are not required, and that, at the option of the applicant or client, he or she may bring the matter directly before the court. There is no right to an administrative hearing, pursuant to the provisions of N.J.A.C 10:120-2, if the services denied, reduced, suspended or terminated are the subject of an existing court order or are pending the decision of a court.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Initial Response

Proposed New Rules: N.J.A.C. 10:133A

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4C-11 et seq., specifically 30:4C-44, and N.J.S.A. 9:6-8.8 et seq., specifically 9:6-8.15.

Proposal Number: PRN 1991-592.

Submit comments by January 15, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

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Summary

The Division of Youth and Family Services has undertaken a project to review, revise and incorporate existing Division policy continued in the Division's Field Operations Casework Policy and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules", or OPTR, was initiated by the Division to subject those policies which have wide-spread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rule-making process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The OPTR project involves an advisory body of 90 members, which includes family and child advocates, foster parent associations, Legal Services of New Jersey, the Public Advocate, the Association for Children of New Jersey, DYFS field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project has been a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process will result in a thorough and full-scale study, re-evaluation and revision of existing Division policies, procedures and practices. As published in this issue of the New Jersey Register, this proposal, the proposal preceding it (N.J.A.C. 10:133) and the proposal that follows (N.J.A.C. 10:133B), are products of the OPTR project.

The Division's Field Operations Manual on Initial Response covers some of the child welfare services provided by the Division. The Division proposes to put this extensive material into the New Jersey Administrative Code as an introductory chapter, in which general provisions applying to all the chapters in the series are stated and all the terms to be used throughout the series of chapters to follow are defined, and as subsequent chapters on specific child welfare service areas. The introductory chapter is the concurrently proposed N.J.A.C. 10:133, Initial Response and Service Delivery General Provisions. The subsequent chapters on child welfare services will all be in the series beginning with N.J.A.C. 10:133, this proposal at N.J.A.C. 10:133A, Initial Response, and the concurrently proposed N.J.A.C. 10:133B, Information and Referral. Projected future chapters include eligibility and assessment (N.J.A.C. 10:133C), case management (N.J.A.C. 10:133D), child and family services (N.J.A.C. 10:133E), support (N.J.A.C. 10:133F), and confidentiality (N.J.A.C. 10:133G).

Additionally, rather than merely codifying the existing Division Field Operations Manual on Initial Response, the OPTR Advisory Group approached the issue by determining the way they thought the Division should respond when contacted for services. This effort resulted in these proposals, which vary from previous Division policy as contained in the Field Operations Initial Response Manual. This manual was never part of the New Jersey Administrative Code, but for informational purposes, the changes from the manual to the proposed new rules are here summarized: it is clarified that the source of a referral may be the child himself or herself; screening activity is to be completed within three working days of receiving the referral; referrals requiring investigation immediately, within 24 hours, and within 72 hours are clearly defined; and specific services designed to preserve families and protect chidlren are listed as well as other services to be tried when preventive and protective services have failed to ameliorate the family's problems.

The Field Operations Manual on Initial Response, which contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.), will be revised to reflect these new rules upon their adoption.

A summary of the proposed rules follows.

N.J.A.C. 10:133A-1.1 states the purpose of this chapter.

N.J.A.C. 10:133A-1.2 states the scope of this chapter.

N.J.A.C. 10:133A-1.3 incorporates the definitions in N.J.A.C. 10:133-1.3 into this chapter.

N.J.A.C. 10:133A-1.4 requires that the Division screen each request for service and provide information.

N.J.A.C. 10:133A-1.5 requires the Division to inform each referral source of Division responsibilities, resources, and the referral source's right of confidentiality.

N.J.A.C. 10:133A-1.6 explains what circumstances are necessary to complete the screening.

N.J.A.C. 10:133A-1.7 requires that the Division screen each request for service within three working days.

N.J.A.C. 10:133A-1.8 details how the Division shall make initial contacts and collateral contacts during screening, to assess the necessary Division response based on the information received.

N.J.A.C. 10:133A-1.9 requires the Division to make a decision following screening. The Division must either provide the applicant with information and referral and end Division involvement, or conduct an initial assessment to determine whether the child or family needs additional services.

N.J.A.C. 10:133A-1.10 specifies the time frames for responding in person to referrals and applications, for example, when abuse or neglect is alleged a child protection investigation shall begin immediately in response to the most serious allegations; within 24 hours for less serious allegations; within 72 hours, or, with the approval of the office manager, within three working days, of some neglect and emotional abuse allegations, among others; and more than 72 hours but less than 10 days in some allegations of sexual abuse when a credible source indicates that the child is no longer at risk.

Social Impact

The proposed new rules represent a thorough review, evaluation and revision of existing DYFS initial response and screening policy as contained in the Initial Response Manual. These rules make explicit Division initial response policy, and as such, affect all DYFS caseworkers who accept requests for services. These rules also serve to clarify Division screening policy for applicants and clients, by making this information more accessible and understandable to the general public of New Jersey who request information and services from the Division. These proposed new rules are thus more responsive to the needs and wishes of the regulated public.

Child advocates, regional and district office staff, and other agency representatives participated in developing these rules through the OPTR process. The Division expects that these new rules, and especially the changes in these proposed rules from existing DYFS policy relating to a three-day time limit on screening activity, will result in improved services to referral sources and clients.

Economic Impact

The Division does not anticipate any economic impact from these proposed rules. These rules state Division policy and add some new requirements on Divisional operations which will not require any additional capital improvements, expenditures for staff or equipment on the part of the Division or any individual. Any training required to familiarize Division staff with these rules will be part of ongoing staff development. As screening and the initial assessment of eligibility and the need for services are only part of many functions performed by DYFS direct service staff, the costs of such tasks cannot be estimated with any degree of accuracy.

Regulatory Flexibility Statement

Neither the Division nor the public requesting Division services are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed new rules do not impose reporting, recordkeeping or compliance requirements on small businesses. Therefore a regulatory flexibility analysis is not necessary. These proposed new rules state DYFS initial response policy.

Full text of the proposal follows:

CHAPTER 133A
INITIAL RESPONSE

SUBCHAPTER 1. INITIAL RESPONSE AND SCREENING

10:133A-1.1 Purpose

The purpose of this chapter is to make known the rights and responsibilities of applicants and clients of the Division and the process used by the Division to determine what action to take when a referral or application is made.

10:133A-1.2 Scope

The provisions of this chapter apply to all Division representatives, all applicants for services from the Division, all persons referred for Division services, and all persons making referrals to the Division.

10:133A-1.3 Definitions

The definitions in N.J.A.C. 10:133, General Provisions of Initial Response and Service Delivery, are hereby incorporated into this chapter by reference.

10:133A-1.4 Referrals and applications

The Division shall screen all referrals and applications made by telephone, in person, or in writing from any referral source or applicant as stipulated in N.J.A.C. 10:133A-1.7 and 1.8. The Division shall provide information to the referral source as stipulated in N.J.A.C. 10:133A-1.4(j) and N.J.A.C. 10:133A-1.5.

10:133A-1.5 Information given to referral source

(a) The Division representative shall inform each referral source of:

1. The responsibilities of the Division under State law;
2. The kinds of services provided by the Division;
3. The Division's ability to accept a referral if the referral source decides to remain anonymous;
4. The referral source's right to have his or her name kept confidential unless he or she gives the Division permission to use it or court procedures require disclosure; and
5. Other resources in the community.

10:133A-1.6 Determinations made at screening

(a) The Division representative shall determine that any person who applies to or is referred to the Division currently resides in New Jersey and that his or her circumstances are such that he or she falls into one or more of the categories listed below:

1. A person from birth to age 18 and his or her family;
2. An unaccompanied refugee minor or entrant minor and other non-U.S. citizen minor;
3. A pregnant woman of any age, on behalf of her unborn child;
4. An adult who requires services on behalf of or in relation to a child; or
5. A minor living in adult circumstances, known as an "emancipated minor," either through court action or without court action.

(b) The Division representative shall determine if a runaway child is a non-New Jersey resident from another state who is located in New Jersey and is either under age 18, or is younger than the age of majority stated in the Interstate Compact on the Placement of Children in effect in his or her home state (see N.J.S.A. 9:23-1), whichever is older; or

(c) In accordance with the provisions of N.J.S.A. 9:23-5 et seq., the Interstate Compact on the Placement of Children, the Division representative shall screen a request for services from another state on behalf of a child:

1. Who is a resident of the other state;
2. Who has not yet reached the age of majority in the other state; and
3. Who is located in the State of New Jersey.

10:133A-1.7 Screening of referrals and applications

(a) The Division representative shall screen each referral or application to determine whether the referral or application for service is appropriate for the Division.

(b) Screening shall be completed within three working days of receiving the referral unless the referral requires a more prompt response as stipulated in N.J.A.C. 10:133A-1.10(b) and (c).

10:133A-1.8 Contacts made during screening

(a) The initial screening contact between the Division representative and the applicant or referral source may be by telephone or in person and shall serve to:

1. Elicit basic identifying information;
2. Elicit a statement of the problem, allegation, or request for service;
3. Determine eligbility;
4. Assess the type of response necessary based on the information received;
5. Determine whether services are needed on an emergency basis;
6. Provide basic information about the Division's services and agency mandates and other relevant services; and
7. Document the referral or request for services.

(b) The Division representative shall make collateral contacts as necessary to obtain additional information and to clarify the presenting problem. Collateral contacts may be made in person or by telephone.

(c) Referrals and applications received by letter shall require an acknowledgment in the form of telephone or in person contact to complete the screening activity where a telephone number or address has been provided.

10:133A-1.9 Decision following screening

(a) Following screening, the Division representative, with supervisory approval shall:

1. Conduct a child welfare services assessment to determine how or if the Division can provide child welfare services;
2. Conduct a child protective services investigation in order to determine whether a child is an abused or neglected child; or
3. Provide the applicant with information and referral to another resource and end the Division's involvement.

10:133A-1.10 Responding to referrals and applications

(a) The Division representative shall respond in person.

(b) The response shall begin immediately upon receipt of the referral when the allegation is that:

1. A child is currently being physically or sexually abused;
2. A child has been physically injured by abuse or neglect;
3. A child has died under suspicious circumstances and there are other children in the home;
4. A child has physical trauma or physical evidence of sexual interaction which may be lost if not documented immediately;
5. A child may need immediate medical treatment due to abuse or neglect;
6. A child is without adult supervision and is not competent to provide for his or her own care;
7. A child is in the hospital and in protective custody in the hospital;
8. A child or family is in severe psychological crisis or actively calling for help which cannot be resolved over the telephone or by referral to another appropriate community resource;
9. The severity of a referral situation is in doubt; or
10. A foundling is discovered, unless the child is already receiving appropriate medical care and the police are actively investigating.

(c) The response shall begin within 24 hours of receiving a referral when the allegation is that:

1. A child has been physically abused in the past, evidence of the physical abuse is no longer present, and there is evidence that no abuse is likely to occur within 24 hours because the perpetrator has no access to the victim; or
2. A foundling is already receiving appropriate medical care and the police are involved.

(d) The response shall begin within 72 hours or, with the approval of the office manager, within three working days of receiving a referral unless an immediate or 24 hour response is required as outlined in (b) or (c), above when:

1. The referral indicates present or past physical neglect;
2. The referral indicates emotional abuse or neglect;
3. The referral is from the Family Court, Crisis Intervention Unit or Court Intake;
4. The referral alleges domestic violence which is threatening the safety of the child; or
5. The referral of sexual abuse does not indicate current abuse or physical trauma, as stated in (b) above or does not require an extension as described in (e) below.

(e) The response to an allegation of sexual abuse may begin more than 72 hours after receiving a referral when a credible source, for example, the child's mental health practitioner, indicates that the child is not at risk and extending the time frame for response allows the Division representative to plan his or her response without compromising the child or the investigation. The Division representative shall document the reason for the extension of the time frame for response and obtain office manager approval. The response shall begin within 10 working days of the referral.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Information and Referral

Proposed New Rules: N.J.A.C. 10:133B

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4C-11 et seq., specifically 30:4C-44, and N.J.S.A. 9:6-8.8 et seq., specifically 9:6-8.15.

Proposal Number: PRN 1991-611.

Submit comments by January 15, 1992 to:
Barbara Kraeger
Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules", or OPTR project, was initiated by the Division to subject those policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rule-making process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The OPTR project involves an advisory body of 90 members, which includes family and child advocates, foster parent associations, Legal Services of New Jersey, the Public Advocate, the Association for Children of New Jersey, DYFS field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project has been a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process will result in a thorough and full-scale study, re-evaluation and revision of existing Division policies, procedures and practices. This proposal, and the two proposals preceding it in this issue of the New Jersey Register (N.J.A.C. 10:133 and N.J.A.C. 10:133A), are products of the OPTR project.

The Division's Field Operations Manual on Initial Response covers some of the child welfare services provided by the Division. The Division proposes to put this extensive material into the New Jersey Administrative Code as an introductory chapter, in which general provisions applying to all the chapters in the series are stated and all the terms to be used throughout the series of chapters to follow are defined, and as subsequent chapters on specific child welfare service areas. The introductory chapter is the concurrently proposed N.J.A.C. 10:133, Initial Response and Service Delivery General Provisions. The subsequent chapters on child welfare services will all be in the series of N.J.A.C 10:133, for example, the concurrently proposed N.J.A.C. 10:133A, Initial Response, and these proposed new rules, N.J.A.C. 10:133B, Information and Referral. Projected future chapters include planned chapters on eligibility and assessment (N.J.A.C. 10:133C), case management (N.J.A.C. 10:133D), child and family services (N.J.A.C. 10:133E), support (N.J.A.C. 10:133F), and confidentiality (N.J.A.C. 10:133G).

Additionally, rather than merely codifying the existing Division Field Operations Manual on Initial Response, the OPTR Advisory Group approached the issue by determining the way they thought the Division should respond when contacted for services. This effort resulted in these proposals, which vary from previous Division policy as contained in the Field Operations Initial Response Manual. This manual was never part of the New Jersey Administrative Code, but for informational purposes, the significant change from the manual to the proposed new rules is that DYFS responsibility regarding information and referral has been expanded to include "follow-up," in some instances, after the referral has been made.

The Field Operations Manual on Initial Response, which contains other material not regulatory in nature (hypothetical situations, case practice examples, etc.), will be revised to reflect these new rules upon their adoption.

A summary of the proposed rules follows:

N.J.A.C. 10:133B-1.1 states the purpose of this chapter.

N.J.A.C. 10:133B-1.2 states the scope of this chapter.

N.J.A.C. 10:133B-1.3 incorporates the definitions in N.J.A.C. 10:133-1.3 into this chapter.

N.J.A.C. 10:133B-1.4 details when the Division is to provide information and referral, or information only.

N.J.A.C. 10:133B-1.5 provides that the Division representative shall help an applicant make the referral when the applicant wants or needs the help.

N.J.A.C. 10:133B-1.6 states that when the Division representative does not provide help with the referral, the Division representative shall follow up on the referral if the applicant asks for follow-up, or when the need for follow-up is otherwise indicated.

N.J.A.C. 10:133B-1.7 provides that the Division representatives shall work with community agencies and county government to develop a county information and referral plan.

Social Impact

The proposed new rules represent a thorough review, evaluation and revision of existing DYFS information and referral policy as contained in the Initial Response Manual. These rules make explicit Division policy, and as such, affect all DYFS caseworkers who accept requests for services. These rules also serve to clarify Division information and referral policy and the rights of applicants, making this information more accessible and understandable to the general public of New Jersey. These proposed new rules are thus more responsive to the needs and wishes of the regulated public.

Child advocates, regional and district office staff, and other agency representatives participated in developing these rules through the OPTR process. The Division expects that these new rules, and especially the changes in these proposed rules from existing DYFS policy relating to follow-up activities in certain circumstances, will result in improved services to referral sources and clients, and better understanding of rights and responsibilities.

Economic Impact

The Division does not anticipate any economic impact from these proposed rules. These rules clarify existing Division policy and add a new requirement (follow up, in certain instances) which will not require any additional capital improvements, or expenditures for staff or equipment on the part of the Division. Any training required to familiarize Division staff with these rules will be part of ongoing staff development. As information and referral activities are only part of many functions performed by DYFS direct service staff, the costs of such tasks cannot be estimated with any degree of accuracy.

Regulatory Flexibility Statement

Neither the Division nor the public requesting Division services are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed new rules do not impose reporting, record keeping or compliance requirements on small businesses. Therefore a regulatory flexibility analysis is not necessary. The proposed new rules state DYFS policy regarding information and referral.

Full text of the proposal follows:

CHAPTER 133B
INFORMATION AND REFERRAL

SUBCHAPTER 1. GENERAL PROVISIONS

10:133B-1.1 Purpose

The purpose of this chapter is to make known the actions the Division shall or may take on behalf of anyone who expresses a need for services or information for himself or herself or for a family or on behalf of a child.

10:133B-1.2 Scope

The provisions of this chapter apply to all Division representatives, all applicants for services from the Division, all persons referred for Division services, and all persons making referrals to the Division.

10:133B-1.3 Definitions

The definitions in N.J.A.C. 10:133, General Provisions of Initial Response and Service Delivery, are hereby incorporated into this chapter by reference.

10:133B-1.4 Information and referral services

(a) The Division shall provide information and referral services within 72 hours to anyone who expresses a need for services or information for himself or herself or for a family or on behalf of a child.

(b) The Division may provide information and referral instead of an assessment and provision of services when:

1. The applicant requests or needs more than information only, as defined in N.J.A.C. 10:133-1.3; or

2. Abuse or neglect are not alleged, and the Division is not legally required to provide the requested service, and another part of the social service system is responsible for providing the service.

10:133B-1.5 Help for the applicant

The Division representative shall help the applicant make the referral when the applicant wants this help or the need for this help is otherwise indicated.

10:133B-1.6 Follow-up

When the Division representative does not provide help with the referral, the Division representative shall follow up with the applicant or the source/service to which the applicant was referred to determine whether the applicant continues to need a service from the Division when the applicant requests follow-up or the need for this follow up is otherwise indicated. The Division representative shall provide the applicant with the Division representative's name and telephone number and inform the applicant that the applicant may recontact the Division at any time for help in obtaining the needed services.

10:133B-1.7 County information and referral plan

Division representatives in each county shall work with community agencies and county government to develop a county information and referral plan.

CORRECTIONS

(a)

THE COMMISSIONER

Classification Process

Proposed Readoption with Amendments: N.J.A.C. 10A:9

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1991-626.

Submit comments by January 15, 1992 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:9, Classification Process, expires on January 20, 1992. The Department of Corrections has reviewed these rules and, with the amendments in subchapters 1, 2, 3, 4, 5, 6 and 8, has determined these rules to be necessary, reasonable and proper for the purpose for which they were originally promulgated, and is, therefore, proposing them for readoption at this time.

Subchapter 1 provides the purpose and scope of the chapter, the definition of words and terms used and a list of forms that are utilized in the classification process. The proposed amendment to N.J.A.C. 10A:9-1.1(a) adds the purpose ... "Establish rules and regulations to adequately fulfill the functions of the Department of Corrections as enumerated in N.J.A.C. 10A:1-1.1."

Subchapter 2 provides the criteria used to assign housing to adult offenders, the time requirements for classifying adult offenders and the activities which must be completed during the reception classification process. The proposed amendment to N.J.A.C. 10A:9-2.1(e) deletes references to the "Youth Reception Classification Committee" since the responsibilities of this Committee have been added to the responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.).

Subchapter 3 establishes the responsibilities and composition of the Institutional Classification Committee (I.C.C.) and establishes the decision making criteria for initial classification, review dates, special reviews, discussions and assignments of inmates within a correctional facility setting. The proposed amendments add minor changes in language for the purpose of clarification. For chapter format consistency, N.J.A.C. 10A:9-3.2 has been recodified as 3.1 and N.J.A.C. 10A:9-3.1 has been recodified as 3.2. The responsibilities of "reviewing referrals by the Disciplinary Hearing Officer" and "reviewing and approving or disapproving applications for the Electronic Monitoring Home Confinement Program," were added to the list of responsibilities of the I.C.C. in the recodified N.J.A.C. 10A:9-3.1. N.J.A.C. 10A:9-3.4(a) has been amended to delete "undergo a series of tests and interviews" and replace it with "be interviewed and may be tested." A proposed amendment to N.J.A.C. 10A:9-3.5(b) will change the statement "Status changes may include . . . :" to the statement, "Factors that may be considered include . . . :" In N.J.A.C. 10A:9-3.5(c), "Classification Office" has been changed to "Classification Officer."

An amendment to N.J.A.C. 10A:9-3.8(b) deletes "is not eligible for a job change" and replaces it with "may not request a job change." The heading of section N.J.A.C. 10A:9-3.9 has been changed from "Education assignments" to "Educational assignments" and, in N.J.A.C. 10A:9-3.9(a), the words "shall be" have been changed to the words "may include." The word "shall," when used in N.J.A.C. 10A:9-3.10, has been deleted and replaced by the word "may." In N.J.A.C. 10A:9-3.12(a), paragraphs (a)1 and 2 will be deleted and the rule has been rewritten so that it reads "The Institutional Classification Committee (I.C.C.) may assign an inmate to a community release program when the inmate has been classified as full minimum custody and meets the criteria for assignment to the program in which the inmate will participate."

Subchapter 4 establishes the three categories of custody status levels (maximum custody, gang minimum, full minimum) used within the New Jersey Department of Corrections; the authority of the Institutional Classification Committee (I.C.C.) to change custody status levels of inmates; and the criteria for each custody status level. A proposed amendment will recodify N.J.A.C. 10A:9-4.1(a) as 4.1(b) and will add a new subsection (a) which outlines the three categories of custody status levels used within the Department of Corrections as "maximum custody," "gang minimum" and "full minimum." A cross-reference to "N.J.A.C. 10A:9-4.4" has been added to the recodified paragraph (b)1. N.J.A.C. 10A:9-4.4(c) has been amended to authorize the I.C.C. to assign eligible inmates to full minimum custody status not only to Jones Farm but to "other minimum security correctional facilities" without the prerequisite service of time required for gang minimum custody status. N.J.A.C. 10A:9-4.6(e) and (f) have been clarified to explain that reference is made to inmates who have been "custody status considered" in relation to the date of April 2, 1990. A new paragraph 4 has been added to N.J.A.C. 10A:9-4.6(k) which allows inmates with detainers from other jurisdictions outside New Jersey to be considered for gang minimum and full minimum custody status if the inmates are not brought to trial within 180 days from the date the inmates have made application under the Interstate Agreement on Detainers (I.A.D.) and no court-ordered continuances were granted. Proposed amendments to this subchapter also add minor changes in language for the purpose of clarification. N.J.A.C. 10A:9-4.6(l)3 has been clarified. Those inmates with detainers for lesser controlled dangerous substance (C.D.S.) offenses, such as 4th degree crimes and disorderly conduct, are eligible for consideration for reduced custody status.

Subchapter 5 codifies and implements statutory law for awarding, forfeiting and restoring commutation time to inmates and for crediting work credits to inmates housed in county correctional facilities. Proposed amendments to this subchapter more clearly specify that inmates can start receiving work credits on the sixteenth day after custody or sentencing, and that work credits can continue to be received while recovering from job related injuries. In N.J.A.C. 10A:9-5.1(a), a new subsection has been added which specifies that commutation credits are not awarded until the mandatory minimum portion of the sentence has been served. All references to "commutation time" have been replaced with "commutation credit." In N.J.A.C. 10A:9-5.2, a new subsection (f) has been added which states that work credits may be awarded to Administrative

Segregation inmates pursuant to N.J.A.C. 10A:9-3.19. N.J.A.C. 10A:9-5.8, Reports of earned credits, is being deleted because this policy is no longer applicable. Currently, the parent or Regional institution handles earned credits, or in the case of county correctional facilities, earned credits are based on an established credit earning pattern. Additional amendments to this subchapter include minor changes in language for the purpose of clarification.

Subchapter 6 establishes the responsibilities and composition of the Inter-Institutional Classification Committee (I.I.C.C.) and the decision making criteria for initially assigning inmates to various State correctional facilities. Proposed amendments will add "Northern State Prison" to N.J.A.C. 10A:9-6.1(b); establish the criteria for assignment to "Northern State Prison" at N.J.A.C. 10A:9-6.3(d); recodify N.J.A.C. 10A:9-6.3(d) through (j) as (e) through (k); and delete the present N.J.A.C. 10A:9-6.3(k) because male inmates are no longer assigned to the Edna Mahan Correctional Facility for Women. Proposed amendments to this subchapter also add minor changes in language for the purpose of clarification.

Subchapter 7 establishes the responsibilities and composition of the Special Classification Committee (S.C.C.), the decision making criteria for reviewing inmate transfer requests and the procedures for emergency inmate transfers.

Subchapter 8 establishes the responsibilities and composition of the Special Classification Review Board (S.C.R.B.), and the criteria for conducting reviews of inmates sentenced under N.J.S.A. 2C:47 and 2A:164 who are being considered for parole.

Subchapter 9 provides the criteria for assigning housing to male juvenile offenders committed to the New Jersey Training School for Boys; the time requirements for classifying male juvenile offenders; and outlines the activities which must be completed during the reception classification process. This subchapter also establishes the composition of the Juvenile Reception Classification Committee (J.R.C.C.) and the responsibilities of the committee related to the initial classification, placement and transfer of male juvenile offenders within the Division of Juvenile Services of the New Jersey Department of Corrections.

Subchapter 10 establishes the responsibilities and composition of the Juvenile Institutional Classification Committee (J.I.C.C.) and establishes the decision making criteria for assigning male juvenile offenders to housing, education, treatment, therapy, work, and/or other programs.

Subchapter 11 establishes the responsibilities and composition of the Juvenile Female Classification Committee (J.F.C.C.) and the decision making criteria for assigning and/or transferring female juvenile offenders to correctional facilities and programs within the Division of Juvenile Services of the New Jersey Department of Corrections.

Social Impact

The readoption of N.J.A.C. 10A:9 will assure that the Department of Corrections carefully reviews the case of each inmate upon initial placement into the correctional system and on an ongoing basis. The classification process facilitates decision-making regarding inmates related to the selection of the appropriate correctional facility, custody level, housing, job assignment and program placement. The use of these rules will continue to assist administrators in the management of inmate populations so that security and the orderly operation of correctional facilities can be maintained. The proposed amendments serve to clarify existing procedures and to bring selected sections into full compliance with current law.

Economic Impact

The proposed readoption of Chapter 9 with amendments should not result in any economic impact because additional funding is not necessary to implement the requirements of the amendments.

The costs of meeting and maintaining the requirements established by the readopted rules will be met by the Department through the established budget process with monies allocated by the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:9.

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

10A:9-1.1 Purpose

(a) The purpose of this chapter is to:

1.-4. (No change.)

5. Establish a mechanism for deciding whether to recommend parole for persons confined pursuant to N.J.S.A. 2C:47 and 2A:164; [and]

6. Provide a process for assignment and transfer of juvenile offenders[.]**; and**

7. Establish rules and regulations to adequately fulfill the functions of the Department of Corrections as enumerated in N.J.A.C. 10A:1-1.1.

10A:9-2.1 Reception activity

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

(e) At the end of the reception process, a male inmate admitted to the Garden State Reception and Youth Correctional Facility shall appear before the Inter-Institutional Classification Committee (I.I.C.C.) [or the Youth Reception Classification Committee] and the decisions on the degree of custody and the appropriate correctional facility to which the inmate will be assigned shall be made.

(f)-(g) (No change.)

[10A:9-3.1 Composition of the Institutional Classification Committee (I.C.C.)

(a) The members of the Institutional Classification Committee (I.C.C.) at each of the adult correctional facilities shall be composed of the:

1. Superintendent or Assistant Superintendent;
2. Director of Psychology;
3. Director of Education;
4. Social Work Supervisor;
5. Director of Custody Operations or Correction Captain;
6. Supervisor of State Use Industries; and
7. Classification Officer (non-voting member).

(b) Staff members other than those listed above, may be designated by the Superintendent to serve as members or alternate members of the I.C.C.

(c) The I.C.C. shall meet weekly, and more often as required.]

10A:9-[3.2]**3.1** Responsibilities of the Institutional Classification Committee (I.C.C.)

(a) Each [institution] **correctional facility** shall establish an Institutional Classification Committee(s) (I.C.C.) which shall be responsible for:

1.-7. (No change.)

8. Reviewing the imposition of Administration Segregation; [and]

9. Reviewing Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.)[.]**;**

10. Reviewing referrals by the Disciplinary Hearing Officer; and

11. Reviewing and approving or disapproving applications for the Electronic Monitoring Home Confinement Program.

10A:9-3.2 Composition of the Institutional Classification Committee (I.C.C.)

(a) The members of the Institutional Classification Committee (I.C.C.) at each of the adult correctional facilities shall be composed of the:

1. Superintendent or Assistant Superintendent;
2. Director of Psychology;
3. Director of Education;
4. Social Work Supervisor;
5. Director of Custody Operations or Correction Captain;
6. Supervisor of State Use Industries; and
7. Classification Officer (non-voting member).

(b) Staff members other than those listed above, may be designated by the Superintendent to serve as members or alternate members of the I.C.C.

(c) The I.C.C. shall meet weekly, and more often as required.

10A:9-3.3 Institutional Classification Committee (I.C.C.) decision making criteria

(a) Decisions on transfers and assignments to housing[,]; work, educational, vocational, or treatment programs[,]; custody status; and community release programs shall be made after consideration of [the] the following factors:

1.-20. (No change.)

10A:9-3.4 Initial classification

(a) Upon assignment to an adult correctional facility or its satellite, an inmate shall [undergo a series of tests and interviews] **be interviewed and may be tested** to determine [his or her] **the inmate's** aptitudes, abilities, interests and problems.

(b)-(e) (No change.)

10A:9-3.5 Review dates

(a) (No change.)

(b) The frequency of case review shall be dependent on the review date determined by the Institutional Classification Committee (I.C.C.) or a change in the inmate's status. [Status changes may include] **Factors that may be considered include:**

1.-5. (No change.)

(c) The Classification [Office] **Officer** shall be responsible for scheduling all reviews set by the I.C.C.

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

10A:9-3.8 Work assignments

(a) (No change.)

(b) When the I.C.C. has assigned an inmate to a job, [he or she is not eligible for] **the inmate may not request** a job change until at least two months of work has been completed on the job.

10A:9-3.9 [Education] **Educational** assignments

(a) Determining factors in referring an inmate to an educational program [shall be] **may include**:

1.-5. (No change.)

10A:9-3.10 Counseling assignments

(a) Inmates with emotional and/or personal problems [shall] **may** be referred to the appropriate staff members.

(b) Inmates [shall] **may** be approved for group counseling and other therapy programs by the Institutional Classification Committee (I.C.C.) and [shall] **may** be assigned by the staff member in charge of the program.

(c) (No change.)

10A:9-3.12 Community [Release Programs] **release programs**

[(a)] The Institutional Classification Committee (I.C.C.) may assign an inmate to a community release program when the inmate [is eligible for:] **has been classified as full minimum custody and meets the criteria for assignment to the program in which the inmate will participate.**

[1. Full minimum custody; and

2. Assignment to the program in which he or she will participate.]

10A:9-4.1 Eligibility for reduced custody

(a) There are three categories of custody status within the New Jersey Department of Corrections:

1. Maximum custody;

2. Gang minimum; and

3. Full minimum.

[(a)]**(b)** The criteria set forth in this subchapter shall be applied by Institutional Classification Committee (I.C.C.) to determine whether an inmate is eligible for reduced custody consideration, as follows:

1. Eligible to be considered for full minimum custody status, preceded by the successful completion of a period of time in gang minimum status, **except as provided by N.J.A.C. 10A:9-4.4**;

2.-3. (No change.)

10A:9-4.4 Authority of Classification Committee

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

(c) The I.I.C.C. is authorized, at initial classification, to assign eligible inmates directly to full minimum custody status at Jones Farm **and other minimum security correctional facilities** without the prerequisite service of time required for gang minimum custody status [or in-and-out custody status].

10A:9-4.5 Discretion of Institutional Classification Committees (I.C.C.); factors to be considered

(a) In making decisions to reduce an inmate's custody status, Institutional Classification Committee (I.C.C.) shall take into consideration all relevant factors which, in their professional judgment, bear upon the inmate's suitability for reduced custody status. These factors may include, but not be limited to:

1.-5. (No change.)

6. Any reason which, in the opinion of the Superintendent and **Institutional** Classification Committee, relates to the best interests of the inmate or the safe [and], orderly operation of the correctional facility or the safety of the [public at large or] community **or public at large**.

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

(e) An inmate who has been granted reduced custody status may have his or her custody status increased for any of the following reasons, subject to confirmation by the Institutional Classification Committee (I.C.C.):

1.-5. (No change.)

6. Any reason which, in the opinion of the Superintendent and **Institutional** Classification Committee, relates to the best interests of the inmate or the safe [and], orderly operation of the correctional facility or the safety of the [public at large or] community **or public at large**.

(f) (No change.)

10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status

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

(e) **Inmates who were considered for reduced custody status** [Prior] **prior** to April 2, 1990, [inmates] **and were** sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the following service of time has been met. Any New Jersey [County Jail] **county jail** credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

1.-3. (No change.)

(f) **Inmates who were considered for reduced custody status** [On] **on** or after April 2, 1990, [inmates] **and were** sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the inmate has served one-half of the mandatory minimum. Any New Jersey county credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

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

(i) Inmates with indeterminate sentences must have served the following number of months of their sentences to be eligible to be considered for gang minimum custody status and full minimum custody status:

Length of Sentence	Months in Maximum
30 years to life	42
25 [to] **through** 29 years	30
20 [to] **through** 24 years	18
15 [to] **through** 19 years	6
Up to 15 years	None

(j) (No change.)

(k) Inmates with detainers from other jurisdictions outside New Jersey shall be eligible as follows:

1.-3. (No change.)

4. In those cases in which application has been made under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainer, if the inmate is not brought to trial within 180 days from the date of the inmate's request and no court-ordered continuances

were granted, the detainer shall be disregarded for classification purposes.

(l) Inmates who have New Jersey detainers, New Jersey open charges less than five years old or who are on bail, are eligible to be considered for gang minimum custody status and full minimum custody status unless the detainer, the open charge or the bail is for one of the following:

1.-2. (No change.)

3. Controlled dangerous substance [offense] **offenses, if 1st, 2nd or 3rd degree crimes**;

4.-13. (No change.)

(m) (No change.)

10A:9-4.7 Criteria for consideration for gang minimum custody status only

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

(c) An inmate who is presently serving a sentence for one count of a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a nonsexual offense but who has a prior adult conviction for one count of a sexual offense may be considered for gang minimum custody status provided:

1. (No change.)

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody status; [and] **or**

3. (No change.)

(d) (No change.)

10A:9-5.1 Authority

(a) Commutation [time] **credit** is awarded to inmates pursuant to N.J.S.A. 30:4-140, which provides:

1. For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional facility for a minimum-maximum term there shall be remitted to him or her from both the maximum and minimum terms of his or her sentence, for continuous orderly deportment, the progressive [time] **commutation** credits indicated in the schedule herein.

2. Commutation credits are not awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum part of the sentence has been served, commutation credits are awarded on the full sentence.

[2.]**3.** When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then [time] **commutation** credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence.

[3.]**4.** No [time] **commutation** credits shall be calculated as provided for in this subchapter on time served by any person in custody between his or her arrest and the imposition of sentence.

[4.]**5.** In case of any flagrant misconduct [the board of managers may declare a forfeiture of the time previously remitted, either in whole or in part, as to them shall seem just], **commutation credits may be declared to be forfeited pursuant to N.J.A.C. 10A:9-5.3.**

(b) (No change.)

10A:9-5.2 Exceptions; time in custody; failure to work

(a) No commutation or work credits shall be given to any inmate sentenced for sex offenses under the provisions of N.J.S.A. 2A:164. However, those inmates who have been sentenced or resentenced under N.J.S.A. 2C are eligible to receive [compensation] **commutation** and work credits from the effective date of that law, September 1, 1979.

(b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation [time] **credits**, work [time] **credits**, gap time and minimum credits may not be applied to the mandatory minimum term, but may only reduce the maximum term.

(c) In no case may commutation [time] **credits**, work [time] **credits**, gap time and minimum credits be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.

(d) (No change.)

(e) Work credits may not be applied in cases where an inmate does not work because of choice, unavailability of sufficient job assignments, medical lay-in **(except for job related injuries)**, court remand, disciplinary lock-up or similar incapacity. Inmates who refuse to perform assigned work shall receive disciplinary charges in accordance with N.J.A.C. 10A:4.

(f) Work credits may be awarded to Administrative Segregation inmates pursuant to N.J.A.C. 10A:5-3.19, Work opportunities.

10A:9-5.3 Forfeiture of commutation [time] **credits**

(a) Commutation [time] **credits** may be declared to be forfeited as a penalty for misconduct. See N.J.S.A. 30:4-140.

(b) Forfeitures shall be determined by the Disciplinary Hearing Officer or Adjustment Committee pursuant to N.J.A.C. 10A:4. All decisions shall be reviewed by the Superintendent or Acting Superintendent, who may approve or modify the amount of commutation [time] **credits** forfeited.

(c) In no case shall more than 365 days of commutation [time] **credits** be declared forfeited for any single disciplinary offense.

10A:9-5.4 Forfeiture of commutation [time] **credits** by parolees

A parolee under the supervision of the State Parole Board is subject to forfeiture of commutation [time] **credits** in the event the parolee violates a condition of parole.

10A:9-5.5 Restoration of forfeited commutation [time] **credits**

(a) The following procedures for restoring forfeited commutation [time] **credits** apply to all inmates who received charges for acts which occurred on or after May 24, 1979.

1. Up to 75 percent of the forfeited commutation [time] **credits** may be restored to inmates over the three year period following the incident which resulted in the loss of commutation credits. The three years must run consecutively, calculated beginning with the date of the incident. Credits shall be restored at the rate of 25 percent for each year which is free of any disciplinary charges with a guilty finding, as follows:

i.-ii. (No change.)

iii. If the inmate completes all three years without a charge which results in a guilty finding, [he or she] **the inmate** will have 75 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective three years.

Example: An inmate commits a disciplinary infraction on January 1, 1985, and the sanction imposed includes a forfeiture of commutation credits. On January 25, 1985, the inmate commits another disciplinary infraction and is found "guilty." The inmate receives no disciplinary charge between January 25, 1985, to January 25, 1986. [He] **The inmate**, therefore, has 25 percent of his **or her** commutation [time] **credits** restored. [He] **The inmate** is again free of guilty findings from January 24, 1986, to January 25, 1987, an additional 25 percent of his **or her** commutation [time] **credits** is restored. From January 25, 1987, to January 25, 1988, [he] **the inmate** is again free of guilty finding but is not eligible for an additional 25 percent restoration of commutation time because more than three years have elapsed since January 1, 1985, date which resulted in the loss of the commutation credits.

2. (No change.)

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

10A:9-5.6 Work credits for inmates housed in county **correctional** facilities

(a) State sentenced inmates who are being housed in county **correctional** facilities shall be credited with one day work credit for every five days worked **beginning on the sixteenth day after sentencing**. All inmates confined in county **correctional** facilities are charged with the responsibility to keep their cells clean; such assignments shall be considered as five day per week jobs. **Work credits prior to sentencing must be certified by county authorities.**

(b) Inmates that are parole violators without additional charges who are held in a county **correctional** facility on a parole warrant will receive work credits **beginning on the sixteenth day** after they have been in custody [for 15 days].

(c) Inmates that are Intensive Supervision Program (I.S.P.) violators, who are in county correctional facilities, will receive work credits **beginning on the sixteenth day** after they have been in custody [for 15 days].

(d) Parolees housed in county correctional facilities on additional charges and sentenced on additional charges may receive work credits and wages beginning [15 days] **on the sixteenth day** after sentencing. If an inmate's parole is revoked prior to sentencing, the effective date on which to begin wages and work credits shall be the date of the parole revocation.

(e) (No change).

(f) Inmates with approved parole dates who are transferred to county correctional facilities prior to parole shall receive work credits as if [they] **the inmates** was **still** assigned to a five day or seven day per week job in a State correctional facility. Inmates in minimum custody status [prior to] **at the time of** transfer[,] shall continue to receive compensation for that status during their stay in the county correctional facility in accordance with N.J.S.A. 30:4-92.

[10A:9-5.8 Reports of earned credits

Regular reports of earned credits should be forwarded to the parent correctional facility when inmates are housed at V.R.U., in county correctional facilities or in half-way house assignments.]

10A:9-6.1 Responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) (No change.)

(b) Inmates shall be assigned to either the New Jersey, East Jersey, **Northern,** Bayside and Riverfront State Prisons and the Mid-State or Southern State Correctional Facility or to the Garden State, Albert C. Wagner or Mountainview Youth Correctional Facilities when appropriate.

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

10A:9-6.2 Composition of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) The Deputy Director of the Division of Adult Institutions shall serve as permanent Chairperson of the Inter-Institutional Classification Committee (I.I.C.C.). In addition, the I.I.C.C. shall be composed of the Superintendents of the New Jersey, East Jersey, **Northern,** Bayside and Riverfront State Prisons and the Mid-State and Southern State Correctional Facilities.

1.-2. (No change.)

(b) (No change.)

10A:9-6.3 Criteria for assignment of inmates

(a) (No change.)

(b) Inmates assigned to the New Jersey State Prison shall generally be men who, in the opinion of the I.I.C.C., require a higher degree of custody and more constant supervision than inmates in other State prisons. Known instigators and agitators, and extreme assaultive types, shall be assigned to the New Jersey State Prison. Other criteria which shall be considered in an assignment to New Jersey State Prison[,] include, **but are not limited to**:

1.-3. (No change.)

(c) (No change.)

(d) Inmates who have a maximum sentence of up to and including 15 years may be assigned to Northern State Prison. An inmate shall not be assigned to Northern State Prison if he:

1. Is a known instigator or agitator; or

2. Has an aggressive homosexuality record.

[(d)](**e**) Inmates who have a maximum sentence of **up to and including** 20 years [or less] may be assigned to Bayside State Prison. An inmate shall not be assigned to Bayside State Prison if he has:

1.-5. (No change.)

[(e)](**f**) Inmates eligible for parole within three years may be assigned to Mid-State **Correctional Facility**. An inmate shall not be assigned to Mid-State **Correctional Facility** if he has:

1.-4. (No change.)

[(f)](**g**) Inmates with a maximum sentence of **up to and including** [15] **20** years may be assigned to [State Prison,] Southern State **Correctional Facility**. An inmate shall not be assigned to [State Prison,] Southern State **Correctional Facility** if he has:

1.-4. (No change.)

[(g)](**h**) Inmates with a maximum sentence of **up to and including** 20 years [or a minimum sentence of 10 years] may be assigned to [State Prison,] Riverfront **State Prison**. An inmate shall not be assigned to [State Prison,] Riverfront **State Prison** if he has:

1.-2. (No change.)

[(h)](**i**) An inmate may be assigned directly to Jones Farm if he meets the following requirements:

1.-4. (No change.)

[(i)](**j**) Assignment to Jones Farm shall be permitted for those individuals who have previous convictions for assaultive offenses, if the present offense(s) and sentence(s) fall within the presently established criteria for assignment to Jones Farm.

[(j)](**k**) An inmate shall be assigned to one of the **youth** correctional facilities [within the]**, such as,** Garden State, Albert C. Wagner [and] **or** Mountainview Youth Correctional Facility [at Garden State, Albert C. Wagner and Mountainview] if, in the opinion of the I.I.C.C., [he] **the inmate** is younger and less sophisticated than other prison inmates or [he] **the inmate** can benefit from the educational, vocational, therapeutic and rehabilitative programs available at those **correctional** facilities.

[(k) The I.I.C.C. may assign a male inmate directly from reception to the Edna Mahan Correctional Facility for Women. The male inmate may be assigned at any time thereafter, if he meets the criteria governing male admittance to that correctional facility.]

10A:9-8.9 Parole records

(a) For all parolees who are sentenced under N.J.S.A. 2C:47 and [2A:154] **2A:164**, the Coordinator shall receive copies of the following:

1.-6. (No change.)

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

LAW AND PUBLIC SAFETY

(a)

DIVISION OF STATE POLICE

Motor Carrier Safety Regulations

Proposed Readoption with Amendment: N.J.A.C. 13:60

Authorized By: Colonel Justin J. Dintino, Superintendent, Division of State Police.

Authority: N.J.S.A. 39:5B-32.

Proposal Number: PRN 1991-625.

Submit comments in writing no later than 5:00 P.M. Wednesday, January 15, 1992 to:

Col. Justin J. Dintino, Superintendent
Division of State Police
Office of Hazardous Materials Transportation
Compliance and Enforcement
P.O. Box 7068
West Trenton, N.J. 08628-0068

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), rules adopted by the Superintendent of the Division of State Police (hereafter Superintendent) under the authority of N.J.S.A. 39:5B-32 are being proposed for readoption with amendments. The present rules will expire on January 20, 1992.

At the direction of the Superintendent, the rules at N.J.A.C. 13:60 have been reviewed to determine their continuing usefulness and necessity. The Superintendent has determined to readopt the existing rules, with amendments, to conform them to existing Federal regulations.

The rules proposed for readoption will permit the State of New Jersey to continue to enforce Federal "Motor Carrier Safety" regulations as adopted by the Secretary of Transportation of the United States of America as found at 49 C.F.R. Parts 390 through 397.

Since 1987, the State of New Jersey has been enforcing Federal regulations pertaining to "Motor Carrier Safety" and the transportation

of hazardous materials. More specifically the Superintendent was authorized and directed by the Legislature to adopt "rules and regulations [pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.] concerning the qualifications of interstate motor carrier operators and vehicles, which shall substantially conform to the requirements established pursuant to Sections 401-404 of the 'Surface Transportation Assistance Act of 1982,' Pub. L. 97-424 (49 [App.] U.S.C. §§2301-2304)." N.J.S.A. 39:5B-32. In 1987, the Superintendent proposed and adopted rules as found as N.J.A.C. 13:60 which adopted, by reference, the Federal Motor Carrier Safety regulations as set forth at 49 C.F.R. Parts 390 through 397, revised as of October 1, 1986, with certain specific sections omitted.

Concurrent with the adoption by the Superintendent, the Commissioner of Transportation, New Jersey Department of Transportation, (hereafter Commissioner) acting under the provisions of N.J.S.A. 39:5B-26 and 29c, proposed and adopted rules at N.J.A.C. 16:49 which adopted by reference the Federal regulations pertaining to the Transportation of Hazardous Materials as found at 49 C.F.R. Parts 100-199. Within those regulations at 49 C.F.R. 177.804 the Hazardous Materials regulations incorporate the Motor Carrier Safety regulations at 49 C.F.R. Parts 390 through 397.

The Superintendent now proposes to readopt the regulations as previously adopted with the following changes as amendments.

1. 49 C.F.R. Parts 390 through 397 are readopted as revised in the October 1, 1989, Edition of the Code of Federal Regulations.

2. The following sections of Parts 390 through 397 are omitted: Sections 391.69, 393.81 and 397.3.

3. The following sections of Parts 390 through 397 are modified: Sections 391.49(a) and 391.71.

Below is a review of the sections omitted from adoption.

Section 391.69 is omitted as it applies only to "Drivers operating in Hawaii."

Section 393.81 is omitted in order that a more stringent statutory provision concerning horns on commercial motor vehicles at N.J.S.A. 39:3-69 can apply. The Federal Motor Carrier Safety Regulations at Sections 390.9 and 392.2 (49 C.F.R. §§390.9, 392.2) permit a state to require a more stringent standard provided that the standard does not otherwise prevent full compliance with the Federal regulations.

Section 397.3 is omitted in order to avoid any unnecessary conflict between Federal and State statutes or regulations as they pertain to the transportation of hazardous materials. With the adoption of P.L. 1985, chapter 415, amending N.J.S.A. 39:5B-25 et seq., earlier provisions of Title 39 regulating the movement of dangerous articles over the highways at N.J.S.A. 39:5B-1 through 17, inclusive, were repealed. By omitting this section of the Federal code, the potential for conflict between the Federal statutory and regulatory scheme pertaining to the transportation of hazardous materials and State statutes or regulations is avoided with the Federal law preempting the State law.

Below is a review of the sections modified in the proposed readoption, with amendments.

49 C.F.R. 391.71, as referenced herein, is proposed for adoption, with a modification. Drivers of intrastate shipments of combustible liquids hired on or after January 1, 1991 would be subject to the New Jersey adoption of the Federal Motor Carrier Safety Regulations relating to minimum age, applications for employment, investigations and inquiries, road tests, and written examinations. Drivers hired before January 1, 1991 would not be subject to these requirements.

The incorporation of 49 C.F.R. 391.49(a) has been proposed for amendment, which would make it legal for those drivers who were regularly employed prior to January 1, 1991 to drive, even though not physically qualified under 49 C.F.R. 391.41(b), provided they are otherwise qualified under N.J.S.A. 39:3-10 and possess a valid New Jersey driver's license issued before January 1, 1991, or have been granted a waiver pursuant to 49 C.F.R. 391.49.

The above proposed amendments are identical to the actions taken by the Commissioner of Transportation in his adoption of amendments to N.J.A.C. 16:49 effective October 7, 1991 (see 23 N.J.R. 2102(a) and 3037(c)). By adopting identical language there will be no confusion within the law enforcement community concerning which Federal regulations are to be relied upon when enforcing the provisions of N.J.S.A. 39:5B-25 et seq.

Although the Commissioner of Transportation has adopted the same regulations, the within readoption fulfills the legislative mandate on the Superintendent of P.L. 1985, c.415, amending P.L. 1983, c.401, by broadening the scope of enforcement of the Federal Motor Carrier Safety regulations to all motor carriers and operators of vehicles engaged in interstate commerce and as well as to those motor carriers and operators of vehicles engaged in the intrastate transportation of hazardous materials.

This readoption also contains amendatory language to reflect changes in the citations to Title 49 of the United States Code. The authorizing legislation makes reference to 49 U.S.C., but that Title has been revised and is now referred to as 49 App. U.S.C. Additional changes were made to correct editorial and typographic errors.

Social Impact

This proposed readoption with amendments will continue to promote uniform enforcement of Federal Motor Carrier Safety regulations by making the State codification of the Federal Motor Carrier Safety regulations (49 C.F.R. Parts 390 through 397) consistent with their current Federal counterparts.

These proposed amendments will achieve this goal by imposing the same minimum age requirements on interstate and intrastate drivers of combustible liquids. Uniformity between State and Federal guidelines will also be promoted by imposing upon interstate and intrastate drivers of vehicles transporting combustible liquids who are hired after the effective date of these amendments, the same requirements concerning minimum age, application for employment, investigations and inquiries, road tests and written examinations.

The readoption of these rules will advance the goal of public safety by assuring the ability of law enforcement to inspect commerical motor vehicles and, where necessary, remove unsafe vehicles and operators from the highway. It will also promote safety in that interstate operators of commercial motor vehicles and operators of any vehicle transporting hazardous materials will know what regulatory requirements will be enforced.

Economic Impact

The rules proposed for readoption have an economic impact on shippers, motor carriers, and their personnel operating in interstate commerce and intrastate commerce who transport hazardous materials in and between the State(s). The impact is the cost of compliance with the requirements of N.J.A.C. 13:60-1.3 and 2, and the imposition of penalties for non-compliance pursuant to N.J.A.C. 13:60-1.4. These costs will vary widely depending upon the materials shipped and the motor carriers' carrying capabilities. While compliance with these rules increases shipping costs, compliance is required under Federal law, and such increase is justified by the need to protect the public from the hazardous materials transported.

For the public-at-large, these rules reduce the danger posed by transportation of hazardous materials, and the possibility of economic loss due to spillage of such materials. Enforcement and administration of these rules by the Superintendent are provided for in the operating budget of the Division of State Police.

The proposed amendments which will require all new intrastate drivers to be 21 years of age as of January 1, 1991, may have an economic impact on a hiring carrier. Such economic impact may reduce the pool of qualified drivers, for example, a driver who meets all other qualifications except age will not be able to drive a vehicle containing a combustible liquid. In addition, drivers with certain physical defects, as specified in the C.F.R., may not be hired after the effective date. The economic inconvenience of age requirement will be mitigated by the fact that many insurance carriers are demanding compliance with this age requirement of the Federal Motor Carrier Safety Regulations as a condition for obtaining insurance coverage. It is the position of the Superintendent that greater uniformity between Federal and State regulation outweighs any economic inconvenience of compliance.

Regulatory Flexibility Analysis

The proposed readoption will impose reporting, recordkeeping and compliance requirements on motor carriers and their personnel involved in interstate commerce and involved in interstate or intrastate commerce who transport hazardous materials in between the State(s). An undetermined number of the entities affected by the readoption may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. No differentiation in requirements or exemptions can be afforded such businesses due to the requirements' Federally-mandated nature and their object is to protect the health and safety of the public.

The proposed modification amendments will impose additional recordkeeping, reporting and other requirements on intrastate drivers of combustible liquids hired after January 1, 1991.

Although small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq., will be subject to greater recordkeeping, reporting and other requirements resulting from these modification amendments, it is the position of the Superintendent that these requirements are necessary to promote the desired uniformity with Federal law. The proposed amendments to the waiver procedure for certain types of physical defects will not impose any additional reporting or recordkeeping procedures. The requirements related to reporting should not create additional costs for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:60.

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

13:60-1.1 Purpose

This chapter establishes rules and regulations concerning the qualifications of motor carrier operators and vehicles, which substantially conforms to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982", Pub. L. 97-424 [(49 U.S.C. §2301-2304)] **(49 App. U.S.C. §§2301-2304)** by adopting the "Federal Motor Carrier Safety Regulations" as adopted at 49 C.F.R., Parts 390 through 397.

13:60-1.3 General requirements

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

(d) This chapter may be amended from time to time by the Superintendent of State Police. The "Federal Motor Carrier Safety Regulations" referenced herein are those adopted by the Secretary of Transportation as of October 1, [1986] **1989.** The Superintendent of State Police intends to [review the Federal regulations and] amend these regulations as [relevant changes in the] **new** Federal [regulatory scheme are adopted] **publications become available.**

(e) (No change.)

13:60-1.4 Penalty for violation

(a) The penalties for violation of these regulations **including the Federal regulations incorporated by reference in N.J.A.C. 16:30-2 and herein** shall be enforced under the provisions of [the Laws of] **P.L.** 1985, [Chapter] **c.** 415, [Section] **Sec.** 5, (N.J.S.A. 39:5B-29).

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

13:60-1.5 Document availability

(a) Copies of the "Federal Motor Carrier Safety Regulations", Title 49 Code of Federal Regulations, Parts 390 through 397, revised as of October 1, [1986] **1989**, and referenced herein, may be purchased from the sources listed below.

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
(202) 264-3238

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, N.Y. 10278-0081
(212) 264-3825

U.S. Government Printing Office Bookstore
Room 1214, Federal Building
600 Arch Street
Philadelphia, Pa. 19106
(215) 597-0677

(b) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, [1986] **1989**, are also available for review at the following public libraries:

New Jersey State Library
185 West State Street
Trenton, N.J. 08625
(609) 292-6220

Newark Public Library
5 Washington Street
Newark, N.J. 07101
(201) 733-7882

Jersey City Public Library
U.S. Government Documents Section
472 Jersey Avenue
Jersey City, N.J. 07304
(201) [547-4501] **547-4517**

New Brunswick Public Library
60 Livingston Avenue
New Brunswick, N.J. 08901
[(201)] **(908)** 745-5108

Trenton Public Library
120 Academy Street
Trenton, N.J. 08608
(609) 392-7188

Camden County Public Library
Laurel Road
Voorhees, N.J. 08043
(609) 772-1636

Cherry Hill Public Library
1100 Kings Highway, North
Cherry Hill, N.J. 08034
(609) 667-0300

(c) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, [1986] **1989**, are further available for review at the Division of State Police, Office of Hazardous Materials Transportation, Compliance and Enforcement, River Road, P.O. Box 7068, West Trenton, New Jersey 08625. Regular business hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. The telephone number is (609) 882-2000, extension 2581 or 2582.

SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATION, BY REFERENCE

13:60-2.1 Parts adopted by reference

The Superintendent of the Division of State Police, pursuant to [the Laws of] **P.L.** 1985, [Chapter] **c.** 415, (N.J.S.A. 39:5B-32), hereby incorporates, by reference, the following portions of the Code of Federal Regulations, Title 49—Transportation, Subchapter B—The Federal Motor Carrier Safety Regulations, Parts 390 through 397, inclusive, **(excluding Sections 391.69, 393.81 and 397.3)** revised as of October 1, [1986] **1989.** 49 C.F.R., Parts 390 through 397, inclusive. The parts adopted by reference are found in Chapter III, referred to as "Federal Highway Administration, Department of Transportation", Subchapter B—Federal Motor Carrier Safety Regulations. These parts are detailed in the Appendix to the Regulations regarding the Motor Carrier Safety Regulations. **The portions adopted are summarized below.**

1. Part 390, Federal Motor Carrier Safety Regulations: General.

2. Part 391, Qualifications of Drivers. (Section 391.69 is omitted. Modifications are made to Sections 391.49(a) and 391.71.)

3. Part 392, Driving of Motor Vehicles.

4. Part 393, Parts and Accessories Necessary for Safe Operation. (Section 393.81 is omitted.)

5. Part 394, Notification and Reporting of Accidents.

6. Part 395, Hours of Service of Drivers.

7. Part 396, Inspection, Repair, and Maintenance.

8. Part 397, Transportation of Hazardous Materials: Driving and Parking Rules. (Section 397.3 is omitted.)

APPENDIX TO THE REGULATIONS REGARDING THE MOTOR CARRIER SAFETY REGULATIONS

This Appendix to the regulations regarding the Motor Carrier Safety Regulations details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A—**General Applicability and** Definitions

Section 390.1	[Motor vehicle] **Purpose.**
[Section 390.2	Vehicle.]
Section 390.3	[Bus] **General Applicability.**
[Section 390.4	Truck.]
Section 390.5	[Truck Tractor] **Definitions.**
[Section 390.6	Semi-Trailer.]
Section 390.7	[Full Trailer] **Rules of Construction.**

Subpart B—General Requirements and Information

[Section 390.8	Pole Trailer.]
Section 390.9	[Driveway-towaway operation] **State and local law, effect on.**
[Section 390.10	Gross Weight.]
Section 390.11	[Driver] **Motor carrier to require observance of driver regulations.**
[Section 390.12	Business district.]
Section 390.13	[Residence district] **Aiding or abetting violations.**
[Section 390.15	Motor carrier.
Section 390.16	Exempt intracity operation.
Section 390.17	Lightweight vehicle.]
Section 390.19	**Additional equipment and accessories.**
Section 390.21	**Marking of motor vehicles.**
Section 390.23	**Relief from hours-of-service regulations—disasters.**
Section 390.27	**Locations of regional motor carrier safety offices.**
Section 390.31	**Copies of records or documents.**
Section 390.33	**Vehicles used for purposes other than defined.**
Section 390.35	**Certificates, reports, and records: falsification, reproduction, or alteration.**
Section 390.37	**Violation and penalty.**

PART 391 QUALIFICATIONS OF DRIVERS

Subpart A—General

Section 391.1	Scope of the rules in this part; additional qualifications; duties of carrier-drivers.
Section 391.2	General exemptions.
[Section 391.3	Definitions.
Section 391.5	Familiarity with rules.
Section 391.7	Aiding or abetting violations.]

Subpart B—Qualifications and Disqualifications of Drivers

Section 391.11	Qualifications of drivers.
Section 391.15	Disqualification of drivers.

Subparts C and D. (No change.)

Subpart E—Physical Qualifications and Examinations

Section 391.41	Physical qualifications for drivers.
Section 391.43	Medical examination; certificate of physical examinations.
Section 391.45	Persons who must be medically examined and certified.
Section 391.47	Resolution of conflicts of medical evaluation.
Section 391.49	Waiver of certain physical defects.

(Section 391.49(a) is revised to state the following:)

(a) A person who is not physically qualified to drive under Section 391.41(b)(1) or (2), and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if that person has been granted a waiver pursuant to Title 49, Code of Federal Regulations, Section 391.49.

Subpart F—Files and Records

Section 391.51	Driver qualification files.

Subpart G—Limited Exemptions

Section 391.61	Drivers who were regularly employed before January 1, 1971.
Section 391.62	[Drivers of lightweight vehicles] **(Reserved).**
Section 391.63	Intermittent, casual, or occasional drivers.
Section 391.65	Drivers furnished by other motor carriers.
Section 391.67	Drivers of articulated (combination) farm vehicles.
Section 391.71	**Intrastate drivers of vehicles transporting combustible liquids.**

(Section 391.71(a) and (b) are revised to state the following:)

(a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of the subchapter) as of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

(1) Is transporting combustible liquids (as defined in Title 49, Code of Federal Regulations, Section 173.115), and

(2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, a person who has been a regularly employed driver as defined in Section 390.5 as of January 1, 1991, but who is not physically qualified to drive under Section 391.41(b) and who is otherwise qualified under N.J.S.A. 39:3-10 to drive a motor vehicle, may continue to drive a motor vehicle provided that person is in possession of a valid New Jersey driver license issued prior to January 1, 1991, and continues to be a regularly employed driver of that motor carrier and drives a vehicle that:

(1) Is a truck (as defined in Section 390.5 of this subchapter), and

(2) Is operated in retail delivery service, and

(3) Is transporting combustible liquids (as defined in Title 49, Code of Federal Regulations, Section 173.115), and

(4) Is operated in intrastate commerce.

Subpart H—Controlled Substances Testing

Section 391.81	**Purpose and scope.**
Section 391.83	**Applicability.**
Section 391.85	**Definitions.**
Section 391.87	**Notification of test results and recordkeeping.**
Section 391.93	**Implementation schedule.**
Section 391.95	**Drug use prohibitions.**
Section 391.97	**Prescribed drugs.**
Section 391.99	**Reasonable cause testing requirements.**
Section 391.101	**Reasonable cause testing procedures.**
Section 391.103	**Pre-employment testing requirements.**
Section 391.105	**Biennial testing requirements.**
Section 391.107	**Pre-employment and Biennial testing procedures.**
Section 391.109	**Random testing requirements.**
Section 391.111	**Random testing procedures.**
Section 391.113	**Post-accident testing requirements.**
Section 391.115	**Post-accident testing procedures.**
Section 391.117	**Disqualifications.**
Section 391.119	**Employee Assistance Program (EAP).**
Section 391.121	**EAP training program.**
Section 391.123	**After-care monitoring.**

PART 392 DRIVING OF MOTOR VEHICLES

Subpart A—General

Section 392.1	Scope of the rules in this part.
Section 392.2	Applicable operating rules.
Section 392.3	Ill or fatigued operator.
Section 392.4	[Narcotics, amphetamine,] **Drugs** and other [dangerous] substances.
Section 392.5	Intoxicating beverage.

Section 392.6	Schedules to conform with speed limits.
Section 392.7	Equipment, inspection and use.
Section 392.8	Emergency equipment, inspection and use.
Section 392.9	Safe loading.
Section 392.9a	Corrective lenses to be worn.
Section 392.9b	Hearing aid to be worn.

Subparts B-G (No change.)

PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart A—General

Section 393.1	Scope of the rules in this part.
Section [393.2] **393.3**	Additional equipment and accessories.
Section 393.5	**Definitions.**

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

Section 393.9	Lamps operable.
Section 393.11	[Lamps] **Lighting devices** and reflectors[, small buses and trucks].
[Section 393.12	Lamps and reflectors, large buses and trucks.
Section 393.13	Lamps and reflectors, truck tractors.
Section 393.14	Lamps and reflectors, large semi-trailers and full trailers.
Section 393.15	Lamps and reflectors, small semi-trailers and full trailers.
Section 393.16	Lamps and reflectors, pole trailers.
Section 393.17	Lamps and reflectors, combinations in driveaway-towaway operation.
Section 393.18	Lamps on motor vehicles with projecting loads.]
Section 393.19	Requirements for turn signaling system.
Section 393.20	Clearance lamps to indicate extreme width and height.
Section 393.22	Combination of lighting devices and reflectors.
Section 393.23	Lighting devices to be electric.
Section 393.24	Requirements for headlamps and auxiliary road lighting lamps.
Section 393.25	Requirements for lamps other than headlamps.
Section 393.26	Requirements for reflectors.
Section 393.27	Wiring specifications.
Section 393.28	Wiring to be protected.
Section 393.29	Grounds.
Section 393.30	Battery installation.
Section 393.31	Overload protective devices.
Section 393.32	Detachable electrical connections.
Section 393.33	Wiring, installation.

Subparts C-I (No change.)

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

Section 393.201	**Frames.**
Section 393.203	**Cab and body components.**
Section 393.205	**Wheels.**
Section 393.207	**Suspension systems.**
Section 393.209	**Steering wheel systems.**

PART 394 NOTIFICATION AND REPORTING OF ACCIDENTS

Section 394.1	Scope of the rules in this part.
Section 394.3	Definition of "reportable accident".
Section 394.5	[Definition of "farm-to-market agricultural transportation"] **(Reserved).**
Section 394.7	Immediate notification of fatal accidents.
Section 394.9	Reporting of accidents.
Section 394.11	Notice of death after filing report.
Section 394.15	Assistance in investigations and special studies.
Section 394.20	Instructions for preparing accident reports.

PART 395 HOURS OF SERVICE OF DRIVERS

Section 395.1	[Compliance with, and knowledge of, the rules in this part.] **(Reserved).**
Section 395.2	Definitions.
Section 395.3	Maximum driving and on-duty time.
Section 395.7	Travel time.
Section 395.8	Driver's record of duty status.
Section 395.10	Adverse driving [and] conditions.
Section 395.11	Emergency conditions.
Section 395.12	Relief from regulations.
Section 395.13	Drivers declared out-of-service.
Section 395.15	**Automatic on-board recording devices.**

PART 396 INSPECTION, REPAIR AND MAINTENANCE

Section 396.1	Scope.
Section 396.3	Inspection, repair and maintenance.
Section 396.5	Lubrication.
Section 396.7	Unsafe operations forbidden.
Section 396.9	Inspection of motor vehicles in operation.
Section 396.11	Driver vehicle inspection report(s).
Section 396.13	Driver inspection.
Section 396.15	Driveaway-towaway operations, inspections.
Section 396.17	**Periodic inspections.**
Section 396.19	**Inspector qualifications.**
Section 396.21	**Periodic inspection recordkeeping requirements.**
Section 396.23	**Equivalent to periodic inspection.**

Appendix G to Subchapter B—Minimum Periodic Inspection Standards

PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS: DRIVING AND PARKING RULES

Section 397.1	Application of the rules in this part.
Section 397.2	Compliance with Federal [Motor Carrier Safety Regulations] **motor carrier safety regulations.**
Section 397.5	Attendance and surveillance of motor vehicles.
Section 397.7	Parking.
Section 397.9	**Routes.**
Section 397.11	Fires.
Section 397.13	Smoking.
Section 397.15	Fueling.
Section 397.17	Tires.
Section 397.19	Instructions and documents.
[Section 397.21	Making of vehicles operated by private carriers.]

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications; Gaming Equipment

Slot Machine Fees; Possession of Slot Machines; Transportation of Slot Machines into, within, and out-of-State

Proposed Amendments: N.J.A.C. 19:41-9.6 and 19:46-1.22

Proposed Repeal and New Rule: N.J.A.C. 19:46-1.23

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

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a): 5:12-70(e), 5:12-70(f), 5:12-70(i), and 5:12-100(b).

Proposal Number: PRN 1991-619.

Submit comments by January 15, 1992 to:
Robert H. Barney
Assistant Counsel
Casino Control Commission
Tennessee at the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

N.J.A.C. 19:46-1.22(c) permits an out-of-State manufacturer or distributor of slot machines to transport and possess slot machines in New Jersey for purposes of demonstration, upon approval by the Commission of an application and the payment of a permit fee of $500.00 as set forth in N.J.A.C. 19:41-9.6(c).

The Commission is concerned that the imposition of the $500.00 permit fee may be a deterrent to the demonstration of new slot machines in New Jersey. Consequently, in order to stimulate business and to encourage innovation and competition in the slot machine industry, the Commission proposes to repeal both N.J.A.C. 19:46-1.22(c) and N.J.A.C. 19:41-9.6(c). Under the Commission's proposal, out-of-State slot machine manufacturers and distributors who wish to demonstrate or exhibit slot machines in New Jersey would be added to the list of persons in N.J.A.C. 19:46-1.22(b) who are presumptively eligible to possess slot machines in this State as long as all of the requirements of that subsection are satisfied.

The Commission also proposes to amend the language of the remaining portions of N.J.A.C. 19:46-1.22 for purposes of clarification and to eliminate redundant terminology. First, it is proposed that N.J.A.C. 19:46-1.22(a) and (b) be amended to eliminate redundant terms and conditions. Specifically, the current rule uses the permissive expressions "have," "keep," and "possess" to describe a single action; the proposal would eliminate the terms "have" and "keep" because they are fully included in the meaning of "possess." Experience has demonstrated that such redundancies create unnecessary misunderstandings through attempts to define each word as having a separate and distinct meaning where, in fact, there is no distinction. Second, the current rule is organized in such a manner so as to require the repetition of the same conditions in each paragraph; the proposal would reorganize the rule to eliminate this needless repetition. Third, the rule would be amended to eliminate references to the "transport" of slot machines since this aspect of the regulation of slot machines is controlled by N.J.A.C 19:46-1.23. Detailed requirements concerning common carriers would be recodified to N.J.A.C. 19:46-1.23 since those requirements primarily relate to the transport of the machines.

The Commission also proposes to amend N.J.A.C. 19:46-1.23 to clarify terms, remove redundancies, and provide a necessary cross-reference to N.J.A.C. 19:45-1.38.

Social Impact

The proposed amendments are technical in nature and are not expected to have any pervasive social impact. To the extent that the proposed amendments may reduce applicant confusion and encourage the slot machine industry to demonstrate its products in New Jersey, it is believed that the proposed amendments may have a positive social value.

Economic Impact

The proposed amendments will have a positive economic effect on out-of-State manufacturers or distributors of slot machines since they will eliminate the fee currently required for a demonstration permit. The proposed amendments are not anticipated to have any significant economic impact on the Commission or the Division of Gaming Enforcement. The funds collected pursuant to this rule, in the past, have represented an infinitessimal percentage of the overall budget of the Commission and the Division.

Regulatory Flexibility Statement

Certain manufacturers or distributors of slot machines, gaming schools or common carriers may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although the proposed amendments do not create any significant new recordkeeping or reporting requirements for such businesses, the current requirements are considered absolutely essential to the regulation and control of slot machines in this State. The recordkeeping includes invoicing and retaining copies during the shipping of slot machines and the reporting requirement is the notification in writing to the Commission and Division of the movement of a slot machine prior to transport or movement. Since it is illegal for any person to possess slot machines in this State unless approved by the Commission, it would be inappropriate to exempt any person from the provisions of these rules. Therefore no differing standards based on business size are provided.

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

19:41-9.6 Slot machine fees

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

[(c) In accordance with N.J.A.C. 19:46-1.22(c), an out-of-state manufacturer or distributor of slot machines may apply for and obtain from the Commission a slot machine demonstration permit. The application fee for such a permit shall be $500.]

19:46-1.22 Possession of slot machines

(a) Except as otherwise provided in this section **and N.J.S.A. 2C:37-7**, no person shall [have, keep or] possess within this State any slot machine or **similar** device [in the nature of a slot machine] which may be used for [playing of money or other valuable thing] **gambling activity**.

(b) [Notwithstanding the prohibition of subsection (a), it shall be lawful for the] **The** following persons[, and their employees or agents] **and any employee or agent** acting on their behalf[, to have, keep,] **may, subject to any terms and conditions imposed by the Commission,** possess [and transport] slot machines in this State **for the purposes provided herein provided that the machines are kept only in such locations as may be specifically approved in writing by the Commission and that any machines located outside of a licensed casino room not be used for gambling activity** [subject to the terms and conditions stated below]:

[1. A casino licensee provided that such machines are kept only in a casino room of a licensed casino hotel facility and in such other location or locations as may be specifically approved in writing by the Commission and provided further that any machines located outside the casino room not be used for actual gaming;

2. A school licensed to teach slot machine design, operation, repair, or servicing provided that such machines are kept only in such locations as are specifically approved in writing by the Commission and provided further that such machines are not used for gaming;

3. A licensed manufacturer, distributor, repairer or servicer of slot machines provided that such machines are kept only in such locations as are specifically approved in writing by the commission and provided further that such machines are not used for gaming;

4. A common carrier, to include any transportation service offered for public use for the conveyance of services or material for hire, transporting machines to or from a person authorized to possess such machines provided that an invoice accompany each machine being transported showing:

i. The serial number of each machine being transported;

ii. The full name and address of the person or entity from whom the machines were obtained;

iii. The full name and address of the person or entity to whom the machines are being sent; and

iv. The dates of shipment;

5. An employee or agent of the commission or division as may be required by his or her official duties;

6. Such other persons as the commission may approve after finding that possession of slot machines by such person is necessary and appropriate to fulfill the goals and objectives of the Casino Control Act and provided that such person comply with the limitations and conditions imposed by the commission on such possession.]

1. An applicant for or holder of:

i. A casino license, for the purpose of maintaining for use or actually using such machines in the operation of a licensed casino;

ii. A gaming school license, for the purpose of teaching slot machine design, operation, repair or servicing; or

iii. A gaming related casino service industry license, for the purpose of manufacturing, distributing, repairing or servicing slot machines;

2. An out-of-State manufacturer or distributor of slot machines for the purpose of exhibition or demonstration;

3. A common carrier, for the purpose of transporting such slot machines in accordance with N.J.A.C. 19:46-1.23;

4. An employee or agent of the Commission or Division, for the purpose of fulfilling official duties or responsibilities; or

5. Any other person the Commission may approve after finding that possession of slot machines by such person in this State is necessary and appropriate to fulfill the goals and objectives of the Act.

[(c) Notwithstanding the prohibition of subsection (a), it shall be lawful for an out-of-state manufacturer or distributor of slot machines to transport and possess slot machines in this State for demonstration purposes provided that such manufacturer or distributor first obtain a demonstration permit from the commission that such machines are not used for gaming, and that the demonstration permit shall be in the possession of the person in custody of the machines at all times while machines are in this State.]

19:46-1.23 Transportation of slot machines [within,] into, **within** and out-of-[state] **State**

[(a) Prior to transporting any slot machines into this State, the manufacturer, distributor, seller or other person shipping such machines shall notify the commission and division in writing of such shipment giving the following information:

1. The full name and address of the person or entity shipping said machines;

2. The method of shipment and the name of the carrier or carriers;

3. The full name and address of the person or entity to whom the machines are being sent and the destination of said machines if different from such address;

4. The quantity of machines being shipped and the serial number of each machine;

5. The expected date and time of arrival of the machines at their destination within this State;

6. The port of entry, if any, of said machines.

(b) Prior to transporting any slot machines out of this State, the person shipping said machines shall notify the Commission and division in writing of such shipment giving the following information:

1. The full name and address of the person or entity shipping said machines;

2. The method of shipment and the name of the carrier;

3. The full name and address of the person or entity to whom the machines are being sent and the destination of said machines if different from such address;

4. The port of exit if the destination of said machines is outside the continental United States;

5. The quantity of machines being shipped and the serial number of each machine;

6. the expected date and time of shipment.

(c) Prior to transporting any slot machine from one location in this State to another location, other than for the purposes of repair or servicing, the person shipping such machine shall notify the Commission and division in writing of such transportation giving the following information:

1. The full name and address of the person or entity shipping said machine;

2. The method of shipment and the name of the carrier, if any;

3. The reason for transporting the machine;

4. The full name and address of the person or entity to whom the machines are being sent and the destination of said machines if different from such address;

5. The quantity of machines being transported and the serial number of each machine;

6. The expected date and time of such shipment.]

(a) Prior to the transport or movement of any slot machine into, from one authorized location to another authorized location within, or out of, this State, the manufacturer, distributor, seller, or other person causing such slot machine to be transported or moved shall first notify the Commission and Division in writing giving the following information:

1. The full name and address of the person shipping or moving said machine;

2. The method of shipment or movement and the name of the carrier or carriers;

3. The full name and address of the person to whom the machine is being sent and the destination of said machine if different from such address;

4. The quantity of machines being shipped or moved and the serial number of each machine;

5. The expected date and time of delivery to or removal from any authorized location in this State;

6. The port of entry, or exit, if any, of the machine if the origin or destination of the machine is outside the continental United States; and

7. The reason for transporting the machine.

(b) The movement of any slot machine into or out of a casino room shall be approved pursuant to N.J.A.C. 19:45-1.39(b) and a record thereof shall be maintained in accordance with N.J.A.C. 19:45-1.38(c).

(c) The person shipping or moving any slot machine shall provide to the common carrier, or to the operator of the transporting conveyance in the event the mode of transport is not a common carrier, an invoice, at least one copy of which shall be kept with the slot machine at all times during the shipping process, containing the following information:

i. The serial number of the machine being transported;

ii. The full name and address of the person from whom the machine was obtained;

iii. The full name and address of the person to whom the machine is being sent; and

iv. The dates of shipment.

(a)

CASINO CONTROL COMMISSION

Gaming Schools

Courses and Programs of Instruction; Minimum Hours

Proposed Amendment: N.J.A.C. 19:44-8.3

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

Authority: N.J.S.A. 5:12-63(c), 69(a) and 92.

Proposal Number: PRN 1991-612.

Submit comments by January 15, 1992, to:
Seth Briliant, Assistant Counsel
Casino Control Commission
Citicenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

On June 29, 1991, Section 5 of the Casino Control Act, N.J.S.A. 5:12-5, was amended to include the game of "red dog" as an authorized gambling game. This proposed amendment would add red dog to the list of games taught by gaming schools, and would specify the minimum number of hours of instruction and training needed to prepare a student to deal red dog in a casino. The proposed amendment would accomplish this by including five additional hours of training for red dog in the minimum number of hours of training for blackjack and baccarat dealers.

Social Impact

The additional training and instruction for red dog that this proposed amendment would require will help to insure the integrity of the game, and that the game is conducted in accordance with the prescribed regulations. This will aid in maintaining public confidence and trust in casino operations. See N.J.S.A. 5:12-1(b)(6).

Economic Impact

This proposed amendment may have an economic impact on casino licensees and casino employees, who will be required to obtain, and possibly pay for, additional training in order to deal red dog. However, such training is needed to insure that the game is conducted in accordance with the regulations. The expense of such training may be offset by the additional employment opportunities for dealers which may arise from casinos that will offer the game of red dog to their patrons, and from the positive impact upon the industry which the new game may cause. Because only a small amount of additional training will be required, the cost is also expected to be relatively small. Although gaming schools may also incur some expenses in offering red dog as part of an approved dealing course for blackjack or baccarat, that expense may be offset by additional income generated by the new course. No economic impact to the general public is expected.

Regulatory Flexibility Statement

The proposed amendment will affect casino licensees and casino employees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendment will also affect licensed gaming schools (four at present) that may choose to offer training in red dog. These schools, which may be small businesses, would also be required to comply with this proposed amendment, which requires an additional five hours of instruction in red dog. No exemption is provided for these small businesses because the Commission has determined that such training is needed to ensure the integrity and the proper conduct of the game, as noted above.

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

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer [of roulette, blackjack, baccarat or craps] shall satisfy the following minimum requirements:

1. For a student being trained to deal [his] **a** first game the following minimum hours of training and instruction shall be required:

i. [160] **165** hours [to prepare a student] to deal blackjack **and red dog**;

ii. [208] **213** hours [to prepare a student] to deal baccarat [and]**,** minibaccarat **and red dog**;

iii. 200 hours [to prepare a student] to deal roulette; and

iv. 240 hours [to prepare a student] to deal craps.

2. For a student being trained to deal [his] **a** second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student [who has been] trained to deal blackjack:

(1) 180 hours [to prepare him] to deal craps;

(2) 120 hours [to prepare him] to deal roulette; [and]

(3) [85] **90** hours [to prepare him] to deal baccarat [and]**,** minibaccarat **and red dog; and**

(4) Five hours to deal red dog.

ii. For a student [who has been] trained to deal roulette:

(1) 180 hours [to prepare him] to deal craps;

(2) [80] **85** hours [to prepare him] to deal blackjack **and red dog**; and

(3) [88] **93** hours [to prepare him] to deal baccarat [and]**,** minibaccarat **and red dog**.

iii. For a student [who has been] trained to deal craps:

(1) 120 hours [to prepare him] to deal roulette;

(2) [80] **85** hours [to prepare him] to deal blackjack **and red dog**; and

(3) [88] **93** hours [to prepare him] to deal baccarat [and]**,** minibaccarat **and red dog**.

iv. For a student [who has been] trained to deal baccarat:

(1) 180 hours [to prepare him] to deal craps;

(2) 120 hours [to prepare him] to deal roulette; [and]

(3) [80] **85** hours [to prepare him] to deal blackjack[.] **and red dog;**

(4) 10 hours [to prepare him] to deal minibaccarat**; and**

(5) Five hours to deal red dog.

[3.]**v.** For a student [who has been] trained to deal blackjack and baccarat, five hours shall be required [to prepare him] to deal minibaccarat.

(b) For any training or instruction [other than that list] **not listed** in (a) above, the required minimum hours of training and instruction shall be determined by the [commission] **Commission** on a case by case basis.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Blackjack Table; Physical Characteristics

Proposed Amendment: N.J.A.C. 19:46-1.10

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

Authority: N.J.S.A. 5:12-63(c) and 5:12-70(f).

Proposal Number: PRN 1991-613.

Submit comments by January 15, 1992 to:
Barbara A. Mattie, Chief Analyst
Casino Control Commission
Citicenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C 19:46-1.10(b) would permit the Commission to authorize betting areas for blackjack table layouts in shapes other than rectangular, circular or oval. In addition, minor changes to N.J.A.C. 19:46-1.10(d) are proposed to eliminate the reference to the blackjack diagram presently included in the rule. Since N.J.A.C. 19:46-1.10(c) clearly describes the information that must appear on the layout, a diagram is no longer necessary.

Social Impact

The proposed amendment merely increases the possible authorized shapes of the betting areas permitted by the Commission for the blackjack table layout and would have no social impact of any significance.

Economic Impact

The proposed amendment merely increases the possible authorized shapes of the betting areas for the blackjack table layout and would have no economic impact of any significance.

Regulatory Flexibility Statement

This proposed amendment will only affect the operation of casino licensees, and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq.

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

19:46-1.10 Blackjack table; physical characteristics

(a) (No change.)

(b) The cloth covering the blackjack table shall have imprinted thereon the name of the casino and shall have [rectangular, circular or oval areas to indicate boxes] **specific areas designated** for **the placement of** wagers[,]**.** [such boxes] **Such betting areas shall** not [to] exceed seven in number.

(c) (No change.)

(d) Each blackjack **table** shall have a drop box and a tip box attached to it [at approximately the locations depicted in the following diagram] **with the location of said boxes on the same side of the gaming table, but on opposite sides of the dealer, as approved by the Commission.**

[Editor's Note: For further information on this diagram which was adopted with these rules but is not reproduced herein, please contact the Casino Control Commission, Building 5, 3131 Princeton Pike Office Park, Trenton, New Jersey 08625.]

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Residual Receipts

Proposed New Rules: N.J.A.C. 5:80-30

Authorized By: New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Authority: N.J.S.A. 55:14K-5(g).
Proposal Number: PRN 1991-618.

Submit comments by January 15, 1992 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The Agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency, pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate income families.

Housing sponsors can be either nonprofit or profit-motivated owners. Profit-motivated sponsors are restricted by statute to a maximum annual return on their investment. When a project generates more surplus income than the sponsor, by law, may earn, the money remains in the project's operating accounts and is invested. For nonprofit sponsors, as they are not permitted to earn a profit, any surplus remains in the project's operating account and is invested.

Several of the projects have accumulated large surplus accounts which could be used to develop additional housing. Under the proposed new rules, nonprofit sponsors may use such surplus for the following purposes:

1. To provide funding to expand the supply of affordable rental housing or to render financial assistance to other Agency financed or affordable housing projects;
2. The funding of supplementary services, such as free senior citizens transportation, medical assistance and other social services programs and activities; and
3. Other uses as may, from time to time, be requested, which will enhance the feasibility of a new proejct or the financial and social condition of an existing project.

Social Impact

The proposed new rules are expected to increase the supply of affordable housing and to provide additional housing-related services to low income individuals and families. The full social impact upon the low income individuals and families cannot be determined at this time since the N.J.H.M.F.A. has permitted a wide range of housing types and support services to be developed with the residual funds.

Economic Impact

The total of residual receipts currently available for use is approximately $5,587,000. This amount will vary, according to factors delineated in the definition of residual receipts and with expenditures made from the residual receipts funds. There are 58 potentially-eligible sponsors. An application fee of $3,500 is required to cover processing costs, as well as the payment of bond counsel fees incurred in the evaluation of the application. These fees, and any other approved costs of initiating the housing or service project, are reimbursable from the residual receipts funds, and, therefore, have no net effect upon the eligible sponsors. The use of these funds to provide needed housing and services is expected to have a generally beneficial effect upon the communities in which the housing and services are based, generating economic investment into the housing and labor markets.

Regulatory Flexibility Analysis

The proposed new rules allow nonprofit housing sponsors, most of whom are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to use surplus funds for additional housing or service purposes. Eligible nonprofit housing sponsors are not required to apply, as the rules are not mandatory. Those sponsors who elect to apply must specify the purpose, amount and payee of the funds, and must complete an Administrative Questionnaire, if the funds are to be paid to a third party. Applications must be supported by a resolution from the board of the sponsor and must provide additional substantiation for specified expenses. Additional application expenses, such as application fees and bond counsel payments, may be recovered from the residual fund upon submission of the required documentation. These requirements are not burdensome, since the documentation required would ordinarily be done in the normal course of business and the expenses incurred are reimbursable. For that reason, and because most of the non-profits housing sponsors are small businesses no differentiation has been provided in the rules.

Full text of the proposal follows:

SUBCHAPTER 30. RESIDUAL RECEIPTS

5:80-30.1 Definitions

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

"Qualifying development" means an Agency-financed housing project owned by a nonprofit sponsor, except for projects receiving Section 8 subsidies pursuant to an Annual Contributions Contract executed after the adoption of regulations by the U.S. Department of Housing and Urban Development on February 29, 1980, at 24 CFR 883, which has:

1. Produced a positive cash flow from operations in each of the past three fiscal years; and
2. Been current in all escrow and debt service payments for the past three fiscal years.

"Residual receipts" means the balance of funds remaining after the deduction of the following items from the cash and the investment accounts of a qualifying development:

1. Debt service arrearages;
2. Current unpaid invoices;
3. For senior citizen projects, three months of operating expenses, which includes debt service and reserve payments, of the ensuing year's budget or, for family projects, six months of the following year's budget of operating expense;
4. Full funding of all required reserve accounts;
5. Anticipated or proposed capital improvements; and
6. Any other current obligations of the qualifying development.

5:80-30.2 Uses of residual receipts

(a) For qualifying developments, residual receipts may be used:

1. To provide funding to expand the supply of "affordable rental housing" or to render financial assistance to other Agency financed or "affordable housing projects" (the terms "affordable rental housing" and "affordable housing project" shall mean housing with income unit distribution consistent with the requirements of tax-exempt financing pursuant to the then-current Internal Revenue Code);
2. For funding of supplementary services to the qualifying development, such as free senior citizens transportation, medical assistance and other social services programs and activities; and
3. For other uses as may from time to time, be requested, which will enhance the feasibility of a new project or the financial and social condition of an existing project.

(b) Residual receipt funding may include any one or more of the following:

1. First and supplemental mortgages, including construction mortgages;
2. Operating deficit subsidies;
3. Seed money loans.

(c) Disbursements of residual receipts shall be in the form of a loan, grant or equity contribution, as approved by the Agency, from the nonprofit sponsor to the entity receiving the funds. However, for all sponsors formed under N.J.S.A. 55:16-1 et seq., approval by the Public Housing Development Authority is required with respect to the form of the disbursement.

5:80-30.3 Request for use of residual receipts

(a) All requests to use residual receipts funds must be approved by the Agency in advance. Requests shall be made in writing by the sponsor of a qualifying development and submitted to the Agency's Director of Management.

(b) The request shall specify the purpose, amount and payee. The request shall be accompanied by a resolution of the nonprofit sponsor's board of directors. If the request is for social services or professional services, the request shall also be accompanied by a proposal outlining the services and the cost. If the request involves payment to a third party, an Administrative Questionnaire, completed by the third party, shall also accompany the request.

(c) The officers, directors and principals of the qualifying development shall submit certifications that they will not receive any fee or compensation, other than reimbursement for out-of-pocket expenses, for services performed in connection with the use of residual receipts.

5:80-30.4 Agency review and approval

(a) Upon receipt of a complete request package as delineated in N.J.A.C. 5:80-30.3, the Agency will review the request to determine whether the requested use of funds falls within the permissible uses set forth in N.J.A.C 5:80-30.2(a) and whether there are sufficient residual receipts to fund the undertaking requested. The Agency will also evaluate the requested undertaking for feasibility.

(b) If the use of the receipts is for total funds of $25,000 or less, it may be approved by the Executive Director of the Agency. If the request is for funds in excess of $25,000, the recommendation and request package shall be submitted to the Agency Board of Directors for approval.

(c) Agency approval will be subject to receipt of:

1. An opinion from Agency bond counsel that the proposed use of residual receipts is permitted under the terms of the Bond Resolution and other Bond documents in connection with the Bonds issued to finance the qualifying development; and

2. An opinion by the qualifying development's counsel that the sponsor's formation documents and the laws under which the sponsor was formed permit the proposed use of residual receipts.

(d) Agency review will be subject to the payment of a $3,500 fee to the Agency to cover administrative costs in reviewing and processing the use of residual receipts and to maintain the account established pursuant to N.J.A.C. 5:80-30.5. In addition, Agency review is subject to the payment of Agency bond counsel costs. Payment may be made by the entity receiving the residual receipts or the qualifying development's sponsor.

5:80-30.5 Disbursement of residual receipts

(a) Upon approval of a request for the use of residual receipts, the sponsor of the qualifying development shall transfer the residual receipts to the Agency. The Agency shall maintain the residual receipts in a separate account and shall make all disbursements from the account to pay for the cost of the approved undertaking. The Agency shall maintain accounting records reflecting the disbursement.

(b) Prior to the disbursement of any residual receipts, the Agency will require acceptable documentation of expenses associated with the undertaking being financed with residual receipts.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Office of Emergency Medical Services

Mobile Intensive Care Programs

Administration of Medications

Proposed Readoption: N.J.A.C. 8:41

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, State Department of Health.

Authority: N.J.S.A. 26:1A-15 and 26:2K-39 et seq.

Proposal Number: PRN 1991-616.

Submit comments by January 15, 1992 to:
George Leggett, Chief Administrator
Office of Emergency Medical Services
New Jersey State Department of Heath
CN 364
Trenton, New Jersey 08625-0364

The agency proposal follows:

Summary

The proposed readoption without change of N.J.A.C. 8:41, currently containing only one subchapter, N.J.A.C. 8:41-8, is for a one-year period. These rules contain the list of approved medications, rules for the handling and storage of medications and syringes and inventory requirements for mobile intensive care units. In accordance with Executive Order 66(1978), these rules are due to expire on February 17, 1992. The Department is seeking to readopt these rules without change at this time. The Department is in the process of developing an extensive revision to Chapter 41 regarding the operation of mobile intensive care units. It is anticipated that these rules will incorporate changes to this subchapter. The readoption for one year will permit the rules to continue in effect while the new rules are developed, proposed and adopted.

Social Impact

These rules reflect the current approved formulary for use on approved mobile intensive care units. Pharmacological therapy, under medical direction, is a vital tool which assists paramedics and mobile intensive care nurses in managing prehospital emergencies. The current list is reflective of treatments provided to patients who require prehospital advanced life support. Continuing these rules for a year will allow New Jersey to provide its citizens with the best possible emergency care.

Economic Impact

Prehospital treatment, utilizing advanced life support techniques and procedures, can be a major determinant in favorable patient prognosis and survival rates. Appropriate and rapid prehospital interventions can prevent unnecessary hospital admissions and decrease the need for more costly in-hospital management techniques. These interventions may also decrease the patient's length of stay in the hospital, if he or she is admitted. The readoption of these rules will allow the mobile intensive care units to continue to provide the most current and effective pharmacological agents (and treatment modalities) available for use in the United States.

Regulatory Flexibility Statement

By statute, only hospitals specially authorized by the State Commissioner of Health may develop and maintain mobile intensive care units and provide prehospital advanced life support services in New Jersey. All of these institutions are large enough to fall outside the definition of "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules do offer some internal flexibility, however. For example, because the generic names of medications are used, the provider can decide whether a brand name drug or the generic equivalent is most appropriate. Each provider can also determine the method of acquisition and storage of medications, taking into account existing laws and hospital policies.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:41.

(a)

DIVISION OF AIDS PREVENTION AND CONTROL

State Sanitary Code

Acquired Immunodeficiency Syndrome; Reporting of Acquired Immunodeficiency Syndrome and Infection with Human Immunodeficiency Virus

Proposed Amendments: N.J.A.C. 8:57-2.1, 2.2 and 2.3

Authorized By: Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.

Authority: N.J.S.A. 26:1A-7 and 26:2-104.

Proposal Number: PRN 1991-615.

A public hearing will be held on Monday, January 13, 1992, from 1:00 to 4:00 P.M. at:

New Jersey State Department of Health
Auditorium, First Floor
Health and Agriculture Building
John Fitch Plaza, CN 360
Trenton, NJ 08625-0360

Submit written comments by Wednesday, January 15, 1992 to:

Ronald Altman, M.D.
Medical Director
Division of AIDS Prevention and Control
New Jersey Department of Health
CN 363
Trenton, NJ 08625-0363

The agency proposal follows:

Summary

The Centers for Disease Control (CDC) has published notification that it is planning to change the definition of AIDS to include individuals with HIV infection who have a CD4 (helper T-cell) count below 200 per cubic millimeter, regardless of clinical disease. This change in the definition of AIDS will increase the number of cases of AIDS reported to the Department in the short run, although the cumulative number of cases reported over a period of a few years may not increase much.

Current AIDS surveillance procedures involve reporting from physicians and institutions, as well as periodic visits by the Department staff to institutions that see a large number of AIDS cases to assist in reporting and determining completeness of reporting. Evaluation of this system has shown that most cases of AIDS in New Jersey are reported to the Department, but the system is very labor intensive. With the recently instituted reporting of HIV infection, plus the proposed inclusion of a CD4 count under 200 as indicative of AIDS, it is anticipated that there will be a large increase in the number of reports of named individuals coming to the Department's HIV/AIDS surveillance unit. Therefore, there is a need to institute other surveillance procedures which will give information on all cases of HIV infection and AIDS which should be reported, but at the same time be less labor intensive for the surveillance staff in the field.

The CDC wishes to evaluate the effect of the proposed new definition of AIDS, as well as evaluate new methods of AIDS surveillance. The CDC sent the states a competitive cooperative agreement proposal to accomplish this evaluation. The Department responded to this proposal, and was awarded funds through a cooperative agreement to participate in this evaluation. This cooperative agreement complements the need of the Department to implement new procedures for AIDS reporting.

Reporting of laboratory results indicative of reportable conditions has proved very helpful in enhancing reporting of such conditions. The laboratory report serves as a signal to the disease surveillance program that a reportable condition potentially exists, and, if the program does not have a report of the condition from a health care provider, alerts the program to investigate to determine if a reportable condition is present. Since a low CD4 count would now be indicative of AIDS, the result of this laboratory test can be used to enhance AIDS surveillance. Such reporting both meets the Department's need to have complete AIDS case reporting in a less field labor intensive manner, and the Department's desire to participate in the CDC cooperative agreement to evaluate both the effect of the change in the AIDS definition and new AIDS surveillance methods.

Similarly, the newly promulgated rules which require the reporting with personal identifiers of persons newly diagnosed as infected with AIDS provides laboratory reporting of individual laboratory results which are indicative of HIV infection. Such reporting can enhance reporting of HIV infection in the manner outlined above.

The proposed amendment to N.J.A.C. 8:57-2 would make the following changes:

1. The definition of AIDS would be expanded to include cases in HIV-infected persons who have a CD4 count below a level set by the State Commissioner of Health.
2. Clinical laboratories would be required to report to the Department, within five working days, individual laboratory results indicative of HIV infection, identifying the health care provider submitting the laboratory specimen and providing whatever identifying information the laboratory has as to the identity of the person from whom the specimen was obtained, including the unique code, if used. Clinical laboratories would no longer be required to report aggregate data on HIV testing quarterly.
3. Clinical laboratories would be required to report to the Department, within five working days, individual laboratory results of CD4 counts below the level set by the State Commissioner of Health, identifying the health care provider submitting the laboratory specimen and providing whatever identifying information the laboratory has as to the identity of the person from whom the specimen was obtained, including the unique identifier code, if such a code is used.

Social Impact

The social impact of the proposed amendment can be divided into two catetories, namely, (1) the impact of expanding the definition of AIDS, and (2) the impact of reporting of laboratory results indicative of AIDS or HIV infection.

1. Current rules define AIDS, for reporting purposes, as the definition adopted by CDC. It is anticipated that CDC shortly will include a low CD4 count in an HIV-infected person in the AIDS definition, so that adopting this definition of AIDS prior to CDC will only have a short term impact different from that if the proposed amendment is not adopted. Adding a low CD4 count to the AIDS definition will bring many HIV-infected persons under the AIDS classification earlier than under the current definition. However, most of the individuals classified as AIDS because of a low CD4 count would eventually be classified as cases of AIDS, as they would eventually develop symptomatology that would place them under the current AIDS case definition.

Classifying a person as AIDS earlier might give that person earlier access to entitlements. However, there is both a social and a psychological stigma attached to the word "AIDS," so that earlier classification of a person as a case of AIDS might have adverse consequences on the person in terms of social interactions, as well as on the individual's ability to deal with his/her HIV infection. From a programmatic perspective, changing the AIDS case definition will bring more people with serious manifestations of HIV infection to the attention of the Department, and thus will assist the Department in the planning and delivery of service to HIV-infected persons.

2. Reporting of laboratory results indicative of HIV infection or of a low CD4 count should increase the completeness of reporting of HIV infection and AIDS to the Department. This should allow the Department to better deliver services to the affected individuals, as well as increase the accuracy of statistical data generated by the Department. It should be noted that these amendments do not affect the ability of an individual to obtain anonymous HIV testing, if the individual were to choose this option.

The potential adverse consequences for this amendment are that there will be an additional source of reporting individual identifying information to the Department, and that if the confidentiality of the information were broached, this could lead to discrimination against the individual in a variety of social and economic interactions.

In addition, it is anticipated that the Department will use the laboratory reports as an indication that there is potentially a case of HIV infection or AIDS that needs to be reported to the Department. If the Department does not have adequate information in its files for disposition of the case, then the Department intends to question the submitter of the laboratory specimen, to determine whether or not the laboratory result is indicative of a case of HIV infection or AIDS that should be reported to the Department, and if there is a reportable case, then the Department will seek all the information necessary for a case report. This will involve the Department interacting with various health care providers concerning individually identified information. Such interaction might increase the opportunity for confidential information to reach the wrong hands, which, as noted above, could have adverse consequences for the individual.

The Department is very aware of the need to maintain the strictest confidentiality on information related to individuals, and will take all appropriate steps to maintain that confidentiality and to minimize any possibility of inadvertent disclosure of confidential information.

Economic Impact

The economic impact of the proposed amendments can be considered in terms of three groups, as follows:

1. Persons with HIV infection and persons with AIDS. As noted above, if information regarding HIV infection or AIDS were to be misused, it could result in discrimination against a person with HIV infection or AIDS. This could result in a serious economic impact against such an individual in areas of housing, employment, and other social interactions. Since these amendments will result in more people handling sensitive, confidential information, the chances for such discrimination are increased. The Department is very aware of the need for the strictest confidentiality of information with personal identifiers, and will take all appropriate steps to maintain that confidentiality and to minimize any possibility of inadvertent disclosure of confidential information.

2. Physicians and institutions. The change in the definition of AIDS will result in more cases of AIDS being reported initially, which will create some burden on physicians and institutions. However, the economic cost of some additional disease reports should be very slight. In addition, almost all of the cases reported under the definition of AIDS which includes a low CD4 count will eventually progress to AIDS under the current definition of that disease, so that cumulatively, over time, the actual number of AIDS cases reported by the new definition will not be very different than the number of cases reported under the current definition.

3. Clinical laboratories. The amendments may have a significant economic impact on clinical laboratories which do HIV testing or CD4 counts. These laboratories will have to send individual reports on positive HIV test results or low CD4 counts to the Department. Many of these laboratories can accomplish this reporting through their computerized data management system, so that the reporting of each case should not be a great burden. However, such laboratories will have the expense of modifying their computer program, plus the administrative expense to be sure the system is functioning properly. Smaller laboratories may not have a computerized data system, and therefore will require personnel time to generate the appropriate reports, but it is not anticipated that these laboratories will generate large numbers of reportable cases. However, the clinical laboratory reporting will slightly increase laboratory costs of HIV and CD4 testing, and this slight increase may be passed on to patients or to third party payers.

Regulatory Flexibility Analysis

The proposed amendments will be applicable to the Department of Health, hospitals, nursing homes, penal institutions and clinical laboratories. As such, the rules will affect organizations having over 100 employees. However, the proposed amendments will also apply to physicians, small clinical laboratories and other small health care providers, some of which can be considered to be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

With the exception of clinical laboratories, the amount of additional information to be reported to the Department because of the proposed amendments will be minimal. Small clinical laboratories may have more significant reporting responsibilities because of these amendments, but because reporting must be complete and from all providers in order to be useful in the provision of services to clients or for statistical data, no exemption or lesser requirements can be provided for small business.

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

8:57-2.1 Applicability; definition of AIDS and HIV infection

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

(c) Acquired immunodeficiency syndrome (AIDS) means a condition affecting a person who has a reliably diagnosed disease that meets the criteria for AIDS specified by the Centers for Disease Control of the United States Public Health Services**, or a condition in a person with laboratory results indicative of infection with HIV who has an absolute CD4 count and/or relative CD4 count below a level designated by the State Commissioner of Health based on currently available medical data.**

1. A CD4 count means a count of lymphocytes containing the CD4 epitope as determined by the results of lymphocyte phenotyping. An absolute CD4 count means the number of lymphocytes containing the CD4 epitope per cubic millimeter. A relative CD4 count means the number of such cells expressed as a percentage of total lymphocytes.

8:57-2.2 Reporting HIV infection

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

(c) [Every clinical laboratory shall report every three months to the State Department of Health the number of specimens tested for HIV, components of HIV and antibodies to HIV that are sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey, as well as the number of such tests indicating infection with HIV and such other information as may be required by the State Department of Health. The manner of reporting shall be determined by the State Department of Health. The report shall be sent within 30 days of the close of each three-month reporting period.] **Every clinical laboratory shall, within five working days of completion of a laboratory test which has results indicative of infection with HIV, report in writing such results to the State Department of Health. The report shall include the name and address of the clinical laboratory, the name and address of the submitter of the laboratory specimen, any identifying information the laboratory may have on the person from whom the laboratory specimen was obtained, including the unique code if a code is the only information identifying the person from whom the laboratory specimen was obtained, and other epidemiological information as may be required by the State Department of Health on a general or a case-by-case basis. Only specimens sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey should be reported.**

8:57-2.3 Reporting AIDS

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

(c) Every clinical laboratory shall, within five working days of completion of a CD count which has results below a level specified by the State Commissioner of Health, report in writing such results to the State Department of Health. The report shall include the name and address of the clinical laboratory, the name and address of the submitter of the laboratory specimen, any identifying information the laboratory may have on the person from whom the laboratory specimen was obtained, including the unique code if a code is the only information identifying the person from whom the laboratory specimen was obtained, and other epidemiological information as may be required by the State Department of Health on a general or a case-by-case basis. Only specimens sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey should be reported.

INSURANCE

(a)

DIVISION OF PROPERTY/LIABILITY

Insurers Required to Provide Automobile Insurance Coverage to Eligible Persons

Proposed New Rules: N.J.A.C. 11:3-40

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:33B-1 et seq.; and 17:33B-15.

Proposal Number: PRN 1991-627.

Submit comments by January 15, 1992 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 27 of the Fair Automobile Insurance Reform Act of 1990 (FAIR Act) N.J.S.A. 17:33B-15) states that beginning April 1, 1992, every insurer, in accordance with rating plans filed pursuant to N.J.S.A. 17:29A-45, will be required to provide private passenger automobile insurance to all eligible persons (N.J.S.A. 17:33B-15(a)). That section further states that no private passenger automobile insurer shall refuse to insure, renew or limit coverage available for automobile insurance to eligible persons meeting the insurer's underwriting rules. (N.J.S.A. 17:33B-15(b)).

Insurance companies authorized or admitted to transact insurance business in New Jersey are authorized by their certificates of authority to transact certain kinds of insurance (N.J.S.A. 17:17-10). Not all insurers actually write all those kinds of insurance for which they are authorized. For example, certain insurers may be authorized to write private passenger automobile coverage, but have never elected to do so in New Jersey. Moreover, some kinds of insurance may be written under either personal or commercial lines rating systems. For instance, insurers may write private passenger automobile insurance under a personal lines policy, a commercial lines policy, or both.

Section 27 of the FAIR Act on its face appears to require that all insurers so licensed provide private passenger automobile insurance to eligible persons beginning April 1, 1992, notwithstanding that some insurers have never written such policies and others may only write private passenger automobile insurance under a commercial lines rating system. Those insurers not currently writing, or never having written, personal private passenger automobile insurance may be uncertain as to whether they will now be required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15). The Department of Insurance (Department) recognizes the ambiguity inherent in the language of Section 27 of the FAIR Act. These proposed rules (N.J.A.C. 11:3-40) address this issue by identifying those insurers required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15).

The Department interprets Section 27 of the FAIR Act to apply only to insurers that actually write private passenger automobile coverage, or have done so in the recent past, pursuant to a personal lines rating system. Nothing in the statute itself nor in its legislative history addresses either the difficulties or benefits of requiring insurers that have never actually offered personal automobile insurance to now offer it. Rather, the Legislative Fiscal Estimate to Assembly Bill No. 1, which became the FAIR Act, stated that "[a]utomobile insurers would be required to insure 'good' drivers in the voluntary market." The Department construes this language to mean insurers that actually offer or have offered automobile insurance, not those who are authorized to provide automobile insurance but have never done so. Furthermore, the Assembly Appropriations Committee Statement to Assembly Bill No. 1 stated that "[t]he bill contains several provisions modeled after the Michigan Essential Insurance Act which require automobile insurers to provide insurance in the voluntary market to 'good drivers' . . ." Again, the term "automobile insurers" is used, which the Department interprets to mean those who actually insure automobiles.

In further support of its view that Section 27 of the FAIR Act was intended to apply only to personal private passenger automobile insurers, the Department notes that the rating plans referred to in Section 27 and set forth at N.J.S.A. 17:29A-45 concern only personal lines automobile insurance. N.J.S.A. 17:29A-1 et seq. in its entirety applies only to personal lines insurance. Since 1982, commercial lines have been regulated in accordance with N.J.S.A. 17:29AA-1 et seq. (the Commercial Lines Deregulation Act). Additionally, the definition of "eligible persons" as that term is used in Section 27 could only include individuals personally owning and/or registering automobiles within the State. Accordingly, the Department concludes that Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) applies only to insurance of private passenger automobiles under a personal lines rating system. Therefore, these proposed rules provide that only those insurers transacting the business of private passenger automobile insurance under a personal lines rating system since December 31, 1983, are required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15).

December 31, 1983 was selected by the Department as the cutoff date for insurers of private passenger automobiles under a personal lines rating system. The New Jersey Automobile Full Insurance Underwriting Association (Association) became operative on January 1, 1984. N.J.S.A. 17:30E-4. That date is further referenced in N.J.S.A. 17:30E-14a (as amended by P.L. 1988, c.119 Section 25, which language was left undisturbed by the FAIR Act amendments), which requires consideration of a company's increase or decrease in volume of private passenger automobile insurance business since January 1, 1984 in the "equitable apportionment procedure" whereby Association insureds are assigned to member insurers. The Department, in turn, utilized data as of December 31, 1983, in determining the amount of additional business that the companies would be required to return to the voluntary market from the Association beginning January 1, 1984. Therefore, it is reasonable to use the December 31, 1983 date to identify insurers required to provide private passenger automobile insurance to "eligible persons" under Section 27 of the FAIR Act (N.J.S.A. 17:33B-15).

However, these proposed rules exempt from compliance with section 27 of the FAIR Act those insurers with less than 1,000 private passenger automobile inforce exposures as of December 31, 1983. These insurers represent only a handful of the total number of private passenger automobile insurers in the State. Moreover, their combined market presence is only about one-tenth of one percent of the total State private passenger automobile insurance market. To exempt these insurers with virtually no market presence would reasonably alleviate them from the burden of bearing the administrative and other expenses that would be involved in complying with Section 27 of the FAIR Act. Additionally, this exemption is not inconsistent with the statutory requirement that every insurer provide coverage to all eligible persons. Since the FAIR Act was intended to apply only to those insurers actually writing private passenger coverage, it is not contrary to that intent to exempt from compliance with Section 27 of the Act only those insurers with a clearly negligible share of the private passenger automobile insurance market.

The correlation between the automobile insurers in the New Jersey market at the time of the Association's establishment and the mandate to insure "eligible persons" under Section 27 of the FAIR Act is further reasonable in light of the history of the Association. Throughout its existence, automobile insurers refused to insure many drivers in the voluntary market, such that over one-half of New Jersey's drivers were in the Association, a large percentage of whom had never had an accident or a serious traffic violation (Governor's Reconsideration and Recommendation Statement to Senate No. 2637—P.L. 1988, c.119, at N.J.S.A. 17:28-1.4). It therefore makes sense that those insurers who collectively benefited from dumping risks into the Association should be the same insurers who are now required to insure "eligible persons" under Section 27 of the FAIR Act.

Of course, those insurers required to insure "eligible persons" under Section 27 of the FAIR Act would not be bound to provide automobile insurance in New Jersey indefinitely. Certain insurers may seek to withdraw from the market pursuant to N.J.S.A. 17:17-10 and 17:33B-30, as amended by Sections 71 (N.J.S.A. 17:17-10) and 72 (N.J.S.A. 17:33B-30) of the FAIR Act. Upon the Department's close examination of the individual insurer and the overall market, the general duty to insure all eligible persons may be modified or superseded in accordance with an approved plan of orderly withdrawal. Moreover, insurers determined to be in an unsafe or unsound financial condition and operating pursuant to an order issued by the Commissioner under N.J.S.A. 17:33B-19 and 20 may be exempt from compliance with Section 27 to the extent provided by the order.

These proposed rules exempt entirely certain insurers from complying with Section 27 of the FAIR Act. Insurers that have not issued or renewed any private passenger automobile policies since December 31, 1983, are exempt, as are insurers that have issued or renewed policies only in accordance with a commercial lines rating system since December 31, 1983. Insurers with less than 1,000 private passenger automobile inforce exposures as of December 31, 1983 are additionally exempt from compliance.

These proposed rules require only limited compliance with Section 27 of the FAIR Act by some insurers. Insurers that write limited coverage only (for example, physical damage only), as well as those that insure only specialty type private passenger vehicles (for example, mobile homes, recreational vehicles or antique cars), are required under these rules to insure all "eligible persons" only for the types coverage and vehicle they currently insure. Certain insurers may be required to comply with Section 27, but do not have a current rating system on file with the Department. In that case, the insurer would be required to file a rating system with the Department within 90 days of the effective date of these rules. The Department intends that these rules become operative on April 1, 1992.

Social Impact

These proposed rules, by clarifying those insurers to whom Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) applies, will have a positive social impact on all insurers insofar as they adopt a reasonable and fair system for determining those insurers to whom Section 27 of the FAIR Act applies. Only those insurers actively engaged in the business of personal lines private passenger automobile insurance in New Jersey will reasonably be required to comply with the requirements of Section 27 of the FAIR Act. Insurers merely authorized to transact such insurance, but who have never actually done so, will not now unfairly be required to write such policies.

Economic Impact

These proposed rules will have a positive economic impact on those insurers not required under Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) to provide personal lines private passenger automobile insurance to eligible persons beginning April 1, 1992, insofar as they will not now be burdened with administrative and other costs involved in providing personal private passenger automobile insurance if they have not written such policies in the past. However, those insurers not required to comply with Section 27 will be required by these proposed rules to file with the Department a certified statement that they are not subject to the requirements of Section 27 of the FAIR Act and setting forth the factual and legal basis for their exemption from those requirements. As a result, those insurers will be subject to the minimal, one-time costs involved in preparing and filing the certified statement.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed rules will not impose any reporting, recordkeeping or other compliance requirements on small businesses. There may be insurers to whom Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) applies that are, in fact, small businesses. However, these proposed rules will not impose any further reporting, recordkeeping or other compliance requirements on those insurers than those to which they are presently subject as private passenger automobile insurers.

A minimal, one-time cost may be incurred by those small business insurers not required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) insofar as they will be required by these proposed rules to file with the Department a certified statement indicating that they are not subject to the requirements of Section 27 of the FAIR Act and setting forth the factual and legal basis for their exemption. This minimum-cost requirement is necessary for the proper monitoring of insurers by the Department, and no lesser requirement for small businesses can be imposed.

Full text of the proposed new rules follows:

SUBCHAPTER 40. INSURERS REQUIRED TO PROVIDE AUTOMOBILE INSURANCE COVERAGE TO ELIGIBLE PERSONS

11:3-40.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 17:33B-15 by setting forth those insurers required under that statutory provision to provide automobile insurance to eligible persons.

(b) This subchapter applies to all insurers authorized or admitted to transact automobile insurance in this State, but does not include the Market Transition Facility created pursuant to N.J.S.A. 17:33B-11 et seq. or any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq.

11:3-40.2 Definitions

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

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes, owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meeting the definition contained in this section shall be considered a private passenger automobile owned by two or more relatives residing in the same household.

"Automobile insurance" means insurance for a private passenger automobile including one or more of the following coverages: bodily injury liability and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

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

"Department" means the Department of Insurance.

"Eligible person" means a natural person who meets the qualifications of an "eligible person" as set forth at N.J.A.C. 11:3-34.4.

"Insurer" means an entity authorized or admitted to write private passenger automobile insurance in New Jersey, but does not include the Market Transition Facility created pursuant to N.J.S.A. 17:33B-7 or any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq.

"Personal lines automobile insurance" means direct automobile insurance issued by an insurer for personal, family or household purposes, and written in accordance with a rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

11:3-40.3 Insurers required to provide automobile insurance coverage to eligible persons

(a) In accordance with N.J.S.A. 17:33B-15, every insurer, except as provided in (b) below, shall provide automobile insurance coverage for eligible persons beginning April 1, 1992. No insurer, except as provided in (b) below, shall refuse to insure, renew, or limit coverage available for automobile insurance to an eligible person meeting the insurer's underwriting rules as filed with and approved by the Commissioner in accordance with N.J.S.A. 17:29A-46. An insurer shall provide all coverages, including physical damage coverages, in accordance with its rating system filed with the Department and approved purusuant to N.J.S.A. 17:29A-1 et seq.

(b) The requirements set forth in (a) above shall not apply to the following:

1. Insurers that have not issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983;

2. Insurers that have issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983, only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1 et seq.;

3. Insurers with less than 1,000 private passenger automobile inforce exposures as of December 31, 1983;

4. Insurers transacting personal private passenger automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent provided by the terms of the approved plan of orderly withdrawal; or

5. Insurers transacting private passenger automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-19 and 20, but only to the extent provided by the terms of the order.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of private passenger automobiles (for example, mobile homes, recreational vehicles or antique automobiles) shall comply with the requirements of (a) above, but only for the particular types of private passenger automobiles currently being insured.

(d) Insurers that curently provide, or have provided since December 31, 1983, only limited coverage (for example, physical damage coverage) shall comply with the requirements of (a) above, but only for the limited coverages currently being written.

(e) Insurers that are required to insure eligible persons, but that do not have a current private passenger automobile rating system on file with the Department, shall file such a system with the Department in accordance with N.J.S.A. 17:29A-1 et seq. within 90 days of the effective date of this rule.

(f) Insurers identified within the provisions of (b), (c) or (d), above, shall comply with the following:

1. Such insurers shall file with the Department no later than 60 days from the date of adoption of this rule a certified statement containing the following information:

i. The insurer's name, including the NAIC number and NAIC group number;

ii. A statement that the insurer is not required to comply fully with N.J.S.A. 17:33B-15;

iii. The factual basis upon which the insurer relief to determine that it is not required to comply fully with N.J.S.A. 17:33B-15;

iv. The particular provision of this rule under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer's information, knowledge and belief, based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the Department at the following address:

Division of Licensing, Enforcement and
Consumer Protection
New Jersey Department of Insurance
20 West State Street
CN 328
Trenton, NJ 08625-0328

11:3-40.4 Penalties

(a) The Commissioner may suspend, revoke or otherwise terminate the certificate of authority to transact automobile business in this State of any insurer failing to comply with the provisions of this subchapter requiring that the insurer provide automobile insurance in accordance with N.J.S.A. 17:33B-15.

(b) In addition or in lieu of the penalty set forth in (a) above, the Commissioner may impose a fine as provided in N.J.S.A. 17:33-2 for any violation of the provisions of this subchapter.

(c) The Department shall follow the procedures set forth at N.J.A.C. 11:17D-2.1 prior to imposing the penalties set forth at (a) or (b) above.

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Extension of Comment Period
Inspection of Records

Proposed Amendment: N.J.A.C. 11:5-1.13

Take notice that the New Jersey Real Estate Commission has extended the comment period until January 17, 1992 for the proposed adoption and amendment to its rule concerning the inspection of records of real estate licensees which was published in the November 18, 1991 New Jersey Register at 23 N.J.R. 3428(a).

Submit comments by January 17, 1992 to:
Robert J. Melillo, Special Assistant to the Director
New Jersey Real Estate Commission
20 W. State Street
CN 328
Trenton, New Jersey 08625

(b)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Extension of Comment Period
Prohibition Against Dual Compensation for Dual Agency
Prohibition Against Kickbacks for Referrals
Disclosures—Mortgage Financing Services; Affiliations with Mortgage Lenders or Brokers
Prohibition Against Excluding Outside Lenders

Proposed New Rules: N.J.A.C. 11:5-1.38 through 1.42

Take notice that the New Jersey Real Estate Commission has extended the comment period until January 17, 1992 for the proposed adoption on new rules concerning the prohibition against dual compensation for dual agency, prohibition against kickbacks for referrals, disclosures—mortgage financing services, affiliations with mortgage lenders or brokers and prohibition against excluding outside lenders which were published in the November 18, 1991 New Jersey Register at 23 N.J.R. 3424(b).

Submit comments by January 17, 1992 to:
Robert J. Melillo, Special Assistant to the Director
New Jersey Real Estate Commission
20 W. State Street
CN 328
Trenton, New Jersey 08625

TRANSPORTATION

(c)

DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD ENGINEERING

Utility Accommodation
Definitions; Limited Access Highways; Underground Fiber-Optic Communication Lines and Other Utility Facilities Longitudinally Occupying Limited Access Highways

Proposed Amendments: N.J.A.C. 16:25-1.1, 1.7, 2.1, 7A.1, 7A.3, 7A.4 and 11.3

Authorized By: George Warrington, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-13, 7-19, 7-44.1, 7A:7, 40:62-35, 62-65, 62-134, 48:7-1, 7-2, 9-17, 9-25.4, 13-10, 17-8, 17-10, 17-16 and 19-17.

Proposal Number: PRN 1991-617.

Submit oral or written comments by January 15, 1992 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendments update the criteria to be followed in the use of fiber-optic cable by utilities along limited access highways.

In February, 1988, the Federal Highway Administration (FHWA) revised its regulations concerning longitudinal occupancy of interstate highway rights-of-way by utility facilities. Prior to 1988, FHWA reviewed all such applications for occupancy on a case by case basis and approved only those installations which met severe restricted safety criteria under conditions of extreme need. After extended study and in recognition of national defense issues affected by a stable dependable communications network, the FHWA revised its regulations and transferred approval authority of longitudinal occupancy to the various state governments. The granting of this authority was subject to each state revising its individual utility accommodation policies to reflect same. The Department promulgated such rules in 1989, which were proposed at 21 N.J.R. 2234(b) and adopted at 22 N.J.R. 359(a).

Recently, AT&T requested the Department to allow it to occupy the rights-of-way of Routes 80 and 287 with fiber-optic cable. AT&T expressed five concerns with the Department's current regulatory provisions:

1. The inability to attach cables to structures;
2. The inability to choose conduit material, that is, to use PVC rather than galvanized steel pipe;
3. The requirement to run in a generally straight alignment without sharp curves;
4. The need to have the facility maintained by one company with other companies sharing the cost of maintenance; and
5. The need for substantially higher occupancy fees for secondary occupiers, or reimbursement of installation costs to the installing company.

The proposed amendments to N.J.A.C. 16:25, Utility Accommodation, satisfy FHWA requirements, maintain highway and traffic safety, maintain the integrity of the interstate highway and freeway systems, provide a relatively secure environment for intrastate and interstate telecommunications, and address AT&T's concerns.

It is the Department's intention to make the limited access highway system more attractive to public utilities in the telecommunications industry. The specific areas addressed include construction materials, methods, location and maintenance responsibilities.

N.J.A.C. 16:25-1.1 has been amended to include the use of materials other than glass to transfer information via lightwave signals. This provision accommodates the rapid technological advances in the industry.

N.J.A.C. 16:25-1.1, 2.1, 7A.1 and 7A.4 have been amended to allow the use of PVC or other approved conduits (except where utility facilities are attached to structures or are within 15 feet of the edge of pavement), as requested by A.T.&T.

N.J.A.C. 16:25-1.7 has been amended to conform to current Federal regulations governing the interstate highway system which require the utility seeking to use a limited access highway right of way to show that disapproval of the request would result in the loss of productivity of agricultural land. It is the Department's intention to revise this provision as needed, to conform to Federal requirements.

N.J.A.C. 16:25-1.7 has been further amended at subsection (h) to provide for specification of a utility access control line in any permit granted within the right of way of a limited access highway.

N.J.A.C. 16:25-7A.1 has been amended at subsection (c) to require the public utility company to provide eight operational fiber pairs for the use of the Department, free of cost to the Department. N.J.A.C. 16:25-7A.1 has been further amended at subsection (d) to require the installer to be responsible for the maintenance of the system, with future occupants (except the Department) to reimburse the installer for the percentage share, as specified in the rule, of the annual maintenance costs. This provision addressed A.T.&T.'s concern regarding maintenance of the facility by one company, with other users sharing the costs of maintenance. (A.T.&T.'s additional request for substantially higher occupancy fees for secondary occupiers, and/or reimbursement of installation costs, was not addressed in these amendments.)

N.J.A.C. 16:25-7A.3 has been amended at subsection (a) to require galvanized steel casing when a utility is placed within 15 feet of a roadway.

Exceptions, to be made at the Commissioner's discretion when the public good justifies an exception, are provided for at N.J.A.C. 16:25-7A.3(c), (d), (e), (g), (k) and (l). These exception provisions may be used to accommodate A.T.&T.'s request to allow sharp curves and other deviations from a generally straight alignment.

N.J.A.C. 16:25-7A.3(g) has been amended, as requested by A.T.&T., to allow the attachment of facilities to structures, when alternative locations are not feasible.

N.J.A.C. 16:25-7A.3(i) has been amended to delete requirements regarding environmentally sensitive locations and the replacement of plant material, since these areas are covered in the permitting rules of the Department of Environmental Protection. The location, connections, depth and marking of a fiber-optic system have been described at new subsections (k) and (l).

A clarification of the standard has been made at N.J.A.C. 16:25-7A.4(c).

A new subsection has been added at N.J.A.C. 16:25-11.3(c) to require that applications for longitudinal use and occupancy of Federal Aid highways be submitted to the Federal Highway Administration Division Administrator before being submitted to the Department.

Social Impact

The rules contained in this chapter apply to all public, private and cooperatively owned utilities. The proposed amendments will directly affect utility companies seeking to install fiber-optic cables along the right-of-way of limited access highways. The amendments are expected to encourage the installation of such cables, and to accommodate the powerful, dynamic and expanding fiber-optic transmission medium. The expansion of this service will, in turn, provide a sound telecommunications system for the benefit of New Jersey industry and private consumers. The installation of this system is expected to promote a strong economy through the attraction of high-tech industries. Fiber-optic systems are capable of carrying more messages, and this capacity can be expected to increase as technological advances are made in the industry. With the ability to transmit more messages comes the capability of serving the individual consumer more effectively, and with a wider variety of services, such as telefax, stock quotations and computer links, as well as the traditional telephone service.

Economic Impact

The utility companies governed by the amendments will be required to pay for installation and maintenance of the approved fiber-optic cables. Provisions are made in the rules for occupants of the lines to share maintenance costs with the installer, who bears the primary responsibility for maintenance under the rules. The Department will benefit economically through the installation and maintenance of up to eight operational fiber-optic pairs, for its exclusive use, at no cost to the Department. No applications were received by the Department under the current rules, therefore, no data is available on costs specific to this type of installation. However, it is anticipated that the amendments allowing changes in materials, methods and installation would yield a lower overall construction cost to the installer, or permittee, and make such installation more attractive to the utility companies. The fee structure remains unchanged by these amendments. The installation of fiber-optic cables will provide a sound telecommunication system which can be expected to attract high-tech industry and to improve the overall economy of the State of New Jersey.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules affect public, private and cooperatively owned utilities, such as A.T.&T., U.S. Sprint, M.C.I. and New Jersey Bell Telephone Company, all of which employ more than 100 people. Therefore, a regulatory flexibility analysis is not required.

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

16:25-1.1 Definitions

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

. . .

"Fiber-optic cable" means a communication cable utilizing hair-thin strands of ultra-pure glass, **plastic or other transparent material** that can carry high volumes of [traffic] **information** via lightwave signals.

"Fiber-optic system" means a utility facility consisting of either:

1. One four-inch galvanized steel **or PVC** pipe **or other approved encasement** containing four each 1¼-inch PVC innerducts, buried directly in the ground[,] (hereinafter referred to as a multi-duct system); or

2. Four each of two-inch galvanized steel **or PVC** pipes **or other approved encasements,** each pipe limited to use by one fiber-optic cable, buried directly in the ground[,] (hereinafter referred to as a single-duct system).

. . .

16:25-1.7 Limited access highways

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

(c) The Department will take under consideration claims of extreme cases of need when a public utility can demonstrate that alternate locations are not available or cannot be implemented at reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations; that the accommodation will not adversely affect the design, construction, operation, maintenance, or stability of the limited access highways; [and] that it will not interfere with or impair the present use or future expansion of the limited access highways**; and that disapproval of the use of the right-of-way would result in the loss of productive agricultural land, or loss of productivity of agricultural land, if any**.

(d)-(g) (No change.)

(h) Whenever a utility installation is permitted within the right-of-way of limited access highways, a utility access control line between the proposed utility installation and the through roadway and ramps will be specified in the permit.

SUBCHAPTER 2. GENERAL CONSIDERATIONS

16:25-2.1 Location of utility lines

(a)-(f) (No change.)

(g) The Department may allow a fiber-optic system to consist of more than four [PVC] innerducts in the case of a multi-duct system, or more than four [galvanized steel] **individual** pipes in the case of a single-duct system, to be decided by the Department on a case-by-case basis.

16:25-7A.1 General considerations

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

(c) Where the longitudinal occupancy will involve a fiber-optic cable, and only where the Department so determines that such dedication would be feasible, the public utility company shall provide, free of any cost, **including maintenance,** up to [one] **eight** operational fiber [pair] **pairs** for the sole use of the Department.

(d) Where the longitudinal occupancy will involve a fiber-optic cable, the first public utility company, hereinafter "the installer,"[,] to be granted a longitudinal occupancy permit shall be required to install a fiber-optic system. The system may be either the multi-duct system or single-duct system, at the discretion of the installer. The installer shall, by virtue of the permit, be entitled to occupy two innerducts of the multi-duct system or two two-inch [galvanized steel pipes] **ducts** of the single-duct system. [The installer and future occupants of the multi-duct system shall be completely and equally responsible for the system.] The unoccupied ducts [of the multi-duct system] shall be at the disposal of the Department and the Department may permit occupancy by the future permittees. **The installer shall be responsible for the maintenance of the system. Future occupants, except the Department, shall reimburse the installer for its percentage share of the annual maintenance costs. The percentage share should be based on the number of ducts occupied by the future occupant compared to the total number of ducts in the system less those occupied by Department facilities, if any. If the Department elects or chooses to occupy one or both of the remaining ducts for its sole use, the Department shall not be responsible for any maintenance costs for the conduit, duct or handholes. A signed maintenance agreement between the installer and the future occupant is required and shall be submitted for the Commissioner's information prior to the issuance of the future occupant's permit.** [In the case of the single-duct system, the installer shall be completely responsible for any ducts occupied by the installer's fiber-optic cable and any unoccupied ducts, except that any unoccupied ducts shall be at the disposal of the Department and the Department may permit occupancy by future permittees. When, in the case of the single-duct system, ducts become occupied by a fiber-optic cable, the public utility company owner of the fiber-optic cable shall assume all responsibility of the occupied duct and the installer shall be relieved of its responsibility for that duct.] The installer, in its initial permit application or in subsequent permit applications, or another public utility company in a future permit application, may apply for occupancy of one or more of the remaining two ducts. Each occupied duct will be assessed an individual right of way occupancy permit fee. When all four ducts are occupied, the next permittee shall be considered the "first public utility company" and the above procedure shall be followed. In all cases, a permit issued for a duct shall be considered occupied by a fiber-optic cable and assessed in accordance with this subchapter.

(e)-(i) (No change.)

16:25-7A.3 Locations

(a) Where the Department deems utility facility installations feasible, the Department will establish, within the right-of-way of limited access highways, a corridor, generally not closer than 30 feet to the edge of roadway, but contiguous to each side of the roadway's control of access line, for the installation of underground utility facilities, with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception. **Should such an exception allow a utility facility to be placed within 15 feet of the edge of pavement, the facility shall be placed within a galvanized steel pipe casing.**

(b) (No change.)

(c) At interchange areas, the installation corridor shall continue along the control of access boundary outside of the outermost roadway or ramp, **with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.**

(d) Transverse installations associated with longitudinal occupancy of the limited access highway shall be normal to the roadway's alignment and shall occur within interchange areas, **with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.**

(e) Installations shall continue along the respective control of access line even when encountering rest areas, scenic-overlook sites, truck weigh stations, and other such facilities, **with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.**

(f) (No change.)

(g) [Attachment to highway structures shall not be permitted.] **Facilities may be attached to structures, when at the Commissioner's sole discretion, alternative locations are not feasible. When attaching to structures, the facility shall be placed within a galvanized steel pipe casing and shall be located under the bridge deck and between the beams. Facilities shall not be attached to the railing, to the outside of the facia beam, or to otherwise constitute an attractive nuisance.**

(h) (No change.)

(i) Where trees an/or shrubbery act as a buffer for the adjacent property, their removal [shall] **is generally** not [be] permitted. [Where] **However, if** removal of vegetation is [otherwise] necessary, replacement trees and shrubs shall be provided by the permittee as required by the Department. [Installation of facilities shall not be permitted in any environmentally sensitive location.]

(j) (No change.)

(k) Service connections to adjacent properties from within the limited access highway right of way are prohibited; however, at interchanges and local road crossings, branch line and transmission line connections may be permitted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies a connection. When connections are permitted they shall be accomplished as close as feasible to the highway's right of way line.

(l) The fiber-optic system shall be installed to a depth which permits at least 48 inches of ground cover. The utility company shall install along with the system a continuous plastic ribbon or marking tape at least 12 inches below the existing ground and above the fiber-optic system. The fiber-optic cable or marker shall be equipped with a system capable of emitting a signal readable by locator equipment operated on the surface. The width of excavation shall normally not exceed 18 inches. Exceptions may be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.

15:25-7A.4 Design of Facilities

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

(c) Handholes for the purpose of cable splicing and/or installation shall be permitted and shall [be flush with] **not extend above** the surrounding ground.

(d) Cable shall be encased in galvanized steel pipe **or other approved encasement**.

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

16:25-11.3 Private utilities

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

(c) Applications for longitudinal use and occupancy of Federal Aid highways by private lines shall be submitted for prior approval to the Federal Highway Administration Division Administrator, prior to submission to the Department.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Stopping and Parking
Time Limit Parking
Route U.S. 202 in Somerset County
Proposed Amendment: N.J.A.C. 16:28A-1.55

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.

Proposal Number: PRN 1991-613.

Submit oral or written comments by January 15, 1992 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment will establish an additional distance restriction for a "time limit parking" zone along Route U.S. 202 in Bernardsville Borough, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local government in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the revised distance restriction within the "Time Limit Parking" zone along Route U.S. 202 in Somerset County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.55 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish an additional 100 feet of restriction for a "Time Limit Parking" zone along Route U.S. 202 in Bernardsville Borough, Somerset County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.55 Route U.S. 202

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

(d) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "Time Limit Parking" zones. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:

(1) Time Limit Parking zones in Bernardsville Borough, Somerset County:

i. Two-hour time limit parking, between 7:00 A.M. to 6:00 P.M.:

(1) (No change.)

(2) Along the east side:

(A) From a point 158 feet south of the southerly curb line of Mt. Airy Road to **a point 100 feet north of** the northerly curb line of Depot Square;

ii. (No change.)

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Bankers and Brokers; Net Worth, Insolvency; Examination; Methods and Accounting

Adopted Amendments: N.J.A.C. 3:38-1.2 and 2.1
Adopted Repeal and New Rule: N.J.A.C. 3:38-1.4
Adopted New Rule: N.J.A.C. 3:38-1.9

Proposed: August 19, 1991 at 23 N.J.R. 2450(a).
Adopted: November 14, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: November 14, 1991, as R.1991 d.588, **with substantive changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:11B-13(a).

Effective Date: December 16, 1991.
Expiration Date: October 5, 1992.

Summary of Public Comments and Agency Responses:

The Department of Banking received comments from the following persons:

1. Frank Harrison, Harrison Mortgage Corp.
2. Ralph Torres, Custom Mortgage Co., Inc.
3. David Toscano, Adams and Smith Mortgage Company, Inc.
4. David J. Maxham, Hemisphere Mortgage Corporation
5. A.S. Potter, A.S. Potter, Associates, Inc.
6. Charles Ercolano, North Gate Mortgage Company, Inc.
7. Thomas J. Margiotta, Kramer Financial Associates
8. Jeffrey Hoerster, Multi-Mortgage Services, Inc.
9. Gregoria Sheehan, Sheehan Mortgage Company, Inc.
10. JoAnne M. Quinn, JDJ Financial Group, Inc.
11. Kurtis S. Baker, Alternative Mortgage & Investment Corporation
12. John R. McGuire, U.S. Express Financial Corporation
13. Peter W. LaMorte, Apple Mortgage Services, Inc.
14. Drew C. Anlas, Apple Mortgage Services, Inc.
15. Bob Gale, Investment Properties by P.E.G., Ltd.
16. Joseph G. Zinman, Aurora Financial Group, Inc.
17. Kenneth Dube, First Valley, Inc.
18. John M. Nojak, Quest Mortgage Services
19. Ruth M. Buchholz, Mortgage U.S.A.
20. Elmer M. Smith, First National Mortgage Co. of N.J. Inc.
21. Jabar Saraf, JS Financial Mortgage Corp.
22. Anthony P. Meli, Jr., CMB
23. Edward V. Moro, Atlantis Mortgage Co. Inc.
24. Jerry Murphy, Garden State Corporate Central Credit Union

A **summary** of comments and responses follows:

COMMENT: The three-year phase-in for existing licensees as provided in the proposal is too short and should be replaced with at least a four-year phase-in period.

RESPONSE: The Department of Banking (DOB) agrees that a full four-year phase-in period would be appropriate. Because of the substantial period of time needed to review all the comments to this proposal, what was originally designed as a 3½ year phase-in period was reduced to slightly more than three years. A change will be made in the adoption to extend the phase-in period to four years.

COMMENT: The DOB should require, in conjunction with its proposed net worth requirements, that licensees demonstrate ability to fund loans for which they issue commitments.

RESPONSE: The DOB agrees that continuing and substantial funding arrangements, separate and apart from net worth requirements, represent an important protection for consumers dealing with licensed mortgage bankers. The existence of such arrangements will be seriously considered by the DOB in the coming months as a possible additional criterion for licensure. More study is needed, however, to determine how best to guard against the fact that such arrangements can disappear without warning. This danger dictates against the establishment of this criterion in lieu of, rather than in addition to, the proposed net worth requirement.

COMMENT: Rather than imposing net worth requirements upon mortgage bankers as a means of guaranteeing that commitments issued by small mortgage bankers to borrowers, which are based upon end investor commitments to the mortgage banker, are fulfilled, the DOB should regulate the end investor commitments.

RESPONSE: Regulating end investor commitments, while it might serve the particular purpose cited by the commenter, would not fulfill the remaining purposes sought to be achieved by the proposed net worth requirement. Additionally, while it is at least arguable that the DOB's regulatory authority extends to end-investor commitments, the DOB has historically chosen to regulate only that aspect of the mortgage lending process in which the consumer is a direct participant. See, for example, N.J.A.C. 3:1-16, regulating the mortgage loan process from application through closing. In any case, as mentioned elsewhere in this adoption notice, end investors funding through mortgage brokers are required to be licensed.

COMMENT: The DOB should "grandfather" existing companies, thereby allowing existing companies to operate at less than the required net worth levels.

RESPONSE: The DOB agrees that it is fair to grandfather existing companies for a period of time to permit them to obtain the required net worth. The DOB is of the view, however, that such period should be finite; that is, that there should not be established a permanent two-tiered licensing system, since such a result would be unfair to new licensees. The DOB is also of the view that four years is an adequate period within which existing companies should be able to achieve compliance. Additionally, the proposal indicates that, in the event of non-compliance, the DOB will have at its command a variety of enforcement mechanisms, short of revocation, with which to effect compliance. The DOB's intention is not to force any licensee out of business but to work with licensees to achieve compliance.

COMMENT: A number of commenters suggested alternative measures the DOB could take, in lieu of imposing net worth requirements, to meet one or more of its stated objectives. The suggestions were that the DOB: (1) establish a guaranty fund, to which existing licensees would contribute, which would be available to compensate consumers for losses incurred as a result of the action or inaction of a licensee; (2) rate licensees through examination and publicize those ratings; (3) make existing competency examinations for licensure more difficult; (4) require that licensed mortgage bankers maintain warehouse lines in certain amounts and/or maintain multiple, verifiable "table funding" arrangements with end investors; (5) increase bonding requirements; (6) require licensees to have prior experience in the business; (7) require end investors to be licensed; or (8) license/register and test all loan "originators."

RESPONSE: While some of these suggestions are certainly worthy of consideration and either are being or will be considered by the DOB, none of them, either singly or in conjunction with one another, serve the multitude of objectives sought to be achieved, as set forth in the summary attached to this proposal, by the imposition of minimum net worth requirements. For example, no one of these measures would serve to enhance the essential viability of business engaged in mortgage banking. Minimum net worth requirements help to accomplish this by ensuring that these businesses operate with sufficient capital to allow them to survive difficult times, which in turn, results in a more stable industry. Maintaining a substantial net worth, moreover, demonstrates to consumers, as does no other suggested measure, that mortgage bankers or brokers who meet these requirements trust their ability, experience and business acumen enough to invest those funds in their own companies. The DOB believes it is appropriate to protect consumers from investing their hopes and dreams, and their trust, in companies which are not willing to invest in themselves. Additionally, industry trends, in neighboring states and elsewhere, and even among correspodent lenders, is to require the maintenance of minimum net worth levels along the lines proposed. As indicated in the proposal, New York and Pennsylvania have net worth requirements similar to those proposed. Fannie Mae and Freddie Mac require substantially higher levels of net worth to be "approved seller-servicers." The U.S. Department of Housing and Urban Development has recently proposed, with a two-year phase-in, capital requirements for HUD "approved mortgagees" which would start at

$250,000 and go up from there. See: 56 Federal Reports 29100 (June 24, 1991.) In an upcoming proposal, the DOB will propose to amend its net worth rule to automatically deem Fannie Mae or Freddie Mac "approved seller servicers" and HUD "approved mortgagees" to be in compliance with the DOB's net worth requirements. Moreover, to adopt any of the suggested alternatives without also imposing net worth requirements would establish New Jersey as a haven for marginally capitalized companies. The DOB does not believe such a result to be desirable. These are but a few examples of reasons why the DOB believes minimum net worth requirements to be necessary, whether or not any of the suggested alternatives are deemed also to be advantageous. For other examples, the DOB refers the commenters to the detailed statement of objectives contained in the proposal Summary.

COMMENT: The proposed minimum net worth requirements, if adopted, will increase the potential for abuse by companies which cannot meet the requirements within the allotted time frame.

RESPONSE: As indicated in the proposal summary, the DOB believes that, when a company's fortunes are on a severe decline and its capital substantially depleted, the temptation to misuse funds belonging to others necessarily increases. To an extent this would be true also in a situation where a licensee is unable to meet the net worth requirements as required. However, this potential would be minimized by the fact that the DOB has authority to take various enforcement measures short of license revocation, which would be considered as a last resort in the event of non-compliance. The DOB's focus, rather, would be on development of a plan to achieve compliance.

COMMENT: New York, which has a $250,000 minimum net worth requirement for mortgage bankers, is not a good model to emulate.

RESPONSE: The mortgage banking industry in New York continues to have numerous providers and is highly competitive despite the existence of a net worth requirement.

COMMENT: Many commenters took issue with DOB assertions concerning the desirable effects of minimum net worth requirements. Specifically, one or more commenters asserted that there is no correlation between high net worth and (1) the quality of service provided by a company, (2) its integrity, (3) its chances of survival in difficult times, (4) its ability to fund commitments where the end investor has withdrawn, (5) the number of severity of consumer complaints filed against the mortgage banker or broker or (6) the mortgage banker or broker's commitment to the business.

RESPONSE: In the proposal Summary, the DOB has expressly indicated that, by proposing a net worth requirement for mortgage bankers and brokers, it did not intend to imply any correlation between a licensee's net worth and its integrity and the quality of service it provides. The primary concern which the DOB intended to address through the net worth requirement was stated in the proposal Summary to be the ability of licensees having low net worth to remain in business and provide continuity of service to their customers. In this regard, in fact, DOB figures, as referred to in the proposal Summary, do demonstrate a correlation between low net worth and a high rate of turnover among mortgage lenders.

The reason for such correlation seems obvious. A capital "cushion" is what enables companies to survive difficult times. Companies which operate "on the edge," with little or no capital, do not have such a "cushion" to fall back on when business suffers a setback. Obtaining capital when business is on the decline, moreover, is very difficult. Also, with little or no capital of their own invested in the company, its principals may have little financial incentive to invest their time, effort and money in a possibly futile struggle to turn around the company's fortunes. It may be easier at that time to simply "close up shop," in the hopes of starting again when conditions have improved. Unfortunately, however, this does not serve the consumer well.

The DOB believes there is also a correlation between net worth and the ability of mortgage bankers to fulfill loan commitments. Net worth is often considered by correspondent lenders and warehouse lenders in determining whether or not to deal with, or advance funds to, mortgage bankers. High net worth, therefore, tends to increase the number of such lenders willing to do business with a mortgage banker. Moreover, and perhaps more importantly, a substantial net worth is likely to increase the mortgage banker's ability to go out into the secondary market and arrange for end financing, at a discount if need be, using its capital to pay for any such discount, to ensure that individual borrowers are protected and the mortgage banker's commitment is fulfilled.

It is true, as mentioned in the proposal Summary, that of the 835 complaints received by the DOB last year against licensed mortgage bankers and brokers, only slightly more than 200 could be identified as coming from consumers who lost opportunities to obtain mortgage loans becuase of insolvent or near insolvent companies failing to close loans after they were arranged. However, it is also true that because of the potential for great harm connected with this type of complaint, they are among the most serious complaints the DOB receives. Typically, they involve far more than the mere loss of fees paid to the mortgage banker or broker. What is often at stake as well is the loss of substantial funds expended in anticipation of closing, for example, attorneys fees, title fees, funds for repairs, and even the loss of a home purchase itself, or of a favorable interest rate, payable in many cases for the next 30 years. These losses can be devastating, and it is precisely these types of losses which are sought to be prevented by the proposed net worth requirements.

COMMENT: Net worth requirements will reduce competition.

RESPONSE: The DOB does not believe that these net worth requirements will result in a significant reduction in competition within the mortgage lending industry, which includes, not only mortgage bankers, but commercial banks, savings banks, savings and loan associations, and credit unions as well. Rather, the DOB is of the view that the most significant effect of its net worth requirements will be to force companies having marginal net worth to operate as licensed mortgage brokers rather than true mortgage bankers. The $50,000 net worth requirement for mortgage brokers, it is felt, is sufficiently low as not to result in any significant fallout from that segment of the industry. Moreover, many companies now licensed as mortgage bankers are in reality already operating as brokers. Like brokers, these mortgage bankers do not use their own funds to close loans; they use end investor funds to close loans. If their end investor disappears or reneges on its commitment to fund the loan, these mortgage bankers, like brokers, must place the loan elsewhere in order to close. They do not have warehouse lines on which to fall back. Like brokers, they cannot close and then shop the loan; they must shop the loan and then close. Since they already operate essentially as brokers, it should not be considered onerous to compel them to be licensed as brokers, and to comply with the operating standards applicable to brokers, such as the additional disclosure requirements for brokers contained in N.J.A.C. 3:1-16.11.

COMMENT: Net worth requirements would eliminate from New Jersey a source of mortgage funding currently available to its residents; namely, unlicensed end investors which fund loans committed by licensed mortgage bankers.

RESPONSE: Following adoption of amendments and new rules, these unlicensed end investors would be able to continue to fund loans, without obtaining a license, committed by licensed mortgage bankers who are able to comply with the net worth requirements. To fund loans brought to them by licensed mortgage brokers, however, these end investors would themselves have to become license mortgage bankers. The DOB is of the view that this result is beneficial. It would provide the DOB with more control over the activities of these unlicensed end investors, and it would result in a better understanding by consumers concerning the true role of the entity with whom they are dealing.

COMMENT: A $250,000 net worth requirement for mortgage bankers who do not issue commitments is unnecessary and will put them out of business.

RESPONSE: The DOB agrees that a $250,000 net worth requirement is unnecessary for an entity which does not issue commitments. Rather than putting such an entity out of business, however, the regulation will merely require that entity to change its form of license from mortgage banker to mortgage broker and to comply with a $50,000 net worth requirement.

COMMENT: One commenter supported the proposal but expressed a view that the DOB should, in addition, require proof of an ability to fund its commitments and the filing annually of a Certified Financial Statement demonstrating the required net worth.

RESPONSE: The DOB will consider the possibility of imposing such additional requirements in the future. For now, the DOB expects to verify compliance with net worth requirements through the examination process. New applicants, of course, will have to demonstrate initial compliance required for licensure by submission of an unqualified certified financial statement.

COMMENT: To require existing mortgage bankers to maintain a $50,000 net worth by the end of 1991 constitutes an onerous burden. This first stage of compliance should be delayed until the end of 1992.

RESPONSE: The DOB agrees and will make the necessary change to effect this.

COMMENT: Several commenters expressed strong support for the proposed regulation in its present form and expressed their views that it was important to bring New Jersey in line with the practice of our neighboring states, that net worth requirements will provide the DOB with forewarning of impending failures and will eliminate under-capitalized "shell" companies, and that the $250,000/$50,000 levels set forth in the regulation are reasonable and reachable.

RESPONSE: The DOB agrees.

COMMENT: This regulation constitutes an undemocratic restriction on trade and should not be adopted.

RESPONSE: Any regulation constitutes a restriction on trade. The DOB believes that its proposal constitutes a reasonable restriction on trade which is designed to serve the public good. The DOB further believes that there exists no less burdensome method of achieving the intended purposes. The DOB concludes that the regulation is warranted and defensible.

Full text of the adoption follows (additions to the proposal in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

3:38-1.2 Applications

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

(e) All applications on behalf of a corporation, partnership, association or other entity and all applications on behalf of an individual sole proprietor shall include an unqualified certified financial statement of the applicant as of the close of its most recent fiscal year, financial statements for the previous two years and such additional information as shall be required by the Commissioner for a newly organized corporation. All other applications shall not be required to include a financial statement.

(f) (No change.)

3:38-1.4 No waiver of examination

The Department shall not grant a waiver of the examination for licensure pursuant to N.J.S.A. 17:11B-4(e).

3:38-1.9 Net Worth/Insolvency

(a) Tangible net worth means net worth less the following assets:

1. That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant;

2. Any asset (except construction loans receivables secured by first mortgages from related companies) due from officers or stockholders of the applicant or related companies in which the applicant's officers and/or stockholders have an interest;

3. That portion of the value of any marketable security (listed or unlisted) not shown at lower of cost or market, except for any shares of FNMA stock required to be held under a servicing agreement, which should be carried at cost;

4. Any amount in excess of the lower of the cost or market value of mortgages in foreclosures, construction loans, or foreclosed property acquired by the applicant through foreclosure;

5. Any investment shown on the balance sheet in the applicant's joint ventures, subsidiaries, affiliates and/or related companies which is greater than the value of said assets at equity;

6. Goodwill;

7. The value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant;

8. Organization costs of the applicant;

9. The value of any servicing contracts held by the applicant not determined in accordance with AICPA Statement of Position 76-2, dated August 25, 1976, or subsequent revision thereto;

10. Any real estate held for investment where development will not start within two years from the date of its initial acquisition;

11. Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease; and

12. Any commitment fees paid/collected which are not recoverable through the closing or selling of loans.

(b) Tangible net worth shall be computed on the accrual basis of accounting.

1. "Accrual basis of accounting" means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

(c) "Insolvent" means negative tangible net worth, or the inability to pay debts when due.

(d) Each applicant for a license as a mortgage banker must demonstrate that it has tangible net worth of at least $250,000. Each applicant for a license as a mortgage broker must demonstrate that it has tangible net worth of at least $50,000.

(e) Each licensed mortgage banker shall maintain at all times tangible net worth of at least $250,000, and each licensed mortgage broker shall maintain at all times tangible net worth of at least $50,000.

(f) Each mortgage banker and mortgage broker shall file a report semi-annually on forms provided by the Department indicating the tangible net worth of the licensee, the warehousing lines available and outstanding, and any other relevant information the Department may require. The reports are due within 60 days following the end of the period. The licensee shall remit with each such report a $50.00 filing fee. The Department shall assess a $50.00 penalty against any licensee for each semi-annual report the licensee files late.

(g) The requirements of this section shall apply to each applicant or licensee which is a corporation, partnership, association or other entity and each individual applicant or licensee seeking to operate or operating as a sole proprietor. The requirements shall not apply to other applicants or licensees.

(h) If the net worth of a mortgage banker or broker falls below the required amount or the mortgage banker or broker is insolvent, the Department may take such action as it deems appropriate and necessary to protect the public including, but not limited to, requiring the licensee to operate pursuant to a Memorandum of Understanding, directing the licensee to submit and comply with a capital plan, or suspending the licensee from transacting new business until the net worth level is attained.

(i) Mortgage bankers licensed on *[the effective date of this rule]* ***December 16, 1991*** shall be exempt from the net worth requirements in (e) above until December 31, *[1994]* ***1995***. Prior to that date, each licensed mortgage banker shall maintain a tangible net worth equal to or greater than $50,000 on or after December 31, *[1991]* ***1992***, $100,000 on or after December 31, *[1992]* ***1993***, and $175,000 on or after December 31, *[1993]* ***1994***. Mortgage brokers licensed on *[the effective date of this rule]* ***December 16, 1991*** shall be exempt from the net worth requirements in (e) above until December 31, 1992.

3:38-2.1 Methods and accounting

(a) All licensees shall maintain books and records in accordance with recognized accounting principles. If a licensee maintains books and records on a basis other than the accrual method of accounting, the licensee shall also maintain books and records on the accrual basis of accounting which states the net worth of the licensee.

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

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Radon Hazard Subcode
Tier I Municipalities

N.J.A.C. 5:23-10, Appendix 10-A

Take notice that the Department of Environmental Protection and Energy has issued a revised list of municipalities included in tier I radon hazard areas. Compliance with the radon hazard subcode is only mandatory for residential (Use Group R) and educational (Use Group E) buildings in tier I municipalities. Appendix 10-A of N.J.A.C. 5:23-10 is therefore revised to read as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

APPENDIX 10-A

New Jersey Municipalities in Tier I

County	Municipality	
Bergen	**Edgewater**	
Burlington	**Chesterfield**	**Mansfield**
Camden	**Laurel Springs**	**Runnemede**
	Magnolia	
Cumberland	**Bridgeton**	
Gloucester	**Deptford**	**Harrison**
	East Greenwich	**Swedesboro**
	Franklin	**Wenonah**
	Greenwich	
Hunterdon	All municipalities **except Kingswood**	
Mercer	(No change.)	
Middlesex	**Helmetta**	Piscataway
	Highland Park	Plainsboro
	[New Brunswick]	South Brunswick
	North Brunswick	
Monmouth	**Allentown**	Little Silver
	Asbury Park	Marlboro
	Colts Neck	**Rumson**
	Freehold Borough	**Shrewsbury Borough**
	Freehold Township	Tinton Falls
	Holmdel	Upper Freehold
Morris	Boonton Town	Morris
	Chester Borough	Morristown
	Chester Township	Mount Arlington
	Denville	Mount Olive
	Dover	Passaic
	Harding	Randolph
	Jefferson	**Rockaway Borough**
	Kinnelon	**Rockaway Township**
	Mendham Borough	Roxbury
	Mendham Township	Victory Gardens
	Mine Hill	Washington
	[Montville]	Wharton
	Morris Plains	
Passaic	(No change.)	
Salem	**Alloway**	**Woodstown**
Somerset	Bedminster	Montgomery
	Bernardsville	Peapack & Gladstone
	Bernards	[Raritan]
	Branchburg	Rocky Hill
	Bridgewater	Somerville
	Far Hills	[South Bound Brook]
	Franklin	Warren
	Hillsborough	**Watchung**
	Millstone	
Sussex	All municipalities [except Hardyston and Stanhope]	
Union	**Scotch Plains**	
Warren	(No change.)	

EDUCATION

(a)

STATE BOARD OF EDUCATION

Business Services

Appropriation of Free Balance and Restricted Appropriations; Method of Determining Tuition Rates for Regular Public Schools, County Vocational Schools and County Special Services Schools; Excess Surplus Calculation

Adopted Amendments: N.J.A.C. 6:20-2.13, 2A.11 and 3.1

Adopted New Rules: N.J.A.C. 6:20-3.3, 3.4 and 5.8

Proposed: September 16, 1991 at 23 N.J.R. 2818(a).

Adopted: November 6, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: November 15, 1991 as R.1991 d.590, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-15, 18A:7A-14, 18A:7D-1, 18A:7D-3, 18A:7D-4, 18A:7D-6, 18A:7D-16, 18A:7D-28, 18A:7D-32, 18A:38-19, 18A:46-21, 18A:46-31 and 18A:54-20.1.

Effective Date: December 16, 1991.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

One individual, James B. Lederer, Superintendent, Bergen County Special Services School Districts, spoke at the October 16, 1991 monthly public testimony session provided by the State Board of Education and no letters with comments were received. A copy of the public testimony may be reviewed by contacting the State Board of Education Office at (609) 292-0739.

COMMENT: The commenter suggested that since there is only one special education category cost factor, "county special services school district," for determining State aid for such schools, there should be only one tuition rate per county special services school district, not one rate for each handicap classification as proposed in N.J.A.C 6:20-3.4.

RESPONSE: N.J.S.A. 18A:46-31 states that tuition for county special services schools shall be "determined for each special education category." The Department has concluded that the statute requires a separate tuition rate for each handicap classification. The language "for each special education category" is inconsistent with the concept of one tuition rate. In addition, the determination of separate rates for each handicap classification is consistent with the cost data contained on the prescribed budget statement and the QEA requirement of conducting studies every two years on the adequacy of additional cost factors for special education.

COMMENT: The same commenter suggested that the determination of tuition rates for county special services school districts should distinguish between the 10 month and extended school years as well as unique expenses for a given youngster.

RESPONSE: The intent of the law was to provide county special services schools a mechanism to recover costs which are in excess of their State aid, county contribution, non-resident fees and other miscellaneous sources of income from those local school districts whose students are enrolled in such programs. The proposed rules represent a simple and equitable method to enable county special services schools to cover their net costs plus maintain a reasonable surplus, and can be accomplished with the Department's current data collection.

The Department sees no reason to expand the current data collection instruments (that is, annual budget, enrollments and supplemental report) and complicate the tuition calculation process when no financial benefit will result for county special services schools. Given the limitations of the current accounting and budgeting systems, the recommendation is impractical.

Summary of Agency-Initiated Changes:
The Department, upon adoption, has made corrections to N.J.S.A. cites and corrected minor typographical errors.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated with brackets and asterisks *[thus]*).

6:20-2.13 Appropriation of free balance and restricted appropriations

(a) (No change.)

(b) A district board of education shall use appropriations exclusively for the specific purpose intended when associated with the following:

1. Approvals by the legal voters or the board of school estimate, as applicable, and/or the Commissioner to exceed the maximum permissible net budget (commonly referred to as a budget cap waiver) pursuant to N.J.S.A. 18A:7D-28;

2. Improvement (remedial) or corrective action plans approved by the Commissioner for districts in level II or level III monitoring pursuant to N.J.S.A. *[18A:7D-14]* ***18A:7A-14*** or educational improvement plans approved by the Commissioner for special needs districts pursuant to N.J.S.A. 18A:7D-32; and

3. Written directives of the Commissioner or his or her authorized representatives for specific purposes deemed necessary for a thorough and efficient system of education in accordance with N.J.S.A. 18A:7A-1 et seq. and the New Jersey Constitution.

(c) Budgeted appropriations of special needs districts and other districts subject to the provisions of this section shall not be modified after the approval to advertise without the prior written permission of the Commissioner.

(d) A reservation of fund balance shall be established by district board of education resolution immediately upon the determination that appropriations subject to the provisions of (b) above will not be utilized or were not utilized, in whole or in part, for the intended purposes.

1. The reservation of fund balance may be established by the reduction of budgeted appropriations, from existing free fund balances or a combination of the two.

2. The reservation of fund balance shall be appropriated in the next original annual budget which is certified for taxes.

i. Fund balances reserved prior to the approval of the next fiscal year's budget by the Commissioner shall be appropriated in that budget and fund balances reserved after such approval shall be reserved and appropriated in the subsequent original annual budget which is certified for taxes.

ii. The annual independent audit shall contain a note to the financial statements indicating the amount of reserved fund balance reflected in the financial statements and the fiscal year in which it will be appropriated.

(e) A district board of education, upon the advice of the chief school administrator, may request an exception from the Commissioner to the provisions of this section if it can document that the imposition of such provisions would cause severe and immediate hardship or prevent it from providing a thorough and efficient system of education.

6:20-2A.11 Appropriation of free balance and restricted appropriations

(a) (No change.)

(b) A district board of education shall use appropriations exclusively for the specific purpose intended when associated with the following:

1. Approvals by the legal voters or the board of school estimate, as applicable, and/or the Commissioner to exceed the maximum permissible net budget (commonly referred to as a budget cap waiver) pursuant to N.J.S.A. 18A:7D-28;

2. Improvement (remedial) or corrective action plans approved by the Commissioner for districts in level II or level III monitoring pursuant to N.J.S.A. *[18A:7D-14]* ***18A:7A-14*** or educational improvement plans approved by the Commissioner for special needs districts pursuant to N.J.S.A. *[18A:7A-32]* ***18A:7D-32***; and

3. Written directives of the Commissioner or his or her authorized representatives for specific purposes deemed necessary for a thorough and efficient system of education in accordance with N.J.S.A. 18A:7A-1 et seq. and the New Jersey Constitution.

(c) Budgeted appropriations of special needs districts and other districts subject to the provisions of this section shall not be modified after the approval to advertise without the prior written permission of the Commissioner.

(d) A reservation of fund balance shall be established by district board of education resolution immediately upon the determination that appropriations subject to the provisions of (b) above will not be utilized or were not utilized, in whole or in part, for the intended purposes.

1. The reservation of fund balance may be established by the reduction of budgeted appropriations, from existing free fund balances or a combination of the two.

2. The reservation of fund balance shall be appropriated in the next original annual budget which is certified for taxes.

i. Fund balances reserved prior to the approval of the next fiscal year's budget by the Commissioner shall be appropriated in that budget and fund balances reserved after such approval shall be reserved and appropriated in the subsequent original annual budget which is certified for taxes.

ii. The annual independent audit shall contain a note to the financial statements indicating the amount of reserved fund balance reflected in the financial statements and the fiscal year in which it will be appropriated.

(e) A district board of education, upon the advice of the chief school administrator, may request an exception from the Commissioner, to the provisions of this section if it can document that the imposition of such provisions would cause severe and immediate hardship or prevent it from providing a thorough and efficient system of education.

6:20-3.1 Method of determining tuition rates for regular public schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 shall mean the local cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7D-6 and 18A:7D-16 that is, regular education classes: pre-school/kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special education classes by handicap classification.

1. All expenditures for each purpose except Federal and State special project expenditures and those specifically excluded in *[(b)5]* ***(d)5*** below shall be included.

2. "Average daily enrollment" for the purpose of determining the "actual cost per pupil," shall be the sum of the days present and absent of all pupils enrolled in the register or registers of the program for which the rate is being determined during the year divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

3. The "actual cost per pupil" for all grade and program categories shall be reduced as appropriate by State aid for programs for at-risk pupils and bilingual pupils received pursuant to N.J.S.A. 18A:7D-20 and 21, respectively, for both resident and nonresident pupils and State aid for minimum teacher salaries received pursuant to N.J.S.A. 18A:29-5. Such reductions shall be made in accordance with the option selected in (b) below for certification of the "actual cost per pupil" for each tuition category.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each receiving district board of education based upon either:

1. A report prepared and submitted annually by the receiving district board of education indicating the actual amounts of expenditures and adjustments whenever practicable or amounts equitably allocated and supported by documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or

2. A report prepared annually by the Commissioner for each receiving district board of education. This report shall determine the "actual cost per pupil" for each tuition category utilizing the following:

i. Expenditures reflected in the receiving district's annual independent audit;

ii. Supplemental data for average daily enrollment and items of expenditure detailed in (d)2 below submitted by category by the receiving district on a form prescribed by the Commissioner;

iii. Data contained on the receiving district's application for State aid for minimum teachers' salaries; and

iv. Criteria contained in (d) below.

(c) Once having determined to annually submit the report pursuant to (b)1 above to the Commissioner, a receiving district must submit a written request to the Commissioner in order to change to the certification method in (b)2 above. The request must indicate reason(s) for the change and shall be subject to the Commissioner's approval.

(d) The share of each item of expenditure for each grade/program category on the report in (b)2 above shall be determined on a pro rata or actual basis as follows:

1. The actual expenditures for each category as reflected in the receiving district's annual independent audit will be used for the following items:

i. Teachers' salaries for regular education classes; and

ii. Direct instructional expenditures for salaries, equipment and other expenses for special education classes.

2. Expenditures submitted by category on the supplemental data report and determined on either an actual basis or an equitable basis of allocation, such as square footage or average daily enrollment, selected by the receiving district and supported by documentation will be used for the following items:

i. Rental of land and buildings;

ii. Interest on lease purchase agreements;

iii. Student body activity expenditures of the general fund;

iv. Salaries and other expenses for local special projects;

v. Capital outlay; and

vi. Building use charges as defined in (d)6 and 7 below.

3. Expenditures for regular education class categories as reflected in the receiving district's annual independent audit will be allocated in proportion to the average daily enrollment in the grade categories for regular education classes for the following items:

i. Other salaries for instruction such as teaching assistants and aides as well as others providing or assisting directly in the instructional program;

ii. Textbooks;

iii. School library and audio/visual materials;

iv. Teaching supplies;

v. Purchased professional educational services;

vi. Purchased technical educational services;

vii. Equipment other than that specifically designated for special education or bilingual classes;

viii. Other direct expenses of regular education classes; and

ix. Direct instructional expenditures for salaries and other expenses for basic skills/remedial programs.

4. Expenditures as reflected in the receiving district's annual independent audit will be allocated in proportion to the average daily enrollment in each category for all categories listed in (a) above for the following items:

i. System-wide administration;

ii. Principals' and assistant principals' salaries;

iii. Salaries of supervisors of instruction;

iv. Salaries of other instructional staff for guidance counseling, psychological services, child study team services, school libraries and other professional services which support the instructional program;

v. Salaries of secretaries and clerical personnel which support the instructional program;

vi. Attendance and health;

vii. Contracted transportation or transportation provided by district owned vehicles for curricular activities such as field trips, athletic trips and other trips which are part of the instructional program;

viii. Operation and maintenance of plant expenditures except those for equipment;

ix. Fixed charges: Employee retirement and social security contributions except T.P.A.F. contributions, insurance and judgments including unemployment compensation (U.C.C.), interest on current loans, and other fixed charges except rental of land and buildings and interest on lease purchase agreements which are determined pursuant to (d)2 above and principal on lease purchase agreements and tuition which are excluded pursuant to (d)5 below;

x. Food service expenditures of the general fund; and

xi. Direct instructional expenditures for salaries, equipment and other expenses for bilingual education programs.

5. Expenditures will be excluded from the actual cost per pupil for tuition purposes for the following items:

i. Transportation to and from school which is paid by the resident district;

ii. Employee retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

iii. Principal on lease purchase agreements;

iv. Tuition;

v. Community services;

vi. Supplemental instruction, speech instruction and home instruction pursuant to N.J.S.A. 18A:7D-16 and which are funded for both resident and nonresident pupils;

vii. Resource room which is determined pursuant to (d)9 below and permitted as a separate charge over and above tuition for regular education classes; and

viii. Accredited adult education programs and nonaccredited adult and evening programs.

6. Building use charge is determined as follows:

i. (No change.)

ii. Multiply the debt service interest charges paid on debt for the buildings in which the program is located by the ratio of State support obtained in (d)6i above;

iii. Subtract the amount obtained in (d)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located;

iv. Distribute the amount obtained in (d)6iii above in accordance with (d)2 above.

7. Special building use charge is determined as follows:

i. Whenever a receiving district receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, except for special education programs, the receiving district may include in accordance with (d)2 above the amount expended for principal and interest on major repairs and major renewals of furniture, equipment and apparatus for the building in which the program is located, provided that:

(1)-(3) (No change.)

ii. Receiving districts for which this section is applicable may include in accordance with (d)2 above the entire rental on a site or school building acquired by a lease purchase agreement pursuant to N.J.S.A. 18A:20-4.2 provided that:

(1)-(2) (No change.)

8. The actual and prorated expenditures for all grade/program categories shall be adjusted to determine the "actual cost per pupil" for tuition purposes as follows:

i. State aid for programs for at-risk pupils received pursuant to N.J.S.A. 18A:7D-20 for both resident and nonresident pupils shall be deducted in proportion to the average daily enrollment for each category weighted on a basis consistent with N.J.S.A. 18A:7D-20. For this purpose the average weight for the grade categories in N.J.S.A. 18A:7D-20 shall be used to determine the weighted average daily enrollments for special education classes;

ii. State aid for programs for bilingual pupils received pursuant to N.J.S.A. 18A:7D-21 for both resident and nonresident pupils shall be deducted in proportion to the average daily enrollment for each category; and

iii. State aid for minimum teacher salaries received pursuant to N.J.S.A. 18A:29-5 shall be deducted for teachers on an actual basis and for other teaching staff members in proportion to the average daily enrollment for each category.

9. In addition to the tuition charged for each grade category, receiving district boards of education may charge for pupils receiving services in a resource room an additional amount up to the actual direct instructional cost per pupil for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the Division of Finance, State Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625).

(e) A tentative tuition charge shall be established for budgetary purposes by written contractual agreement between the receiving district board of education and the sending district board of education and such tentative charge shall equal an amount not in excess of the receiving district's estimated cost per pupil for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the estimated average daily enrollment of pupils expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

1. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a pupil enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the county superintendent. Such contractual agreement shall require the sending district board of education to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, shall require that all adjustments which shall be made because of a difference in cost or in the number of pupils sent shall only be made during the third school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments which may be necessary.

2. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of pupils in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per pupil in each tuition category for the ensuing school year and the tentative tuition charge no later than January 15 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education a copy of its calculations to determine the estimated cost per pupil in each tuition category for the ensuing school year no later than January 15 preceding the beginning of the ensuing school year. Such calculations shall be on a form prepared by the Commissioner.

3. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was greater than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year following the contract year.

4. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a pupil enrolled in a special education class, was less than the actual cost per pupil during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the third school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a pupil enrolled in a special education class shall be made no later than the end of the third school year following the contract year. The county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the third school year following the school year for which the tentative charge was paid would cause a hardship.

(f) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the receiving district board of education to establish the estimated cost per pupil for each tuition category for the ensuing school year.

(g) In any year in which the receiving district board of education can prove to the satisfaction of the Commissioner that the maintenance charge for the use of the school facilities is not adequate, the Commissioner may approve the additional charge for the use of such school facilities.

6:20-3.3 Method of determining tuition rates for county vocational schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-21 and 18A:54-20.1 shall mean the adjusted net cost per pupil in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with N.J.S.A. 18A:7D-14 and 18A:7D-16.

1. Tuition rates shall be determined for the following categories:

i. Regular vocational classes:

(1) Low cost;

(2) Moderate cost; and

(3) High cost;

ii. Special vocational classes:

(1) Low cost;

(2) Moderate cost; and

(3) High cost; and

iii. Special education classes by handicap classification.

2. All expenditures for each purpose except Federal and State grant project expenditures shall be included.

3. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

4. The "actual cost per pupil" for all tuition categories shall be adjusted to reflect net costs plus a reasonable surplus.

(b) The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each county vocational school district board of education utilizing the following:

1. Revenues, expenditures and fund balances reflected in the county vocational school's annual independent audit;

2. Average daily enrollment data by category submitted by the county vocational school on a form prescribed by the Commissioner; and

3. Criteria contained in (c) below.

(c) The share of each item of expenditure for each tuition category shall be determined on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment, and other expenses for the tuition categories listed in (a)1 above shall be allocated on an actual basis;

2. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for basic skills/remedial programs shall be allocated amongst regular vocational class categories listed in (a)1i above in proportion to the average daily enrollment for such categories;

3. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for other unrestricted instructional programs indirectly related to the

regular and special vocational classes listed in (a)1i and ii above shall be allocated amongst those categories in proportion to the average daily enrollment for such categories;

4. Expenditures indirectly related to all tuition categories listed in (a)1 above shall be allocated amongst all categories in proportion to the average daily enrollment for such categories for the following items:

i. System-wide administration;

ii. Undistributed instructional support services;

iii. Bilingual education programs;

iv. Attendance and health;

v. Transportation;

vi. Operation and maintenance of plant;

vii. Fixed charges except for retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

viii. Food service expenditures of the general fund;

ix. Student body activity expenditures of the general fund;

x. Community services; and

xi. Capital outlay.

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted to reflect the net cost by deducting in proportion to the average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:54-29.2, non-resident fees pursuant to N.J.S.A. 18A:54-20.1 and miscellaneous income less expenditures for supplementary, speech, and home instruction and post-secondary programs for which no tuition may be charged pursuant to N.J.S.A. 18A:7D-16 and 18A:54-20.1, respectively, and expenditures for resource room, special schools and evening schools.

1. Whenever funds have been appropriated by the county, the county vocational school district may charge the non-resident fee mentioned in (d) above in addition to tuition for any pupils who are not residents of the county. The fee per non-resident pupil shall not exceed the amount obtained by dividing the county appropriation by the number of pupils who are residents of the county pursuant to N.J.S.A. 18A:54-20.1.

(e) The net cost determined for each tuition category in (d) above shall be adjusted as appropriate to include in the certified maximum tuition rate for each category an amount which will permit the county vocational school district to maintain at its discretion for the year the tuition rate applies an ending general fund free balance not to exceed 7.5 percent of the district's net budget as defined in N.J.S.A. 18A:7D-3 which is consistent with the excess surplus provision of N.J.S.A. 18A:7D-4.

1. If the district's ending general fund free balance is less than 7.5 percent of its net budget for the year the tuition rate applies, the difference will be allocated amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the district's ending general fund free balance is equal to or greater than 7.5 percent of its net budget for the year the tuition rate applies, no amount shall be added to the net cost of any tuition category; and if such balance is in excess of 7.5 percent of the subsequent year's net budget, the district may be subject to a reduction of foundation aid due to excess surplus pursuant to N.J.A.C. 6:20-5.8.

(f) The tuition for each program category shall be at the same rate per pupil for each sending district whether within or without the county pursuant to N.J.S.A. 18A:54-20.1.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the non-resident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6:20-3.1(e) except that the tentative tuition rates shall be based on the county vocational school district's estimated adjusted net cost per pupil consistent with the calculation in (c), (d) and (e) above.

(h) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the county vocational school district boards of education to establish the estimated adjusted net cost per pupil for each tuition category (tentative tuition rates) for the ensuing school year.

6:20-3.4 Method of determining tuition rates for county special services schools

(a) The term "actual cost per pupil" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-31 shall mean the adjusted net cost per pupil in average daily enrollment for special education classes, based upon audited expenditures for that year for each handicap classification contained in N.J.S.A. 18A:7D-16.

1. All expenditures for each purpose except Federal and State grant project expenditures shall be included.

2. "Average daily enrollment" for the purpose of determining the "actual cost per pupil" shall be the sum of the days present and absent of all pupils enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.

3. The "actual cost per pupil" for all tuition categories shall be adjusted to reflect net costs plus a reasonable surplus.

(b) The Commissioner shall certify the "actual cost per pupil" for a given year for each special education class by handicap classification for each county special services school district board of education utilizing the following:

1. Revenues, expenditures and fund balances reflected in the county special services school's annual independent audit;

2. Average daily enrollment data by category submitted by the county special services school on a form prescribed by the Commissioner; and

3. Criteria contained in (c) below.

(c) The share of each item of expenditure for each tuition category (special education classes by handicap classification) shall be determined on a pro rata or actual basis as follows:

1. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for each tuition category shall be allocated on an actual basis;

2. Expenditures indirectly related to all tuition categories shall be allocated amongst all categories in proportion to the average daily enrollment for such categories for the following items:

i. System-wide administration;

ii. Undistributed instructional support services;

iii. Bilingual education programs;

iv. Direct instructional expenditures for salaries, textbooks, teaching supplies, purchased services, equipment and other expenses for other unrestricted instructional programs indirectly related to the special education classes;

v. Attendance and health;

vi. Transportation;

vii. Operation and maintenance of plant;

viii. Fixed charges except for retirement and social security contributions for T.P.A.F. members which are fully funded by the State;

xi. Food service expenditures of the general fund;

x. Student body activity expenditures of the general fund;

xi. Community services; and

xii. Capital outlay.

(d) The total direct and indirect expenditures determined for each tuition category in (c) above shall be adjusted to reflect the net cost by deducting in proportion to the average daily enrollment for each tuition category the amount obtained from the sum of all State aid (except State grants), county appropriations pursuant to N.J.S.A. 18A:46-41, non-resident fees pursuant to N.J.S.A. 18A:46-31 and miscellaneous income less expenditures for supplementary, speech and home instruction for which no tuition may be charged pursuant to N.J.S.A. 18A:7D-16 and expenditures for resource room.

1. Whenever funds have been appropriated by the county, the county special services school district may charge the non-resident fee mentioned in (d) above in addition to tuition for any pupils who are not residents of the county. The fee per non-resident pupil shall not exceed the amount obtained by dividing the county appropriation

by the number of pupils who are residents of the county pursuant to N.J.S.A. 18A:46-31.

(e) The net cost determined for each tuition category in (d) above shall be adjusted as appropriate to include in the certified maximum tuition rate for each category an amount which will permit the county special services school district to maintain at its discretion for the year the tuition rate applies on ending general fund free balance not to exceed 7.5 percent of the district's net budget as defined in N.J.S.A. 18A:7D-3 which is consistent with the excess surplus provision of N.J.S.A. 18A:7D-4.

1. If the district's ending general fund free balance is less than 7.5 percent of its net budget for the year the tuition rate applies, the difference will be allocated amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the district's ending general fund free balance is equal to or greater than 7.5 percent of its net budget for the year the tuition rate applies, no amount shall be added to the net cost of any tuition category; and if such balance is in excess 7.5 percent of the subsequent year's net budget, the district may be subject to a reduction of foundation aid due to excess surplus pursuant to N.J.A.C. 6:20-5.8.

(f) The tuition for each category of special education class shall be at the same rate per pupil for each sending district whether within or without the county pursuant to N.J.S.A. 18A:46-31.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the non-resident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made in accordance with N.J.A.C. 6:20-3.1(e) except that the tentative tuition rates shall be based on the county special services school district's estimated adjusted net cost per pupil consistent with the calculation in (c), (d) and (e) above.

(h) The Commissioner shall prepare the necessary forms to certify the "actual cost per pupil" for each tuition category according to the rules in this section. The Commissioner shall also prepare the contract forms and the forms to be used by the county special services school district board of education to establish the estimated adjusted net cost per pupil for each tuition category (tentative tuition rates) for the ensuing school year.

(i) A new county special services school district board of education shall use the method of determining tentative tuition rates contained in N.J.A.C. 6:20-3.2.

6:20-5.8 Excess surplus calculation

(a) Beginning in fiscal year 1992-93, a district board of education without an *[approval]* ***approved*** surplus reduction plan shall have its foundation aid reduced pursuant to N.J.S.A. 18A:7D-4 by the amount of excess surplus, equal to any beginning general fund free balance for the prebudget year which exceeds 7.5 percent of the district's net budget for the prebudget year, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The terms, net budget and prebudget year, are defined in N.J.S.A. 18A:7D-3. The Division of Finance shall calculate excess surplus as follows:

1. For the purpose of this calculation the beginning general fund free balance for the prebudget year shall equal the ending general fund free balance for the fiscal year prior to the prebudget year as reflected in the district board of education's annual independent audit less any portion of that free balance appropriated in the prebudget year in the budget certified for taxes;

i. The general fund free balance shall be exclusive of funds held in the capital reserve account; and

ii. The general fund free balance shall be exclusive of reserves not available for expenditure or segregated legally for a specific future use;

2. For district boards of education which receive Federal impact aid, the beginning general fund free balance obtained in (a)1 above shall be multiplied by the inverse percentage of impact aid to all general fund revenues for the prebudget year in order to determine the portion of beginning general fund free balance not associated with impact aid; and

3. Any beginning general fund free balance of the prebudget year calculated in (a)1 or 2 above, as applicable, which exceeds 7.5 percent of the net budget for the prebudget year shall be considered excess surplus and deducted from foundation aid for the budget year.

(b) A district board of education that has an approved surplus reduction plan in accordance with the provisions of N.J.S.A. 18A:7D-29 shall have its foundation aid reduced pursuant to N.J.S.A. 18A:7D-4 in a manner consistent with the calculation in (a) above except as follows:

1. In fiscal year 1992-93, excess surplus shall equal any beginning general fund free balance for the budget year which exceeds the percentage of the district's net budget for the prebudget year as stipulated in the approved surplus reduction plan, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The associated reduction in foundation aid shall be made in fiscal year 1993-94 because the beginning general fund free balance for the budget year will not be available until after the calculation of foundation aid for fiscal year 1992-93 and the approval of the budget for that year.

2. In fiscal year 1993-94, excess surplus shall equal any beginning general fund free balance for the budget year which exceeds 7.5 percent of the district's net budget for the prebudget year, after deducting from the balance any Federal funds provided to a district pursuant to P.L. 81-874, 20 U.S.C. 236 (impact aid). The associated reduction in foundation aid shall be made in fiscal year 1994-95 for the same reason stated in (b)1 above.

3. Beginning in fiscal year 1994-95, excess surplus shall be calculated and foundation aid reduced for all districts in strict accordance with (a) above.

(c) District boards of education which do not receive foundation aid are not subject to the excess surplus deduction.

(d) District boards of education will be notified of the amount of excess surplus and the corresponding reduction in foundation aid as part of the annual State aid notice.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

WATER TECHNICAL PROGRAMS

Bureau of Marine Water Classification and Analysis Shellfish Growing Water Classification

Adopted Amendments: N.J.A.C. 7:12-1.1, 2.1, 3.2, 4.1, 4.2, 7.1, 9.8 and 9.10

Proposed: October 7, 1991 at 23 N.J.R. 2993(a).

Adopted: November 18, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: November 19, 1991 as R.1991 d.592, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEPE Docket Number: 036-91-09.

Effective Date: December 16, 1991.

Operative Date: January 1, 1992.

Expiration Date: April 11, 1993.

Summary of Public Comments and Agency Responses:

These amendments were proposed on October 7, 1991, at 23 N.J.R. 2993(a). The comment period closed on November 6, 1991.

No comments were received.

Summary of Agency-Initiated Changes:

The Department has made the following changes upon adoption of these amendments to the Shellfish Growing Water Classification Rules:

1. At N.J.A.C. 7:12-9.10(b), the Permit Number has been changed from 6 to 7. This was an inadvertent typographical error, and is corrected in this adoption to correspond to the rule text currently in effect.

2. Two errors were published in the Summary to the proposal: (1) the net upgrade should have read "13,743 acres" instead of "13,497

acres"; and (2) in the table on 23 N.J.R. 2994, Chart 9 Grassy Sound-Richardson Sound should have read "Prohibited to Seasonal" instead of "Approved to Seasonal". The number of licensed shellfishermen published in the Social Impact in the proposal should have read "13,000" instead of "23,000." None of these inadvertent errors has a major effect on the intent of the rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

7:12-1.1 General provisions

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

(j) Designated areas utilized in conjunction with one of the Special Permit Programs under N.J.A.C. 7:12-9 which are leased from the State and may contain shellfish harvested from the Seasonal Special Restricted or Special Restricted area, are under the Relay Program, N.J.A.C. 7:12-9.8, Transfer Program, N.J.A.C. 7:12-9.9, and Transplant Programs, N.J.A.C. 7:12-9.10, and may be harvested only upon notification by the Bureau of Marine Water Classification and Analysis, Division of Water Resources, Non-leased lots within these designated areas are not available to harvest of shellfish at any time.

7:12-2.1 Shellfish growing water classification—Prohibited

(a) The following shellfish growing waters are classified Prohibited:

1.-15. (No change.)

16. The Wildwoods Area (Note: Portions are designated as Special Restricted and Seasonal. See: N.J.A.C. 7:12-3 and 4):

i.-iii. (No change.)

iv. All of Richardson Sound within a line beginning at the western end of the Route 47 bridge to a Department maintained marker at the mouth of Gar Creek, then proceeding easterly to the northernmost tip of Wishbone Island, then along the shoreline of Wishbone Island to its easternmost point, then proceeding easterly to another Department maintained marker on the northernmost tip of Hildreth Meadow, then southwesterly along the shoreline of Hildreth Meadow to the eastern end of the Route 47 bridge, then northwesterly along the bridge to the point of origin at the western end of the bridge:

v. All of Old Turtle Thorofare and its tributaries north and east of its junction with Tempe Creek;

vi.-xiv. (No change.)

18. Delaware Bay area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4:

i. All that portion of Delaware Bay contained within a line beginning at the Cape May Lighthouse (Fl 15 sec 165ft 24 M) and bearing approximately 336 degrees T to Red Number 8 (R "8" Fl 4sec Bell) then bearing approximately 054 degrees T to the standpipe at North Cape May and terminating;

ii.-vii. (No change.)

19. (No change.)

20. Atlantic Ocean:

i.-viii. (No change.)

ix. All of the ocean waters inshore of a line beginning at the base of the groin located on the beach near the intersection of Ocean Avenue and 2nd Avenue, City of North Wildwood, and continuing along that groin in a northeasterly direction to its outermost tip, then bearing approximately 147 degrees T towards a point with coordinates of latitude 38 degrees 0.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as R "8" Fl R 4sec BELL) for approximately 0.5 nautical miles until it intersects a line bearing 044 degrees T from the light at the end of the eastern jetty of Cape May Inlet charted as Fl 4s 30ft 7M and passing tangent to the southeasternmost point of land of the City of North Wildwood. This point of intersecting lines has coordinates of latitude 38 degrees 59.9 minutes N., longitude 74 degrees 47.0 minutes West. The line then continues from the point of intersection bearing approximately 224 degrees T (reciprocal 44 degrees T) along that line towards the above noted light at the end of the eastern jetty of Cape May Inlet for approximately 2.8 nautical miles until it intersects a line bearing approximately 130 degrees T from the standpipe located on the corner of Park Boulevard and Myrtle Road, Borough of Wildwood Crest, with coordinates of latitude 38 degrees 58.4 minutes N., longitude 74 degrees 50.4 minutes W. This point of intersecting lines is approximately 0.4 nautical miles from the shoreline and has coordinates of latitude 38 degrees 57.9 minutes N., longitude 74 degrees 49.6 minutes W. Then proceeding in a southeasterly direction along that line to a point approximately 1.5 nautical miles from the shoreline with coordinates of latitude 38 degrees 57.2 minutes N., longitude 74 degrees 48.5 minutes W., then proceeding parallel to the shoreline in a southwesterly direction 1.5 nautical miles offshore for approximately 2.4 nautical miles to a point with coordinates of latitude 38 degrees 55.4 minutes N., longitude 74 degrees 50.5 minutes W., then bearing approximately 310 degrees T (reciprocal 130 degrees T) for approximately 1.2 nautical miles to the light noted above at the end of the eastern jetty of Cape May Inlet, then along that jetty to the shore and terminating;

x.-xi. (No change.)

xii. All those water inshore of a line beginning at the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and bearing approximately 151 degrees T for approximately 0.25 nautical miles from the shoreline to a point with coordinates of latitude 38 degrees 56.2 minutes N., and longitude 74 degrees 53.2 minutes W., then parallel along the shoreline in a westerly direction, 0.25 nautical miles offshore, for approximately 2.4 nautical miles to a point with coordinates of latitude 38 degrees 55.5 minutes N., longitude 74 degrees 56.1 minutes W., then bearing approximately 356 degrees T (reciprocal 176 degrees T) for approximately 0.2 nautical miles to the southern tip of Third Avenue groin located at the western end of Beach Avenue, City of Cape May, then along that groin to the shore and terminating.

7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted:

1.-14. (No change.)

15. Cedar Run area. (Note: A portion is designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of Cedar Run Cove, Creek and Tributaries north and west (upstream) of a straight line beginning at Horse Point and bearing approximately 037 degrees T to a point of land on the opposite side of the cover.

ii. (No change.)

16.-23. (No change.)

24. Pleasantville-Northfield-Linwood-Margate-Ventnor-Longport area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i.-ii. (No change.)

iii. All of Great Thorofare and all of Beach Thorofare from the Route 40 Bridge (near Bader Field in Atlantic City) to a line from the tip of the stone jetty at the end of Atlantic Avenue (Longport) and bearing approximately 336 degrees T across beach Thorofare to the center of the Longport Blvd.-Route 152 bridge, that crosses an unnamed creek on the unnamed island immediately north and west of the city of Longport;

iv.-vi. (No change.)

25. Ocean City-Somers Point area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i.-vii. (No change.)

viii. All of those waters in Ship Channel within a line bearing approximately 190 degrees T through a Department maintained marker on the northern shore of Ship Channel approximately 1,000 feet west of the mouth of the Anchorage Point Lagoon, to another Department maintained marker on the southern shore of Ship Channel, then bearing approximately 066 degrees T to another Department maintained marker which is approximately 1,000 feet east of the mouth of the Anchorage Point Lagoon, then proceeding northwesterly along the shoreline of Ship Channel, across the mouth of the Anchorage Point Lagoon and to the point of origin at the Department maintained marker.

26.-29-(No change.)

30. The Wildwoods area:

i. Those waters of Grassy Sound Channel from the Ocean Drive Bridge (Route 619) southwest to a line bearing approximately 062 degrees T through Fl R 8ft "8";

Recodify existing i.-ii. as ii.-iii. (No change in text.)

31.-33. (No change.)

7:12-4.1 Seasonally approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May through October 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly;

1.-6. (No change.)

7. Ocean City-Somers Point Area-Great Egg Harbor Bay: Seasonal-Special Restricted May 1 through October 31, yearly, Approved November 1 through April 30, yearly:

i. (No change.)

ii. All the waters of Ship Channel contained within a line from the base of Somers Point-Ocean City Bridge in Somers Point, then along the bridge to the northern end of the bascule, then bearing approximately 056 degrees T to Flashing light "1" (FL "1"), then bearing approximately 310 degrees T to a point of intersection with the shoreline of Ship Channel, then proceeding westerly along the shoreline of Ship Channel to the point of origin at the base of Somers Point-Ocean City Bridge terminating.

iii. (No change.)

iv. All of the waters of Great Egg Harbor Bay and its tributaries north of a line from the tip of the municipal pier at the boat ramp at Kennedy Parks, Somers Point, to the tip of a privately maintained pier (High Bank Apartments, Broadway, Somers Point) which is just west of the municipal pier, then bearing approximately 260 degrees T to a Department maintained marker located on the northern shore of Drag Channel.

v. All of the waters of Ship Channel within a line bearing approximately 246 degrees T through a Department maintained marker located on the northern shore of Ship Channel approximately 1,000 feet from the mouth of the Anchorage Point Lagoon to another Department maintained marker located on the southern shore of Ship Channel, then bearing approximately 135 degrees T to another Department maintained marker on the southern shore of Ship Channel, then bearing approximately 140 degrees T to buoy N "2", then bearing approximately 008 degrees T to another Department maintained marker at the eastern end of Anchorage Point, then proceeding along the shoreline of Ship Channel to the point of origin approximately 1,000 feet from the mouth of the Anchorage Point Lagoon.

8.-9. (No change.)

10. Jenkins Sound-Grassy Sound-Richardson Sound: Seasonal-Special Restricted May 1 through October 31, yearly, Approved November 1 through April 30, yearly:

i. (No chane.)

ii. All of Grassy Sound Channel and Hereford Inlet from the Ocean Drive Bridge (Route 619) to a line bearing approximately 030 degrees T through Fl 10S 57ft 24M at Hereford Inlet.

iii. All of Grassy Sound contained within a line beginning at the southern end of the railroad bridge in West Wildwood along the shoreline of Grassy Sound in an easterly direction, across the mouth of the Wildwood Canal and Beach Creek to a Department maintained marker at Grassy Point, then bearing approximately 257 degrees T to the northern end of the railroad bridge at Hann Point, then across Grassy Sound Channel to the point of origin at the southern end of the railroad bridge.

iv. Those waters of Old Turtle Thorofare from the mouth of Old Turtle Thorofare at Richardson Sound to a line created by two Department maintained markers on opposite banks of Old Turtle Thorofare just south of its junction with Tempe Creek.

11. (No change.)

7:12-4.2 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31, yearly)

(a) The following shellfish growing waters, designated on that charts referred to in N.J.A.C. 7:12-1.1, shall be Special Restricted for harvest of shellfish from May 1 through December 31 yearly and Approved January 1 through April 30 yearly:

1.-3. (No change.)

4. Cedar Run area: Seasonal-Special Restricted May 1 through December 31, yearly, Approved January 1 through April 30 yearly:

i. (Reserved)

5.-6. (No change.)

7. Brigantine area: Seasonal-Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. An area adjacent to the City of Brigantine inshore from a line beginning at the telephone pole (A4229) at the north end of 13th Street North and bearing approximately 325 degrees T through Steelman Bay to Flashing light 5 (Fl "5"), then to the northwest tip of George's Dock (1427 North Shore Drive) then proceeding in a westerly direction to the first pier end west of the Brigantine Country Club (1048 North Shore Drive), then to the pier end at 1002 North Shore Drive (next to dead end street), then to the third pier end west of the Lafayette Boulevard Street end (860 North Shore Drive), then from pier end to 800 West Shore Drive, then to pier end at 174 West Shore Drive and bearing approximately 173 degrees T into Shore Drive and bearing approximately 173 degrees T into Wading Thorofare until it intersects a line connecting Flashing lights 6 and 8 (Fl R "6" and Fl R "8" in Wading Thorofare, then along the line connecting Flashing lights 6 and 8 (Fl "6" and Fl "8") to Flashing light 8, then bearing approximately 211 degrees T to a point of land on the west shore of Bonita Tideway, then along the shoreline in a southerly direction to the first unnamed creek past Sand Creek, then bearing approximately 030 degrees T to the point of land on the opposite shore and terminating.

ii. That portion of Broad Creek immediately south of Sunflower Island (U.S.G.S. quad designation), between the Brigantine shoreline and a line from a Department maintained marker on Boot Island (U.S.G.S. quad designation) and bearing approximately 238 degrees T across Broad Creek, to another Department maintained marker on the opposite shore and terminating.

8. (No change.)

7:12-7.1 Sanctuaries

(a) The Department may establish areas known as sanctuaries to be utilized for research purposes such as spawner areas. Sanctuaries shall be delineated by the Department. Shellfish may be relocated to such an area to suppply brood stock to re-establish populations elsewhere. When shellfish from waters other than Approved are relocated to areas classified as Approved or Seasonal Approved, the relocation site (sanctuary) will be Prohibited to the harvest of shellfish.

7:12-9.8 Relay program

(A) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the shellfisheries rules which appear at N.J.A.C. 7:25-15.1.

1.-14. (No change.)

15. Shellfish taken from the designated relay section shall be bagged by the participant, to the imprinted line on the bag, in bags available to the participant from the Department. These bags will be provided, at cost, to the participant through the Leeds Point office of this bureau. No unmarked bags will be allowed in to the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvester's name and/or buyer's name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the Department. The vehicles will be sealed by the Department, or

an agent designated by the Department, at the harvest landing site and opened by the Department or a designated agent at the off-loading site. The enforcement unit may specify the route to be taken from the harvest landing site to the planting off-loading site. Shellfish purchased from a holder of a valid Hard clam depuration permit (Number 9) shall be handled under the same conditions.

16.-21. (No change.)

7:12-9.10 Transplant program

(a) (No change.)

(b) Permit No. *[6]* **7** shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1. (No change.)

2. This permit is limited to persons having a leased shellfish lot(s) in Approved waters and/or Seasonally Approved waters and a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife. The applicant shall provide a chart delineating the leased grounds to which the shellfish are to be transplanted. This chart shall be validated by the appropriate Bureau of Shellfisheries Office at Nacote Creek or Bivalve. Additionally, a chart showing the area from which the shellfish are to be harvested shall be provided by the applicant.

3.-10. (No change.)

(c) (No change.)

(a)

OFFICE OF LEGAL AFFAIRS

Notice of Administrative Correction

Water Pollution Control Act Rules

Procedures to Request an Adjudicatory Hearing to Contest an Administrative Order, a Notice of Civil Administrative Penalty Assessment or a Notice of Civil Administrative Cost Assessment; Procedures for Conducting Adjudicatory Hearings

N.J.A.C. 7:14-8.4

Take notice that the Department of Environmental Protection and Energy has discovered two errors in the text of N.J.A.C. 7:14-8.4(a)9 currently published in the New Jersey Administrative Code. References in N.J.A.C. 7:14-8.4(a)9i and ii to N.J.A.C. 7:14-8 Appendix A are incorrect; the correct reference would be to Appendix D, which contains the document wording referred to in those subparagraphs. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment, or a notice of civil administrative cost assessment issued pursuant to the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act, the violator shall submit the following information in writing to the Department:

1.-8. (No change.)

9. If the violator is not a local agency, financial assurance in the full amount of the civil administrative penalty in the notice of civil administrative penalty assessment as follows:

i. Financial assurance, in the form of a surety bond guaranteeing payment, an irrevocable letter of credit or a fully funded trust, worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix [A] **D** or in another form the Department individually approves in writing for this purpose; and

ii. A certification of acknowledgment worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix [A] **D**.

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

HEALTH

(b)

DIVISION OF FAMILY HEALTH SERVICES

Catastrophic Illness in Children Relief Fund Program

Adopted Amendments: N.J.A.C. 8:18

Proposed: September 3, 1991 at 23 N.J.R. 2564(a).

Adopted: November 19, 1991 by Catastrophic Illness in Children Relief Fund Commission, Frances J. Dunston, M.D., M.P.H., Chairman and Commissioner, Department of Health.

Filed: November 20, 1991 as R.1991 d.595, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-154i.

Effective Date: December 16, 1991.

Expiration Date: November 6, 1994.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on September 3, 1991. During the comment period, which closed October 3, 1991, four comments were received by various agencies. A summary of the comments follows:

COMMENT: The Mental Health Association in New Jersey, Monmouth County Office of Social Services Foundation and Ocean County Special Child Health Services County Case Management unit support the proposed amendment in its entirety, particularly clarifying mental health and substance abuse conditions as eligible expenses, increasing the existing cap to $100,000 and changing to a consecutive 12-month period of time as the prior time for measuring income and expenditures.

RESPONSE: The Commission appreciates the support of the Mental Health Association in New Jersey, Monmouth County Office of Social Services Foundation and Ocean County Special Child Health Services County Case Management Unit. The Department looks forward to working with each agency to continue support and local outreach efforts to encourage families to apply to the program.

COMMENT: The Camden County Special Child Health Services County Case Management Unit did not support the inclusion of home modifications and the purchase of specialized handicapped equipped vehicles as catastrophic expenses.

RESPONSE: The Commission acknowledges the comment of the Camden County Special Child Health Services County Case Management Unit. The intent of the legislation is to provide financial relief for a child's extraordinary expenses that are otherwise uncovered by insurance. Since the statute clearly defines "catastrophic" in financial terms, families may apply for assistance for routine medical expenses or for medically-related expenses normally not covered by insurance. The commission recognizes the many financial obstacles families incur in order to maintain a chronically ill child with long-term care needs or an acutely-ill child at home; and, it is interested in providing financial assistance to these families so they do not have to experience financial ruin. Additionally, the program considers retroactively all expenses that are medically authorized by a licensed physician. For families who have already incurred these non-traditional expenses, they are a direct result of a child's illness or condition. From its beginning, the program has considered these expenses.

Summary of Agency-Initiated Changes:

N.J.A.C. 8:18-1.4 has been revised to clarify that the local agency will forward to the State Office applications for all children who have applied to the program. This change has been made to align the amended local agency's responsibilities with those of the State Office, under N.J.A.C. 8:18-1.11(a)1.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

8:18-1.2 Definitions

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

. . .

"Income" means the following:

1.-20. (No change.)

21. Income does not include the following money receipts: withdrawals from a bank; sale of property, house or car; tax refunds; gifts; one-time insurance payments; or compensation from injury, unless the injury directly relates to a child's condition which is the basis for an application being made to the Fund. Also disregarded is non-cash income and any money raised by fundraising.

"Local agency" means the agency responsible for assisting families in the application process, forwarding applications to the State Office, and making appropriate referrals to other state programs and benefits.

8:18-1.4 Initial application process

[(a)] Applications may be submitted on a year-round basis to the local agency. The name, address, and phone number for the local agencies shall be available from the State Office. The local agency shall forward written applications on forms provided by the State Office for those children who *[qualify]* ***have applied*** to the State Office.

8:18-1.5 State Office and Commission review process

(a) Upon receipt of the application from the local agency, the State Office shall consider the providers' and vendors' charges submitted.

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

8:18-1.7 Annual cap

The amount of Fund's disbursements on behalf of a child shall be capped at $100,000 per year.

8:18-1.10 Local agency responsibilities

(a) The local agency shall make referrals and assist in the application process for other programs and benefits (for example, Medicaid, Hospital Charity Care, and other programs), where applicable.

8:18-1.11 State Office responsibilities

(a) The State Office shall:

1. Screen applications to determine whether a child's medical expenses exceed 30 percent of family's income with income of $100,000 or less, or 40 percent of family income greater than $100,000;

2. Maintain oversight to the local agency responsible for assisting families with Program, accepting applications and providing local outreach/information;

Recodify existing 1-5 as 3-7. (No change in text.)

8:18-1.13 Time period of measuring expenses and income

In screening a child/family for eligibility for the Fund, expenses and income shall be measured by any 12 (consecutive) month period which ends the last day of the month preceding a family's initial application to the Fund. The income will be reported for the same 12 (consecutive) month period back to January 1988. In addition, a supplemental statement of current income and expenses may be submitted at the request of the State Office. Applications shall be accepted any time throughout the year.

8:18-1.14 Eligible health services

(a) Categories of incurred health and health-related expenses eligible for consideration in assessing whether a family has reached its 30 percent/40 percent eligibility threshold include, but are not limited to, the following:

1. (No change.)

2. Specialized pediatric ambulatory care, including physician-authorized rehabilitative therapies (for example, speech *[occupations]* ***occupational***, and physical), physician-authorized care for treatment of addiction disorders and mental health care, dental care, eye care, chiropractic care;

3. Care in an acute hospital in New Jersey (treatment for acute and chronic conditions and treatment of addiction disorders and mental health conditions);

4. Care in acute hospitals in other states (treatment for acute and chronic conditions, and treatment of addiction disorders and mental health conditions as well as highly specialized care such as organ transplants);

5.-11. (No change.)

12. Family transportation and travel-related expenses including, but not limited to, mileage allowance, tolls, parking receipts, temporary shelter costs and telephone calls related to medical condition;

13. Fifty percent of a health insurance premium including supplemental and dependent coverage that is paid by a family;

14. Home modification;

15. Purchase of a specialized, modified vehicle; and

16. Experimental medical treatment/experimental drugs which are recognized by Federal and State agencies or licensed health care providers. Applications involving experimental treatment may require additional review.

8:18-1.15 Ineligible health services

(a) Categories of health and health-related expenses which are not eligible for consideration in assessing whether a family has reached its 30 percent/40 percent eligibility threshold shall include, but are not limited to, the following:

1.-2. (No change.)

8:18-1.16 Administration of payments

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

(c) When the Commission decides that a purchase of insurance may reduce the need for a family to reapply to the Fund in the next year, it shall consider to fund the purchase of insurance for one year.

8:18-1.17 Appeals process

(a) The following applies to the appeals process:

1. (No change.)

2. Appeals must be received at the above address no later than 30 days from the date of notice of the determination made by the State Office. The Commission may waive the deadline for cause.

3.-6. (No change.)

(b) (No change in text.)

(a)

DIVISION OF HOSPITAL REIMBURSEMENT

Adopted Concurrent Amendments: N.J.A.C. 8:31B-3.65 and 3.71

Proposed: October 7, 1991 at 23 N.J.R. 3042(a).

Adopted: November 14, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: November 15, 1991 as R.1991 d.589, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: November 15, 1991.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

COMMENTER: Community Medical Center

COMMENTS: There was no basis to adopt these rules on an emergency basis especially with regard to cash flow adjustments. Imminent peril is said to exist because of the large one-time increase in hospitals' rates expected from the voluntary rate settlement process, but cash flow adjustments are made annually. The regulation gives the Commission authority to consider the projected financial impact of rate adjustments; no special consideration is necessary, however, for annual cash flow adjustments.

The cap originally approved by the Hospital Rate Setting Commission was adopted without sufficient consideration of outside testimony or advice. There is no basis for the specific 6.5 percent and three percent caps adopted, or for a distinction between settlement and non-settlement hospitals.

RESPONSE: The rule authorizes the Hospital Rate Setting Commission to consider the timing of adjustments or modifications to the Schedule of Rates and to cap the annual payout of these adjustments if necessary to avoid sudden large rate increases. The genesis of this rule was the late 1990 approval of an unprecedented level of settlement dollars that could have led to rate increases of $1 billion if applied in calendar year 1991. To prevent this, the Department recommended a cap on the amount of settlement dollars which could flow into hospital rates in any one year. The precise nature of prior year rate adjustments is unrelated to their projected financial impact on those who pay for health care. Cash flow adjustments of this magnitude are unlikely to be necessary on a routine basis in the future, especially since the Department has proposed eliminating most components of final reconciliation beginning in 1992. The specific caps proposed for 1991 were developed by considering information about the affordability of health care for New Jersey payers as well as the rate increases required by hospitals. A higher cap for hospitals accepting the voluntary rate settlement is appropriate since these hospitals will have no future opportunity for rate increases based on prior year appeals and final reconciliations. The Department intends to review application of a cap annually based on payer affordability and hospital financial needs.

COMMENTER: Bergen Pines County Hospital

COMMENTS: The emergency rule puts undue financial hardship on Bergen Pines County Hospital. The hospital has subsequently met with the Department of Health and the Hospital Rate Setting Commission to discuss its position.

RESPONSE: As is the case with all rules, if strict application creates an undue hardship for an individual institution, the hospital can request relief from the Hospital Rate Setting Commission. The Hospital Rate Setting Commission has entertained Bergen Pines' request for waiver of the strict application of the regulations and did not find reason to grant it.

In proposing specific cap levels for 1991 as well as subsequent years, the Department must balance the financial considerations affecting hospitals, payers, and consumers of health care. Very large rate increases, as would have occurred in 1991 without a cap, would pose undue financial hardship on those who pay for health care in the State of New Jersey.

Full text of the adoption follows.

8:31B-3.65 Schedule of Rates Adjustments

(a) For 1991 rates issued pursuant to these rules, except as modified, shall be effective as of January 1 of the rate year, except for fiscal year hospitals whose rates shall be effective as of the first day of the "fiscal" rate year. Unless a substantial danger to the ability of a needed hospital to provide adequate care shall result, adjustments or modifications which may be approved during the rate period shall be implemented through an appropriate adjustment to the Schedule of Rates for a given hospital, groups of hospitals, DRG or group of DRGs, and shall take effect at the beginning of the following rate year. At the direction of the Commission, the Commissioner shall make an appropriate adjustment to the Schedules of Rates for affected Diagnosis Related Group(s), indirect costs, revenue, or payer adjustments. The hospital(s) shall make an appropriate adjustment to its charge master(s), and third party payers shall make appropriate adjustments to their case-mix adjusted periodic intermittent payment. However, where appropriate, the Commission may order lump sum, pro rata, automatic, periodic or deferred adjustments. All adjustments shall be made prospectively. (See also N.J.A.C. 8:31B-3.42.)

(b) In making adjustments under this section, the Commission may consider their projected financial impact on hospitals, payers, consumers, and the health care system as a whole. Based on these projections, the Commission may authorize a payment schedule to minimize adverse impacts; it may stipulate a reasonable time period during which the adjustments will be paid, and the amounts to be paid in each time segment of the stated period; and the schedule may be applied statewide to similarly-situated hospitals. Accordingly, there will be a cap on adjustments due hospitals for rate year 1991 to reduce the impact of the almost $1 billion increase in hospitals' rates occassioned by cash flow adjustments and settlement of outstanding rate appeals in 1990.

1. Hospitals not participating in the 1990 voluntary settlement program will have their 1991 cash flow adjustments capped at three percent of preliminary 1991 gross revenue requirements.

2. Hospitals participating in the 1990 voluntary settlement program will have their cash flow and settlement adjustments capped at 6.5 percent of preliminary 1991 gross revenue requirements.

Recodify (b) as (c) (No change in text.)

8:31B-3.71 Reconciliation and Adjustment

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

(c) Reconciliation of the Schedule of Rates shall take place pending calculation of actual experiences for a reporting period. Reports will be required from hospitals to monitor such reconciliations on a current basis and adjustments will be made on an annual basis culminating in a flow of reports back to hospitals and a compliance adjustment to the Rate order determined by the Commissioner. All reconciliation adjustments to/from hospitals will include adjustments pursuant to N.J.A.C. 8:31B-3.65(b), Schedule of Rates Adjustments.

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Garden State Scholarships
Academic Requirements

Adopted Amendment: N.J.A.C. 9:7-4.2

Proposed: August 5, 1991 at 23 N.J.R. 2211(a).

Adopted: November 19, 1991 by the Student Assistance Board, M. Wilma Harris, Chairperson.

Filed: November 20, 1991 as R.1991 d.599, **without change.**

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-26.9.

Effective Date: December 16, 1991.

Expiration Date: February 28, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

9:7-4.2 Academic requirements

(a)-(f) (No change.)

(g) Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top 20 percent of the graduating class at the end of the junior year; and

2. SAT scores of 1,000 or above at the end of the junior year, or through the January administration of the SAT in the senior year.

(h)-(i) (No change.)

CORRECTIONS

(b)

THE COMMISSIONER

Interjurisdictional Agreements and Statutes
Interstate Corrections Compact

Adopted New Rules: N.J.A.C. 10A:10-3

Proposed: August 5, 1991, at 23 N.J.R. 2221(a).

Adopted: November 6, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: November 13, 1991 as R.1991 d.586, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 30:1B-6; 30:1B-10 and 30:7C-1 et seq.

Effective Date: December 16, 1991.

Expiration Date: August 17, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received comments from three persons: Audrey Bomse, Assistant Deputy Public Defender; Ajamu U. Kafele, a New Jersey prisoner who was transferred to New Mexico under the Interstate Agreement; and Ali Abdul-Habib Hakeem, a New Jersey State Prison inmate, who is now incarcerated in Oregon. A summary of the comments and the New Jersey Department of Corrections' responses follows:

COMMENT: A commenter suggested that the entire rule, N.J.A.C. 10A:10-3, be withdrawn and re-drafted because the rule fails to accord adequate due process procedures for inmates who are selected for involuntary transfer to prisons in other states. The commenter stated that a hearing officer's decision should "be based upon substantial evidence that the inmate has committed a prohibited act," and that evidentiary requirements should be similar to those required by N.J.A.C. 10A:4, Inmate Discipline.

RESPONSE: N.J.S.A. 30:7C-5 provides broad discretion to the states who are parties to the Interstate Compact. Reasons for transfer include the necessity or desire to provide adequate quarters and care, or an appropriate program of rehabilitation or treatment, or for any other purpose permitted by the laws of the sending state.

The hearing which is accorded to an inmate who is the subject of involuntary transfer is not based upon disciplinary infractions, nor is it intended that an adjudication of guilt for a disciplinary infraction be reached in connection with the hearing officer's decision. N.J.A.C. 10A:10-3.10, 11 and 12 are, therefore, somewhat misleading because the hearings, although administrative in nature, are designated to be conducted by a "disciplinary" hearing officer. This choice of language was based on the Department of Corrections' practice of using hearing officers from the Disciplinary Hearing Program to conduct the interstate transfer hearing. To clarify the intent of this section, the word "disciplinary" will be deleted in each section which refers to the hearing officer. In all other respects, however, procedures set forth in N.J.A.C. 10A:10-3 will be followed. These procedures are intended to permit the inmate an opportunity to present his or her point of view, opinion and any evidence which is relevant to the decision making process. It is not the Department of Corrections' intention, nor does N.J.S.A. 30:7C require, that a transfer hearing accord the same rights as a disciplinary hearing. Interstate transfer is not considered to be punishment, nor is it used for such a purpose.

COMMENT: A commenter stated that N.J.A.C. 10A:10-3.17 is deficient because it fails to provide an adequate mechanism by which inmates incarcerated out-of-State can be afforded access to legal material and services.

RESPONSE: N.J.A.C. 10A:10-3.18 provides for an inmate's return to New Jersey for a court appearance or when subpoenaed and for a reasonable amount of consultation with counsel in connection with such court proceedings. In addition, depending on the legal material and range of services available to the inmate in the receiving state, the New Jersey Department of Corrections maintains correspondence between the inmate and the Central Office Paralegal Coordinator. In response to a demonstrated specific need for research material, the Paralegal Coordinator, who is an attorney, will forward copies of statutes, case law or rules to assist the inmate in legal research. The inmate may also correspond with an attorney of his or her choice, a public advocate or with the New Jersey law library. It is believed that this process provides adequate legal access.

COMMENT and RESPONSE: The statements from inmates Hakeem and Kafele contain numerous examples of claimed improper use or implementation of the interstate transfer procedures. However, they did not offer suggestions for revisions to any of these rules and thus, cannot be addressed as part of this rulemaking.

Summary of Agency-Initiated Change:

Upon adoption, the Department of Corrections is correcting a typographical error at N.J.A.C. 10A:10-3.16(b)1 that should read "state" not "staff."

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 3. INTERSTATE CORRECTIONS COMPACT

10A:10-3.1 Statutory authority

N.J.S.A. 30:7C-1 et seq. established the Interstate Corrections Compact which provides that the State of New Jersey may enter into a contract with any other signatory state of the United States whereby prisoners from contracting states may be transferred between such states and confined in correctional facilities outside the state of conviction on a reciprocal basis or as otherwise provided for by the contract or a rider.

10A:10-3.2 Definitions

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

"Legal rights" means State or Federal constitutional rights.

"Receiving state" means a state compact member of the Interstate Corrections Compact receiving an inmate transferred from a sending state.

"Sending state" means a state compact member of the Interstate Corrections Compact which is transferring an inmate committed and convicted within the sending state's jurisdiction to another state who is a compact member.

"State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

"State compact member" means any state having membership in the Interstate Corrections Compact.

10A:10-3.3 Applicability

(a) The Interstate Corrections Compact is applicable to adult inmates under the jurisdiction of the Division of Adult Institutions, New Jersey Department of Corrections, except those adult inmates sentenced under N.J.S.A. 2A:164-3 or N.J.S.A. 2C:47-1 et seq.

(b) The State of New Jersey shall accept only adult state inmates from contracting states.

10A:10-3.4 Eligibility criteria for interstate transfer consideration

(a) Inmates considered for interstate transfer must be sentenced for a term of imprisonment such that the earliest parole or release dates are not less than one and a half years from the date of application for transfer. Exceptions to this rule shall be made on a case-by-case basis and may include:

1. Inmates in protective custody;
2. Inmates considered to be security risks;
3. Inmates who require special treatment; and/or
4. Consensual transfers

(b) The types of inmates who may be considered for interstate transfers under the Interstate Corrections Compact are:

1. An inmate who is a bona fide resident of the prospective receiving state to which the inmate desires to be transferred;
2. An inmate who by his or her behavior demonstrates that he or she constitutes a threat to the safety, security or orderly operation of any New Jersey correctional facility;
3. An inmate whose continued presence in any New Jersey correctional facility poses a threat to himself or herself;
4. An inmate who can demonstrate a substantial and bona fide reason for being transferred to another state; or
5. A New Jersey inmate who meets the classification and custody criteria of out-of-State correctional facilities where bed space is offered for lease or per diem costs by a state which is a state compact member of the Interstate Corrections Compact. Interstate transfer of an inmate of this type shall be considered:

i. When an executive order is issued by the Commissioner, New Jersey Department of Corrections;

ii. In response to an adult correctional facility emergency, such as overcrowding or a catastrophic occurrence; and/or

iii. In accordance with a court order.

10A:10-3.5 Administrator of the Interstate Corrections Compact

(a) The Commissioner, New Jersey Department of Corrections, is the designated Interstate Compact Administrator of the Interstate Corrections Compact for New Jersey.

(b) The Commissioner, in his or her capacity as Interstate Compact Administrator, is authorized to designate a Deputy Compact Administrator who shall have full authority to act for the Administrator in all matters pertaining to the Interstate Corrections Compact.

(c) The Commissioner has designated the Supervising Interstate Specialist of the Office of Interstate Services, Division of Adult Institutions, to act as Deputy Compact Administrator of the Interstate Corrections Compact.

10A:10-3.6 Riders to contracts

(a) The three types of riders which may be affixed to authorized contracts between the New Jersey Department of Corrections and another state compact member are as follows:

1. A rider to extend the duration of the contract;
2. A rider to set forth the particulars of individual transferring arrangements or special care and custody; and
3. A rider mutually agreeing to a change or amendment to the original contractual terms.

(b) Riders may be ratified by the signatures of the Interstate Compact Administrator and/or Deputy Compact Administrator and his or her counterpart in the other state compact member.

(c) Year-to-year riders may be utilized to extend the original contract up to five years from the date the original contract became effective. After five years a new contract may be arranged.

(d) A rider setting forth the particulars of an inmate's transfer shall contain information regarding:

1. The inmate's identification;
2. The inmate's sentence;
3. Any specialized housing or programming;
4. Paroling arrangements; and
5. The method of exchange agreed upon in the inmate's case, such as:

i. Time bank;
ii. Money;
iii. Inmate for inmate; or
iv. Any other method of exchange agreed upon.

(e) A rider shall remain in full force as long as the inmate is in the custody of the receiving state or until either state compact member desires to make a major change or amendment to the original conditions of the contract or rider(s).

10A:10-3.7 Reasons for interstate transfer

(a) Inmate interstate transfer may be considered, arranged and implemented either at the request of an inmate (consensual), or at the request of the Superintendent (non-consensual) or upon executive order for any of the following reasons:

1. To confine an inmate in his or her home state when that state is other than the one in which the inmate was convicted;
2. To place an inmate in another state where special facilities exist for treating:

i. Drug abuse;
ii. Alcohol abuse;
iii. Diagnosed mental/emotional illnesses; or
iv. Medical conditions and/or specialized medical treatment.

3. To adjust prison populations via executive order to avoid overcrowding and/or county jail backlog;
4. To provide temporary housing arrangements for inmates at times of crisis;
5. To comply with a court order;
6. To provide for the care and custody of security risk inmates;
7. To provide protective custody; or
8. At the discretion of the Compact Administrator.

10A:10-3.8 Processing consensual interstate transfers

(a) An inmate desiring an interstate transfer shall make such request initially to the Institutional Classification Committee (I.C.C.) on Form 822-I INMATE REQUEST FOR TRANSFER UNDER INTERSTATE CORRECTIONS COMPACT. The correctional facility shall forward a copy of this initial request to the Deputy Compact Administrator within 15 days.

(b) The inmate's request shall be reviewed by the I.C.C. within one month of application to verify the information provided on the request.

(c) If all information provided on Form 822-I is verified and the reason for the requested transfer falls within the reasons enumerated in N.J.A.C. 10A:10-3.7, a complete classification summary shall be prepared and submitted, within three months of the inmate's initial request, to the Superintendent for his or her review and approval (see N.J.A.C. 10A:10-3.9).

(d) The I.C.C. shall also submit to the Superintendent, along with the classification summary, a written statement which indicates the consensus of opinion within the I.C.C. which either supports or rejects the inmate's request for transfer.

(e) If the inmate's request is approved by the Superintendent, the Superintendnet shall forward to the Assistant Commissioner, Division of Adult Institutions, a complete set of documents along with the application and a cover letter which shall explicitly state the reason(s) the Superintendent is supporting the requested transfer.

(f) If the Assistant Commissioner, Division of Adult Institutions, approves the inmate's request, all documents shall then be forwarded to the Deputy Compact Administrator who shall determine whether the application and proposed transfer complies with the terms of the Interstate Corrections Compact, N.J.S.A. 30:7C-1 and this subchapter.

(g) Subsequent to an affirmative determination, the Deputy Compact Administrator shall seek acceptance of the inmate by a receiving state.

(h) The inmate requesting transfer shall be notified in writing by the Superintendent of the decision of the New Jersey Department of Corrections regarding the inmate's request.

(i) If a subsequent acceptance or rejection is received, the Deputy Compact Administrator shall notify the Superintendent who, in turn, shall notify the inmate of the Deputy Compact Administrator's decision regarding the inmate's request for an interstate transfer.

(j) If another state compact member is agreeable to the desired transfer, the following steps shall be taken:

1. The contract with the state or agency where the transfer is being contemplated must be verified;
2. A contract may either be initiated or renewed if there is no current contract with the state or agency where the contract is contemplated;
3. If necessary, a rider to the current contract may be completed and authorized;
4. Assistance shall be provided by the correctional facility, if the inmate requires assistance in understanding the terms and conditions of the transfer;
5. The appropriate Form (822-IIA or 822-IIB) shall be completed, signed and then authorized, by the Deputy Compact Administrator of the Interstate Corrections Compact;
6. When the transfer is approved, authorized escort officers, carrying appropriate credentials identifying themselves and the inmate, shall transport the inmate to the receiving state unless other mutually agreeable arrangements for transportation are made;
7. Form 822-IIA or Form 822-IIB AGREEMENT OF WAIVER and any materials not previously transferred to the receiving state, shall accompany the transportation officers and the inmate to the receiving state; and
8. A receipt for the inmate, Form 822-V RECEIPT FOR INMATE AS AN INTERSTATE TRANSFEREE, shall be obtained from the receiving state and copies of the receipt shall be forwarded to the New Jersey Deputy Compact Administrator and to the Superintendent of the sending correctional facility.

10A:10-3.9 Classification summary

(a) Pursuant to the requirements of N.J.A.C. 10A:10-3.8(c), the Classification Department of the sending state shall prepare a classification summary to be forwarded to the Superintendent which contains current information concerning the inmate in the areas of:

1. The inmate's particular needs;
2. Age;
3. Family status;
4. Social contacts with family and friends;
5. Institutional adjustment;
6. Educational needs and history;
7. Vocational needs and history;
8. Treatment program needs and history;
9. Military history;
10. Judgment of conviction;

11. Nature and circumstances of present offense;
12. Parole eligibility information and current time calculation;
13. Prior convictions record;
14. Records from previous confinements regarding adjustment;
15. Detainers on file or pending disposition(s);
16. Drug dependency or involvement;
17. Sexual offenses;
18. Escape history;
19. Current psychological and psychiatric reports;
20. Photograph;
21. Fingerprints; and
22. Medical history and recommendations which shall include:
i. A report on the results of a general physical examination; and
ii. Known medical problems of the inmate within three months prior to the review of the inmate's request for interstate transfer.

(b) The classification summary of the sending state may then be forwarded to a state contemplating approval of the inmate's request to be transferred to that state.

10A:10-3.10 Written notice of non-consensual transfers

(a) Prior to out-of-State transfer, the inmate shall receive written notice on Form 822-III, NOTICE OF INTENT TO SEEK NON-CONSENSUAL INTERSTATE TRANSFER, informing the inmate that he or she has been referred for out-of-State transfer and that a hearing is scheduled before a New Jersey Department of Corrections' *[Disciplinary]* Hearing Officer.

(b) The notice shall be personally served upon the inmate at least 48 hours prior to the scheduled hearing, and shall contain a summary of information which will be considered by the *[Disciplinary]* Hearing Officer.

(c) Confidential materials may be withheld from the inmate, but the information shall be made part of a confidential correctional facility record for the out-of-State transfer proceedings.

(d) The inmate shall also be given a copy of this subchapter along with Form 822-III.

10A:10-3.11 Investigation of non-consensual transfers other than emergency transfer prompted by executive order

(a) At least 24 hours before the scheduled hearing, an investigator assigned by the Superintendent shall visit the inmate to obtain the names of prospective witnesses.

(b) The investigator shall obtain written statements from the named witnesses and such statements shall be included in the *[Disciplinary]* Hearing Officer's final record of the proceedings.

(c) The *[Disciplinary]* Hearing Officer may exercise his or her discretion to limit the number of written statements obtained to avoid the collection of evidence which is merely repetitive or is not necessary for an adequate understanding of the case.

(d) When the *[Disciplinary]* Hearing Officer determines that the inmate is either illiterate or cannot adequately collect and present evidence on the inmate's own behalf, the inmate may choose an inmate to provide assistance. Such choice may be made from a list of available inmate paralegals who are authorized by the Superintendent to assist inmates with legal services.

10A:10-3.12 Hearing on non-consensual transfers

(a) The hearing shall be conducted in-person, unless the inmate refuses to appear without the use of force, or where the *[Disciplinary]* Hearing Officer determines that the hearing cannot be held at the inmate's cell because of the inmate's disruptive behavior.

(b) The *[Disciplinary]* Hearing Officer shall review the correctional facility reports, witnesses' statements and other material(s) offered as relevant and necessary for a proper understanding of the circumstances upon which the recommendation for out-of-State transfer is based.

(c) Witnesses' statements shall be read to the inmate, unless disclosure would subject the witnesses or other persons to threat of harm and/or the statements or reports are marked confidential. Where the *[Disciplinary]* Hearing Officer determines that clarification is desirable, he or she may call the witnesses to appear in person.

(d) The inmate shall be permitted to speak on his or her own behalf and offer evidence to contest the referral for out-of-State transfer, or to provide the *[Disciplinary]* Hearing Officer with reasons for rejecting said recommendation.

(e) The *[Disciplinary]* Hearing Officer shall not grant a postponement of a hearing unless there are exceptional circumstances as, for example, sudden serious illness, prison fire or security problems requiring lockdown.

10A:10-3.13 Decision on non-consensual transfers

(a) The inmate shall be provided with the *[Disciplinary]* Hearing Officer's decision in writing on Form 822-IV NOTICE OF DECISION REGARDING INTERSTATE TRANSFER within 15 working days after the hearing*,* due to the time and distance considerations involved in interstate information exchange.

(b) The decision shall summarize the information relied upon and the reasons for out-of-State transfer, if approved.

(c) Confidential information shall be strictly safeguarded and appropriately marked for the inmate's classification file.

(d) In instances when the *[Disciplinary]* Hearing Officer approves the non-consensual transfer, a copy of the *[Disciplinary]* Hearing Officer's decision and appropriate classification data shall be forwarded to the Office of Interstate Services, Division of Adult Institutions.

10A:10-3.14 Interstate transfer by executive order

(a) Upon issuance of an executive order by the Commissioner, New Jersey Department of Corrections, Form 822-VI NOTICE OF EMERGENCY TRANSFER shall be served, when feasible, upon the selected inmate(s) meeting the classification and custody criteria of contracting states offering bed space for lease and/or per diem cost reimbursement. Form 822-VI shall be served, when feasible, on the inmate 24 hours prior to the intended transfer, and the notice shall include:

1. The conditions upon which the executive order was predicated;
2. The name of the state and the correctional facility to which the inmate shall be transferred;
3. The address of the correctional facility;
4. The security designation of the correctional facility;
5. The custody level of the inmate;
6. The date of transfer;
7. The listing of personal property which may be transferred to the receiving correctional facility;
8. The arrangement(s) for personal property which cannot be transferred to the receiving correctional facility; and
9. Any additional pertinent information.

(b) In emergency situations when time does not permit Form 822-VI NOTICE OF EMERGENCY TRANSFER to be served upon the inmate 24 hours prior to the transfer, Form 822-VI shall be served upon the inmate within 30 days of the transfer.

10A:10-3.15 Review of requests from other state compact members for transfer of inmates to New Jersey

(a) Any request from another state or jurisdiction for incarceration of out-of-State inmates in New Jersey shall be forwarded to the Deputy Compact Administrator.

(b) The Deputy Compact Administrator shall ensure that the request contains minimally the information outlined in N.J.A.C. 10A:10-3.9.

(c) The request shall then be forwarded to the Assistant Commissioner, Division of Adult Institutions, for approval or disapproval.

(d) Upon receipt of the determination of the Assistant Commissioner, the Deputy Compact Administrator shall determine whether the application and transfer comply with the Interstate Corrections Compact and these rules. The requesting state shall then be notified of the decision by the Deputy Compact Administrator.

10A:10-3.16 Receiving state acting as agent for sending state

(a) Whenever the duly constituted authorities in a state compact member have entered into a contract with another state compact member and decide that confinement in, or transfer of an inmate to, a correctional facility within the territory of another state compact member is necessary or desirable, said officials may direct the confinement be within a correctional facility within the territory of that state compact member. The receiving state shall act as agent for the sending state.

(b) Inmates confined in a correctional facility pursuant to the terms of the Interstate Corrections Compact shall be, at all times, subject to the legal jurisdiction of the sending state and may, at any time, be removed therefrom for any of the following reasons:

1. For transfer to a prison or other correctional facility within the sending *[staff]* ***state***;

2. For transfer to another correctional facility in a third party compact state in which the sending state may have a contractual or other right to confine inmates;

3. For release on probation or parole;

4. For discharge; or

5. For any other purpose permitted by the Interstate Corrections Compact or this subchapter, provided that the sendng state continues to be obligated to such reimbursements as may be required pursuant to the terms of any contract.

(c) Each receiving state shall provide to the sending state regular reports on the inmate(s) that the sending state has in correctional facilities of the receiving state pursuant to the Interstate Corrections Compact.

(d) The regular report shall include a conduct and work record of each inmate and shall be certified to the official designated by the sending state, in order that:

i. Each inmate's record may be reviewed by the designated official in determining and altering the disposition of said sending state; and

ii. The report may be a source of information for the sending state.

(e) Any decision of the sending state pertaining to the administration of the terms of the inmate's sentence for which the sending state retains jurisdiction pursuant to the Interstate Corrections Compact shall be conclusive upon and not reviewable within the receiving state.

(f) If, however, at the time the sending state seeks to remove an inmate from a correctional facility in the receiving state and there is a pending criminal charge(s) against the inmate within such state or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense.

10A:10-3.17 Administration of conditions of confinement, hearings and administrative proceedings to which inmates are entitled

(a) All inmates who may be confined to a correctional facility pursuant to the provisions of the Interstate Corrections Compact shall be treated in a reasonable and humane manner and shall be treated equally to similarly situated inmates under the jurisdiction of the receiving state with regard to:

1. The terms and conditions of confinement;
2. Custody status;
3. Program eligibility and participation;
4. Medical services; and
5. Psychiatric services.

(b) The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate correctional facility of the sending state.

(c) Any hearing or hearings to which an inmate confined pursuant to the Interstate Corrections Compact may be entitled by the statutes of the sending state may be conducted by the appropriate authorities of the sending state, or of the receiving state acting as agents of the sending state.

(d) The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state.

(e) In the event such hearing or hearings are held before officials of the receiving state, the governing statute providing for the hearing is that of the sending state. The nature and character of the hearing process is governed by the regulations and procedures administering such hearings in the receiving state.

(f) Inmates in the receiving state, pursuant to the Interstate Corrections Compact, shall be subject to the receiving state's rules and regulations governing discipline and disciplinary sanctions except that any sanction providing for the loss of commutation credits shall not affect the terms and conditions of the sending state's sentence in excess of the amount provided for by the laws and regulations governing disciplinary sanctions in the sending state.

(g) The record of the hearing or hearings, as requested by the sending state, will be made. Said record, together with any recommendations of the receiving state's hearing official(s), shall be transmitted forthwith to the sending state's official(s) before whom the hearing would have been held if it had taken place in the sending state. A final determination shall be made by the sending state.

(h) In any and all proceedings conducted pursuant to the provisions of this subchapter, the officials of the receiving state act solely as agents of the sending state and no final determination shall be made in any matter pertaining to the administration of the imposed sentence except by the appropriate officials of the sending state.

10A:10-3.18 Release/return of transferred inmate

(a) A transferred inmate from New Jersey shall be returned to New Jersey for a court appearance in which the inmate is named as a defendant or when subpoenaed, and for the opportunity for a reasonable amount of consultation with counsel in connection with such court proceedings.

(b) Any inmate confined pursuant to the Interstate Corrections Compact shall be released within the sending state, unless the inmate and the sending and receiving states agree that the inmate will be paroled to a party, under the Interstate Corrections Compact for the supervision of parolees and probationers, who will provide supervision for the parolee.

(c) An inmate may be returned to the sending state at the request of the receiving state due to behavior which poses a threat to the safe, secure, and orderly operation of the correctional facility in the receiving state. In such cases where the inmate is not charged with a prohibited act by the receiving state due to the expedited nature of the inmate's return, the sending state may charge the inmate based on such written reports and/or affidavits as are forwarded by the receiving state.

(d) Form 259 DISCIPLINARY REPORT shall be prepared by the Office of Interstate Services as soon as possible after the return, but in any case, within no more than five working days of the inmate's return.

(e) The report shall be forwarded to the Superintendent of the correctional facility where the inmate is housed. The Superintendent will make a decision whether to proceed and appoint an appropriate individual to investigate the charges. The investigator shall have 10 working days to complete the investigation. All written informational exchanges which occur between the investigator and the out-of-State agency where the alleged act(s) occurred, shall be coordinated by the Office of the Interstate Services.

(f) Nothing in this section shall preclude the placement of the inmate in Prehearing Detention until completion of the investigation. This time may be extended by the Assistant Commissioner, Division of Adult Institutions, New Jersey Department of Corrections, due to extraordinary circumstances.

(g) Where applicable, all other procedures as stated in N.J.A.C. 10A:4 shall be followed with the exception that appeals shall be forwarded to the Office of the Assistant Commissioner, Division of Adult Institutions, New Jersey Department of Corrections.

10A:10-3.19 Rights of parents or guardians

The parents, guardian, trustee or other person or persons entitled under the statutes of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in exercising any power with respect to any inmate confined pursuant to the terms of the Interstate Corrections Compact.

10A:10-3.20 Escapees and transportation

(a) An inmate who escapes from a correctional facility in which the inmate is confined pursuant to the Interstate Corrections Compact shall be deemed a fugitive from the sending state and from the state in which the correctional facility is located.

(b) In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for initiating extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(c) Authorized transportation officers of the sending state shall be permitted to transport inmates pursuant to the Interstate Corrections Compact through any and all United States territories or states without interference.

10A:10-3.21 Forms

(a) The following forms related to the Interstate Corrections Compact shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 259 DISCIPLINARY REPORT;
2. 822-I INMATE REQUEST FOR TRANSFER UNDER INTERSTATE CORRECTIONS COMPACT;
3. 822-IIA AGREEMENT OF WAIVER—REGARDING TRANSFER OF CUSTODY;
4. 822-IIB AGREEMENT OF WAIVER—REGARDING INTERSTATE TRANSFER:
5. 822-III NOTICE OF INTENT TO SEEK NON-CONSENSUAL INTERSTATE TRANSFER;
6. 822-IV NOTICE OF DECISION REGARDING INTERSTATE TRANSFER;
7. 822-V RECEIPT FOR INMATE AS AN INTERSTATE TRANSFEREE; and
8. 822-VI NOTICE OF EMERGENCY TRANSFER.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

URBAN ENTERPRISE ZONE AUTHORITY

Discretionary Extension of 50 Percent Sales Tax Exemption to Urban Enterprise Zone Municipalities

Adopted Amendment: N.J.A.C. 12A:121-1.2
Adopted New Rules: N.J.A.C. 12A:121-2

Proposed: June 17, 1991 at 23 N.J.R. 1893(b).
Adopted: November 14, 1991 by the Urban Enterprize Zone Authority, James N. Albers, Chairman.
Filed: November 18, 1991 as R.1991 d.591, **without change.**
Authority: N.J.S.A. 65:27H-60 et seq., specifically N.J.S.A. 52:27H-65 a and e.

Effective Date: December 16, 1991.
Expiration Date: December 5, 1993.

The proposed amendments and new rules were published in the New Jersey Register, with a comment period running from June 17, 1991 to July 17, 1991.

In order to provide notice, pursuant to N.J.A.C. 1:30-3.3A(b), of the public hearing held regarding the rulemaking, the UEZA sent a notice to the following newspapers on or shortly after July 26, 1991: The Star-Ledger, The Trenton Times, The Trentonian, The Camden Courier Post, The Atlantic City Press, The Asbury Park Press, and the Bergen Record.

In order to provide additional notice in accordance with the provisions of N.J.A.C. 1:30-3.1(h)4, the comment period was reopened (see 23 N.J.R. 2885(a)) from September 16, 1991 to October 16, 1991, and notice of the rulemaking was sent to all mayors of Urban Enterprise Zone cities on September 11, 1991.

A public hearing was held at 10:00 A.M. in the Mary G. Roebling Building, conference room 220, on Wednesday, August 14, 1991. The hearing was chaired by James N. Albers, whose summary and recommendations follow:

A public hearing was held on the proposed amendments and new rules on the Discretionary Extension of the 50 Percent Sales Tax Exemption to Urban Enterprise Zone Municipalities. The hearing was attended by 30 people, of whom two commented, offering support. The chair recommends that the Authority adopt the rules as proposed.

Three comments were received by the Urban Enterprise Zone Authority (UEZ) regarding the amendments and new rules. Commenters were: Jay O'Donnell, of the New Jersey Council for Urban Economic Development, Phyllis Brociner, Urban Enterprise Zone Coordinator for the City of Elizabeth, and Thomas G. Dunn, Mayor of the City of Elizabeth.

Summary of Public Comments and Agency Responses:

COMMENT: Mr. O'Donnell noted that the New Jersey Council for Urban Economic Development supports the extension of the 50 percent reduction to the remaining Urban Enterprise Zones and commends the UEZ for its actions.

RESPONSE: The UEZ appreciates the support.

COMMENT: Phyllis Brociner stated that the City of Elizabeth has noted the important needs being served by a 50 percent reduction in sales tax in currently-eligible UEZ municipalities and looks forward to implementing the rules in the City of Elizabeth.

RESPONSE: The UEZ appreciates the support, and looks forward to reviewing the application of the City of Elizabeth.

COMMENT: Mayor Dunn commented on proposed N.J.A.C. 12A:121-2.2(c), which requires the submission of an analysis of the impact on other UEZ municipalities by the zone seeking to utilize the 50 percent reduction provision. He felt that this requirement would place an undue burden on the applicant(s), since the requested data on the absence of a negative impact would be impossible to generate. He suggested, as a substitute, that the applicant provide a positive projection based upon the applicant community, containing estimates of increased retail sales, market share, and ensuing increase in property values and tax ratables. Noting that the UEZ Authority has a statutory requirement to determine that the granting of the 50 percent exemption will result in no detriment to existing zones, Mayor Dunn suggested that the UEZ Authority require an applicant to state that, based upon its analysis of its own positive gains, it sees no potential for a negative impact on another UEZ's business environment.

RESPONSE: As Mayor Dunn noted in his comment, the UEZ Authority must, in accordance with N.J.A.C. 52:27H-60 et seq., make a determination that granting an exemption to additional zones will result in no detriment to existing zones. In order to make this determination, the UEZ Authority needs, among other data, information of the kind required by N.J.A.C. 12A:121-2.2(c). It is the considered opinion of the Authority that such information is an integral part of an application; therefore, the requested change has not been made. While the subject matter of the analysis is covered in N.J.A.C. 12A:121-2.2(c), the manner of analysis is not specified. The Authority will assist any applicant with information which may help to develop the needed analysis.

Full text of the adoption follows.

12A:121-1.2 Definitions

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

...

SUBCHAPTER 2. DISCRETIONARY EXTENSION OF 50 PERCENT SALES TAX EXEMPTION TO URBAN ENTERPRISE ZONE MUNICIPALITIES

12A:121-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, ch. 303, as amended by P.L. 1988, ch. 93, the New Jersey Urban Enterprise Zones Act, and to specifically implement provisions pertaining to the discretionary power of the UEZA to extend the 50 percent sales tax exemption to those urban enterprise zone municipalities which do not currently have such a benefit.

(b) The Act provides for the establishment of the UEZA, which is to designate certain areas of the State as Urban Enterprise Zones (UEZ's). The Act also provides that the UEZA exercise continuing review and supervision of the implementation of zone development plans.

(c) Applications and questions concerning a UEZ should be directed to:

Urban Enterprise Zone Program
New Jersey Department of Commerce and Economic Development
20 West State Street, CN 829
Trenton, New Jersey 08625-0829

12A:121-2.2 Zone municipality application for 50 percent sales tax exemption

(a) Each application for the 50 percent sales tax exemption shall be accompanied by a certified resolution of the governing body of the municipality supporting the application.

(b) Each application for the 50 percent sales tax exemption shall be accompanied by a benefit statement prepared by the municipality or its agent. The benefit statement shall include, but is not limited to:

1. The number of permanent fulltime jobs to be created in the municipality and the existing UEZ if the exemption were to be granted;

2. The increase in the valuation of real property in the municipality and the existing UEZ if the exemption were granted;

3. The extent to which the granting of the exemption would contribute to the economic and social revitalization of the municipality and the existing UEZ;

4. Any other information the UEZA deems relevant or necessary for the purpose of evaluation of the municipal application.

(c) Each application for the 50 percent sales tax exemption shall be accompanied by an analysis of the impact on the other UEZ's in the State of New Jersey if the exemption were granted. The impact analysis shall include, but is not limited to:

1. An analysis of whether the exemption would have an effect on the valuation of UEZ municipalities;

2. An analysis of whether the exemption would have an effect on the social and economic revitalization of other UEZ municipalities;

3. An analysis of whether the exemption would have an effect on the growth of businesses in other UEZ municipalities;

4. An analysis of the increase or decrease of State Tax and other revenues to be created if the exemption were to be granted.

12A:121-2.3 Time for municipal application for 50 percent sales tax exemption

An existing New Jersey Urban Enterprise Zone municipality may apply to the UEZA at any time for the 50 percent sales tax exemption.

12A:121-2.4 Evaluation of 50 percent sales tax exemption municipal application

(a) The Administrator shall evaluate each municipal application for the 50 percent sales tax exemption, considering the following factors:

1. The probability that the granting of the exemption will create permanent fulltime new jobs in the applying municipality;

2. The probability that the granting of the exemption will increase the valuation of real property in the applying municipality;

3. The probability that the granting of the exemption will contribute to the economic and social revitalization of the applying municipality;

4. The probability that the granting of the exemption will significantly increase the economic activity of the applying municipality;

5. The probability that the granting of the exemption will increase the capital expenditures to be undertaken by qualified zone businesses in the applying municipality;

6. The social and economic impact that the granting of the exemption will have on other State of New Jersey Urban Enterprise Zone municipalities; and

7. The extent to which the granting of the exemption will further the purposes and intent of the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.

(b) After the evaluation is completed, the Administrator shall forward to the UEZA the following items for their review:

1. The evaluation of the application completed by the Administrator;

2. The application and accompanying documents submitted by the municipality; and

3. Any written comments received from interested parties concerning the application of the municipality for the exemption.

(c) The UEZA shall, within 120 days from the completion of the evaluation by the Administrator, review the application of a municipality for the 50 percent sales tax exemption and advise the municipality that:

1. The application has been approved;

2. The application has been denied; or

3. The application remains under consideration pending receipt of additional specified information.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Board of Examiners of Electrical Contractors Rules

Readoption with Amendments: N.J.A.C. 13:31

Proposed: October 7, 1991 at 23 N.J.R. 2917(a).
Adopted: November 10, 1991 by the Board of Examiners of Electrical Contractors, Edward H. O'Hara, Acting Chairman.
Filed: November 20, 1991 as R.1991 d.596, **without change**.
Authority: N.J.S.A. 45:5A-6.
Effective Date: November 20, 1991, Readoption;
December 16, 1991, Amendments.
Expiration Date: November 20, 1996.

The Board of Examiners of Electrical Contractors afforded all interested parties an opportunity to comment on the proposed readoption of its rules as set forth at N.J.A.C. 13:31. The official comment period ended on November 6, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on October 7, 1991 at 23 N.J.R. 2917(a). Announcements were also forwarded to the Star Ledger, The Trenton Times, the Northern and Southern New Jersey Chapters of the National Electrical Contractors Association and other interested parties and professional associations.

A full record of this opportunity to be heard can be inspected by contacting the Board of Examiners of Electrical Contractors, Post Office Box 45006, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Two comments in support of the proposed readoption were received during the 30 day comment period. The New Jersey State Council of Electrical Contractors Associations stated that improperly installed wiring is responsible for many unnecessary deaths and injuries every year, and that the Board's licensing and continuing education requirements have reduced the number of people injured and killed by faulty wiring. Anthony Giampietro, president of Lighthouse Electrical Construction, stated that the Board has been a valuable asset to New Jersey's consumers for the past 29 years. The Board acknowledges and appreciates the commenters' support for the readoption of its rules.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:31.

Full text of the adopted amendments follows.

13:31-1.3 Examinations

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

(c) An applicant shall complete all required application forms and questionnaires supplied by the Board. Examinations shall be held at least four times a year. Information about scheduled examinations and deadlines for submissions of completed applications including appropriate fees may be obtained from the Board offices at Post Office Box 45006, Newark, New Jersey 07101.

13:31-1.4 Minor repair work

Minor repair work within the meaning of N.J.S.A. 45:5A-18(a) shall include, without limitation, the replacement of lamps and fuses operating at less than 150 volts to ground with a like or similar item.

13:31-1.10 Requirement of pressure seal defined

(a) At the time of the issuance of the license or as soon thereafter as deemed appropriate, the Board of Examiners of Electrical Contractors shall furnish a seal to every State-licensed electrical contractor. The cost of the seal shall be paid for by the State-licensed electrical contractor to whom it is issued. The seal shall be used exclusively by the State-licensed electrical contractor in the conduct of his practice. The State-licensed electrical contractor is required to impress the said seal upon all applications for electrical inspection by the appropriate duly licensed State inspection agency.

(b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Prescribing of Amphetamines and Sympathomimetic Amine Drugs

Adopted Amendment: N.J.A.C. 13:35-6.7

Proposed: August 5, 1991 at 23 N.J.R. 2248(a).

Adopted: October 10, 1991 by the Board of Medical Examiners, Sanford M. Lewis, President.

Filed: November 20, 1991 as R.1991 d.597, **without change.**

Authority: N.J.S.A. 45:9-2 and 45:1-13.

Effective Date: December 16, 1991.

Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:35-6.7 relating to the prescribing of amphetamines and sympathomimetic amine drugs. The official comment period ended on September 4, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on August 5, 1991, at 23 N.J.R. 2248(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Asbury Park Press, the Medical Society of New Jersey, the New Jersey Psychiatric Association Ethics Committee, the New Jersey Pharmaceutical Association, the New Jersey Department of Health, the Federation of State Medical Boards and to various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, 28 West State Street, Room 602, Trenton, New Jersey, 08608.

Summary of Public Comments and Agency Responses:

Three letters regarding the proposed amendment were received during the 30-day comment period. A summary of the issues raised by these commenters together with the Board's responses follows.

COMMENT: The Board received a comment from Haikaz Grigorian, M.D., President of the New Jersey Psychiatric Association, in support of the amendment's purpose to include Attention Deficit Disorder as a condition for which amphetamines and sympathomimetic amines may be prescribed. However, the association requested that a consultation or second opinion not be required where a psychiatrist or other specialist makes the diagnosis.

RESPONSE: The Board's response is that the purpose of the rule, (N.J.A.C. 13:35-6.7) is to ensure the public health. Amphetamines are Schedule II medications of such severe abuse potential that they have traditionally been subject to protective limitations to ensure they are used only when clearly beneficial to the patient. Through this amendment the Board is permitting a substantial relaxation in the use of these potentially addictive medications. However, as it is difficult to diagnose A.D.D. through objective testing, it is essential to ensure that the diagnosis is confirmed by an independent consultant. It is anticipated that pediatricians, neurologists and psychiatrists will comprise the principal physicians treating A.D.D. (The regulatory flexibility analysis published in the August 5, 1991 New Jersey Register inadvertently omitted the two former categories of physicians). After several years of experience with the newly amended rule, the Board may reconsider the second opinion consultation requirement.

COMMENT: Harold Lubin, M.D., also wrote in support of the amendment, but opined that because of the significant abuse potential of the medications involved, physicians should prescribe only an amount of medication to be used until the patient's next visit, the date of which should be noted on the prescription.

RESPONSE: The Board thanked Dr. Lubin for his support and noted that physicians can follow Dr. Lubin's suggestion in an appropriate case but would not be required to so limit their prescribing for A.D.D. regulation.

COMMENT: Finally, the Board received a comment from Lucius Bowser, chief of the Drug Control Program of the New Jersey Department of Health in support of the amendment. He queried whether it was still acceptable for physicians to prescribe amphetamines and sympathomimetic amines under the diagnosis of hyperkinesis.

RESPONSE: As indicated in the Summary to the proposed amendment, hyperkinesis is included in the broader term "A.D.D.," and therefore it is anticipated that some physicians will continue to prescribe under that terminology. However, it is appropriate for physicians to adopt the newer terminology.

Full text of the adoption follows.

13:35-6.7 Prescribing of amphetamines and sympathomimetic amine drugs

(a) No physician shall prescribe, order, dispense, administer, sell or transfer any amphetamine or sympathomimetic amine drug or compound designated as a Schedule II Controlled Dangerous Substance pursuant to the laws of New Jersey, to or from any person except:

1. For the treatment of the following conditions. A patient's records shall contain documentation to justify the prescribing including the use of appropriate testing, and with respect to those conditions which are not readily diagnosed by objective testing, documentation that appropriate consultation has been secured.

i. Narcolepsy established by recognized diagnostic criteria;

ii. Attention Deficit Disorder established by recognized diagnostic criteria;

iii.-vi. (No change.)

2.-4. (No change.)

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

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF REAL ESTATE APPRAISERS

Board of Real Estate Appraisers Rules

Adopted New Rules: N.J.A.C. 13:40A

Proposed: September 3, 1991 at 23 N.J.R. 2628(a).

Adopted: November 15, 1991 by Emma Byrne, Director, Division of Consumer Affairs.

Filed: November 20, 1991 as R.1991 d.598, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with proposed N.J.A.C. 13:40A-6.1(b) and (c) not adopted.**

Authority: P.L. 1991, c.68, specifically section 8n.

Effective Date: December 16, 1991.

Expiration Date: December 16, 1996.

The Board of Real Estate Appraisers afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:40A. The official comment period ended on October 3, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 3, 1991, at 23 N.J.R. 2628(a). Announcements were also forwarded to the Star Ledger, Trenton Times, Bergen Record, Appraisal Institute, American Society of Appraisers, American Bankers Association, American Institute of Real Estate Appraisers, American Society of Farm Managers and Rural Appraisers, International Association of Assessing Officers, National Association of Certified Real Property Appraisers, National Association of Independent Fee Appraisers, National Society of Real Estate Appraisers, New Jersey Association of Realtors, New Jersey Real Estate Commission, U.S. League of Savings Institutions, and various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Real Estate Appraisers, Post Office Box 45032, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, letters were received from Robert F. Ferguson, Jr., Executive Vice President of the 40,000-member New Jersey Association of Realtors (NJAR), and from Anthony Graziano of Atlantic Coast Realty, a participant in the preparation of the Real Estate Appraisers Act and State Coordinator for the Appraisal Institute. In addition, the following individuals expressed their opinions regarding the proposed rules at the Board's open public meeting sessions at which these rules were discussed: Beverly Bova Scarano of the Appraiser Coalition and Chuck Davis. A summary of the issues as well as the Board's responses appears below.

N.J.A.C. 13:40A-2.3(a) and 3.3(a) Educational requirements for certification and licensure

COMMENT: N.J.A.C. 13:40A-2.3(a) and 3.3(a) require an applicant to have taken, subsequent to April 27, 1987, a course on the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. NJAR questions the April 27, 1987 limitation, stating it is not in the guidelines published by the Appraisal Subcommittee in the Federal Register on June 6, 1991 or in the Appraisal Foundation's Qualification Criteria issued on March 27, 1991. The NJAR suggested that this limitation be deleted in the interest of creating more eligible individuals to sit for the exam.

RESPONSE: Pursuant to the Real Estate Appraisers Act, P.L. 1991, c.68, the Board of Real Estate Appraisers is obligated to establish licensing and certification standards based upon the USPAP, which became effective April 27, 1987. Any course in appraisal standards offered prior to that date could not have included coverage of the USPAP. Accordingly, the provision is necessary to enable the Board to fulfill its statutory obligation.

N.J.A.C. 13:40A-2.4 and 3.4 Experience requirements for certification and licensure

COMMENT: Pursuant to N.J.A.C. 13:40A-2.4 and 3.4, an applicant must have accumulated the required 2,000 hours of appraisal experience in no less than two nor more than four calendar years. All of the commenters expressed the opinion that the four-year limitation exceeds Appraisal Foundation guidelines, that it is too restrictive, and that it will lead to a shortage of qualified appraisers. Mr. Graziano stated more specifically that in the course of preparing the legislation, concern was expressed by the banking and real estate community that a limitation such as this would make licensure available singularly to full time appraisers, and that this type of restriction was purposefully omitted in the drafting of the legislation specifically to provide a mechanism for participation of part time appraisers. Mr. Graziano expressed the opinion that this requirement will eliminate a major portion of real estate brokers who do appraisals as an ancillary source of income, as they will be unable to accumulate the requisite number of hours to qualify for certification or licensure. Beverly Bova Scarano commented that this provision is too restrictive for residential appraisers who want to become certified.

RESPONSE: The Board points out first that pursuant to the Real Estate Appraisers Act, it is required to establish certification and licensing standards as well as a code of professional ethics which, at a minimum, meet Appraisal Foundation standards. The statute does not preclude the Board from establishing standards which exceed those of the Appraisal Foundation. The Board's intent in establishing the four-year limitation was to ensure that the applicant's experience took place during the time the uniform standards were in effect; for example, subsequent to April, 1987. In order to comply with this requirement, an applicant must have had, on average, approximately 10 hours of experience per week over a four-year period, an estimate the Board believes to be reasonable and necessary to ensure that the applicant's appraisal experience is current. The Board does not believe that this requirement will eliminate a major portion of real estate brokers who do appraisals as an ancillary source of income.

COMMENT: The NJAR expressed the opinion that the restrictive nature of the proposed rules will make qualification problematic, particularly for the licensure classification. As a result, appraisers unable to qualify will become "apprentices" to other licensed and certified appraisers, thereby creating "appraisal mills." The NJAR also stated that the Board will find it increasingly difficult to effectively enforce the law, as there is less direct control on the unlicensed and uncertified individuals performing the actual appraisal work and less incentive for those individuals to comply with professional and ethical standards.

RESPONSE: The Board does not view the establishment of appraisal mills as likely. Furthermore, the Board is confident that the proposed rules will, in fact, ensure greater accountability by certified and licensed individuals, who will now be responsible to the Board for the strict appraisal standards incorported in the proposed rules.

N.J.A.C. 13:40A-3.5 Temporary licenses

COMMENT: The NJAR stated that the September 17, 1991 deadline for temporary license applications does not give enough notice to Association members and that the deadline should be extended until December 31, 1991.

RESPONSE: The Real Estate Appraisers Act, specifically, N.J.S.A. 45:14F-12, states that qualified individuals who apply to the Board within 180 days of the effective date of the Act may be issued a temporary license. The effective date of the Act was March 21, 1991; therefore, under the statute the Board may accept applications only until September 17, 1991. The Board has no authority to deviate from the statute.

N.J.A.C. 13:40A-5.1 Appraisal Standards

COMMENT: N.J.A.C. 13:40A-5.1(a)1 requires appraisals to conform to USPAP, except that the Departure Provision of the USPAP shall not apply. The NJAR commented that the Departure Provision should be permitted because it allows an appraiser, with proper explanation, to limit the scope of the appraisal to eliminate unnecessary or non-applicable approaches to value without impairing the credibility of the appraisal. Mr. Graziano stated that the Departure Provision is mandatory for several classes of Federally related appraisal assignments (specifically DOT condemnation cases) and that it establishes the only mechanism to complete market value appraisals for tax appeal purposes and condemnation cases based on judicial exceptions.

RESPONSE: The commenters are correct that, in order to conform to USPAP, appraisals such as equitable distribution, condemnation and acquisition cannot be accomplished without use of the Departure Provision. The Board has corrected its oversight in this regard by revising N.J.A.C. 13:40A-5.1(a) to delete reference to the inapplicability of the Departure Provision.

COMMENT: Mr. Graziano stated that N.J.A.C. 13:40A-5.1(a)3 requires appraisals to be based upon market value as defined in N.J.A.C. 13:40A-1.2. That definition of market value should be amended, for the reasons stated above, to include reference to the Departure Provision.

RESPONSE: The Board agrees, for the reasons previously stated, that use of the Departure Provision should be permitted. Accordingly, N.J.A.C. 13:40A-5.1(a)3 has been revised to provide that appraisals shall be based upon the definition of market value as set forth in N.J.A.C. 13:40A-1.2, except as provided for by the Departure Provision of the USPAP.

N.J.A.C. 13:40A-6.1 Fee schedule

COMMENT: The NJAR stated that the initial certification and licensure fees are too high and that administrative costs associated with the application review and examination processes are sufficiently covered by the substantial application and examination fees. The NJAR expressed the opinion that high fees will discourage entry into the field, thereby exacerbating the anticipated shortage of qualified appraisers.

RESPONSE: Pursuant to N.J.S.A. 45:1-3.2, each board within the Division of Consumer Affairs is required to be self-funding; that is, operating costs must be met through licensing and other fees. Since licensing fees are based upon the number of licensees, the Board of Real Estate Appraisers, with an estimated 4,000 licensees and 2,000 certified individuals, must of necessity charge a higher licensing fee than a board with a greater number of licensees. The Board is confident that the estimate of funds needed to operate the Board during the biennial period is accurate and that the sums to be raised will be sufficient to cover anticipated administrative costs. In the unlikely event that excess funds are raised, they may be carried over for the benefit of the Board.

COMMENT: The NJAR and Mr. Davis suggested the deletion of separate charges for providers of real estate appraisal education courses other than colleges, universities or members of the Appraisal Foundation or, alternatively, equal charges for all education providers. The commenters questioned the Board's basis for establishing unequal fees, which they believe to be both arbitrary and discriminatory.

RESPONSE: The Board established a lower registration fee for colleges, universities and Appraisal Foundation members on the assumption that these program providers were subject to strict oversight by the State Department of Higher Education and the Appraisal Foundation, thus obviating the need for additional detailed Board review. The Board has subsequently learned, however, that these programs are not subject to review by the Department of Education or the Appraisal Foundation. Accordingly, all providers of continuing education will be subject to the same review standards. The Board has determined, pending further review, that it will not charge fees to any providers of continuing education; therefore, N.J.A.C. 10:40A-6.1(b) and (c) will not be adopted.

Summary of Agency-Initiated Changes:

In N.J.A.C. 13:40A-6.1, the words "examinations" and "examination fee" have been changed to "credentialing" and "credentialing fee" to clarify that the Board does not administer the examination but rather processes applications for and results of the examination.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 40A
STATE BOARD OF REAL ESTATE APPRAISERS

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:40A-1.1 Purpose and scope

This chapter, as effective *[(effective date)]* ***December 16, 1991***, is promulgated by the Director, Division of Consumer Affairs. The rules contained in this chapter implement the provisions of the Real Estate Appraisers Act, P.L. 1991, c.68, (N.J.S.A. 45:14F-1 et seq.) and provide for the voluntary licensing and certification of real estate appraisers.

13:40A-1.2 Definitions

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

"Appraisal Foundation" means the Appraisal Foundation incorporated in the State of Illinois as a nonprofit corporation on November 30, 1987, as denominated in Title XI of Publ. L. 101-73 (12 U.S.C. section 3331 et seq.).

"Board" means the State Real Estate Appraiser Board in the Division of Consumer Affairs.

"Classroom hour" means 50 minute out of each 60-minute segment. This definition reflects the traditional educational practice of having 50 minutes of instruction and 10 minutes of break time for each scheduled hour of instruction and shall not be interpreted as permitting course providers to decrease the prescribed number of classroom hours. Classroom hours shall be deemed to include time devoted to examinations, which are considered to be part of the course.

"Market value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

"State certified real estate appraiser" ("SCREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid certificate for real estate appraisal.

"State licensed real estate appraiser" ("SLREA") means an individual who has satisfied the experience and education requirements as set forth in this chapter, has successfully completed the Board sponsored examination, and holds a current, valid license for real estate appraisal.

"Residential" means one to four residential units.

SUBCHAPTER 2. CERTIFICATION OF REAL ESTATE APPRAISERS

13:40A-2.1 Eligibility for certification

In order to be eligible for certification, an applicant shall be required to successfully complete the Board approved examination for the certification of real estate appraisers.

13:40A-2.2 Eligibility for admission to examination

(a) An applicant shall present evidence to the satisfaction of the Board that he or she is:

1. More than 18 years of age;
2. Of good moral character, as established by references from individuals, schools and other records acceptable to the Board;
3. Has a high school diploma or its equivalent;
4. Has completed the educational requirements described in N.J.A.C. 13:40A-2.3; and
5. Has real estate appraisal experience as described in N.J.A.C. 13:40A-2.4.

13:40A-2.3 Educational requirements for certification

(a) In order to be eligible to take the Board approved examination for the certification of real estate appraisers, an applicant shall be required to complete 165 classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required 165 classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987. The 75 classroom hours required for the licensed classification may be included within the required 165 classroom hours.

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the educational offering is at least 15 classroom hours and where the individual successfully completes an examination pertinent to that educational offering.

(c) The applicant may obtain credit for the classroom hour requirement from the following: colleges, universities, community colleges or junior colleges accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; proprietary schools as approved by the Board.

(d) The Board may credit various appraisal courses toward the 165 classroom hour educational requirement. Applicants shall demonstrate that their education included coverage of all the topics listed below with particular emphasis on the appraisal of non-residential properties.

1. Influences on Real Estate Value;
2. Legal Considerations in Appraisal;
3. Types of Value;
4. Economic Principles;
5. Real Estate Markets and Analysis;
6. Valuation Process;
7. Property Description;
8. Highest and Best Use Analysis;
9. Appraisal Math and Statistics;
10. Sales Comparison Approach;
11. Site Value;
12. Cost Approach;

13. Income Approach;
14. Valuation of Partial Interests; and
15. Appraisal Standards and Ethics.

(e) Experience may not be substituted for education.

(f) The Board shall not grant credit for correspondence courses or for video and remote television educational offerings.

13:40A-2.4 Experience requirements for certification

(a) Each person applying for certification as a real estate appraiser shall furnish documentation satisfactory to the Board that:

1. He or she has accumulated at least 2,000 hours of appraisal experience in no less than two nor more than four calendar years; and

2. At least 50 percent (1,000 hours) of the required experience was in non-residential appraisal work.

(b) Acceptable appraisal experience includes, but is not limited to, the following: fee and staff appraisal; ad valorem tax appraisal; review appraisal analysis; real estate counseling; highest and best use analysis; feasibility analysis/study; and teaching of appraisal courses.

(c) The Board shall award experience credit to ad valorem tax appraisers/appraisals when the applicant demonstrates to the satisfaction of the Board that he or she is using similar techniques as appraisers to value properties and that he or she effectively utilizes the appraisal process.

(d) Education may not be substituted for experience.

13:40A-2.5 Temporary visiting certificate

(a) Upon application to the Board and payment of a registration fee, an appraiser certified in another state may be issued a temporary visiting certificate for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid certificate to practice in another state.

(b) An appraiser certified by another state may apply for no more than three temporary certificates within one calendar year, except as provided in (c) below.

(c) The Board may, in its discretion, waive the requirements of (b) above for good cause shown.

SUBCHAPTER 3. LICENSING OF REAL ESTATE APPRAISERS

13:40A-3.1 Eligibility for Licensure

In order to be eligible for licensure, an applicant shall be required to successfully complete the Board-approved examination for the licensure of real estate appraisers.

13:40A-3.2 Eligibility for admission to examination

(a) An applicant shall present evidence to the satisfaction of the Board that he or she is:

1. More than 18 years of age;

2. Of good moral character, as established by references from individuals, schools and other records acceptable to the Board;

3. Has a high school diploma or its equivalent;

4. Has completed the educational requirements as described in N.J.A.C. 13:40A-3.3, except as provided in N.J.A.C. 13:40A-3.5; and

5. Has real estate appraisal experience as described in N.J.A.C. 13:40A-3.4.

13:40A-3.3 Educational requirements for licensure

(a) Except as provided in N.J.A.C. 13:40A-3.5, in order to be eligible to take the Board approved examination for the licensing of real estate appraisers, an applicant shall be required to complete 75 classroom hours, as defined in N.J.A.C. 13:40A-1.2, of courses in subjects related to real estate appraisal. The required 75 classroom hours shall include a course on the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, which the applicant shall have taken subsequent to April 27, 1987.

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the educational offering is at least 15 classroom hours and where the applicant successfully completes an examination pertinent to that educational offering.

(c) The applicant may obtain credit for the classroom hour requirement from any of the following: colleges, universities, community colleges or junior colleges accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; and proprietary schools as approved by the Board.

(d) The Board may credit various appraisal courses toward the 75 classroom hour educational requirement. Applicants shall demonstrate that their education involved coverage of all topics listed below, with particular emphasis on the appraisal of one to four unit residential properties.

1. Influences on Real Estate Value;
2. Legal Considerations in Appraisal;
3. Types of Value;
4. Economic Principles;
5. Real Estate Markets and Analysis;
6. Valuation Process;
7. Property Description;
8. Highest and Best use Analysis;
9. Appraisal Statistical Concepts;
10. Sales Comparison Approach;
11. Site Value;
12. Cost Approach;
13. Income Approach;
14. Valuation of Partial Interests; and
15. Appraisal Standards and Ethics.

(e) Experience may not be substituted for education.

(f) The Board shall not grant credit for correspondence courses or for video and remote television educational offerings.

13:40A-3.4 Experience requirements for licensure

(a) In order to be eligible to take the Board approved examination for the licensing of real estate apprisers, an applicant shall furnish documentation satisfactory to the Board that he or she has accumulated at least 2,000 hours of appraisal experience in no less than two nor more than four calendar years.

(b) Acceptable appraisal experience includes, but is not limited to, the following: fee and staff appraisal; ad valorem tax appraisal; review appraisal; appraisal analysis; real estate counseling; highest and best use analysis; feasibility analysis/study; and teaching of appraisal courses.

(c) The Board shall award experience credit to ad valorem tax appraisers/appraisals when the applicant demonstrates to the satisfaction of the Board that he or she is using similar techniques as appraisers to value properties and that he or she effectively utilizes the appraisal process.

(d) Education may not be substituted for experience.

13:40A-3.5 Temporary licenses

(a) An individual who meets the requirements of N.J.A.C. 13:40A-3.2 and who files his or her application with the Board prior to September 17, 1991, shall be permitted to take the examination prior to meeting the educational requirements.

(b) Upon the applicant's successful completion of the examination and payment of the temporary license fee, the Board shall issue a temporary license.

(c) A temporary license shall be effective for no more than 420 days and shall not be renewable.

(d) If, during the temporary license term, the temporary licensee completes the educational requirements as set forth in N.J.A.C. 13:40A-3.3, the Board may issue to the temporary licensee a license as a State licensed real estate appraiser.

13:40A-3.6 Temporary visiting licenses

(a) Upon application to the Board and payment of a registration fee, an appraiser licensed in another state may be issued a temporary visiting license for a specific appraisal assignment, provided that the individual submits satisfactory proof to the Board that the individual has a current valid license to practice in another state.

(b) An appraiser licensed by another state may apply for no more than three temporary licenses within one calendar year, except as provided in (c) below.

(c) The Board may, in its discretion, waive the requirements of (b) above for good cause shown.

SUBCHAPTER 4. CONTINUING PROFESSIONAL EDUCATION

13:40A-4.1 Requirements for certification and licensure renewal

(a) The Board shall not issue a certification or license renewal unless the applicant submits with his or her renewal application a detailed outline, acceptable to the Board, confirming that the applicant completed, during the biennial period preceding renewal, the equivalent of 20 classroom hours of instruction in courses or seminars approved by the Board.

(b) The Board shall grant credit toward the classroom hour requirement only where the length of the course is at least two hours.

(c) The licensee may obtain credit for the classroom hour requirement from the following: colleges or universities accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; community or junior colleges accredited by the New Jersey Department of Higher Education; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; and proprietary schools as approved by the Board.

(d) The Board may grant credit for courses which cover residential real estate related appraisal topics such as those listed following and which are consistent with the purpose of continuing education: ad valorem taxation; arbitrations; business courses related to practice of real estate appraisal; construction estimating; ethics and standards of professional practice; land use planning, zoning and taxation; management, leasing, brokerage, timesharing; property development; real estate appraisal (valuations/evaluations); real estate law; real estate litigation; real estate financing and investment; real estate appraisal related computer applications; real estate securities and syndication; and real property exchange.

(e) The Board may also grant credit for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education.

SUBCHAPTER 5. STANDARDS FOR APPRAISALS

13:40A-5.1 General requirements

(a) The appraiser shall ensure that all appraisals shall, at a minimum:

1. Conform to the ***current*** Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation*[, except that the Departure Provision of the USPAP shall not apply]* ***which are incorporated herein by reference***;

2. Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP;

3. Be based upon the definition of market value as set forth in N.J.A.C. 13:40A-1.2***, except as provided for by the Departure Provision of the USPAP***;

4. Be written and presented in narrative format or on forms that satisfy all the requirements of this section;

5. Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate;

6. Provide detail and depth of analysis that reflect the complexity of the real estate appraised;

7. Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

i. For one to four family residential property, one year preceding the date when the appraisal was prepared; and

ii. For all other property, three years preceding the date when the appraisal was prepared;

8. Analyse and report data on current revenues, expenses, and vacancies for the property if it is and will continue to be income-producing;

9. Analyze and report a reasonable marketing period for the subject property;

10. Analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;

11. Analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased or leased at other than market rents as of the date of the appraisal, or any tract developments with unsold units;

12. Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

13. Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the market value reported;

14. Include a legal description of the real estate being appraised, in addition to the description required by the USPAP;

15. Identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion or exclusion on the estimate of market value; and

16. Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.

(b) If information required or deemed pertinent to the completion of an appraisal is unavailable, the appraiser shall disclose and explain that fact in the appraisal.

(c) An appraiser's failure to comply with the provisions of this subchapter may be construed to be professional misconduct in violation of N.J.S.A. 45:1-21(e).

SUBCHAPTER 6. GENERAL PROVISIONS

13:40A-6.1 Fee schedule

(a) Charges for *[examinations]* ***credentialing***, certification, licensure and other services are as follows:

1. Application fee:	$100.00
2. *[Examination]* ***Credentialing*** fee:	$125.00
3. Initial certification fee:	
i. During the first year of a biennial renewal period:	$240.00
ii. During the second year of a biennial renewal period:	$120.00
4. Initial license fee:	
i. During the first year of a biennial renewal period:	$160.00
ii. During the second year of a biennial renewal period:	$ 80.00
5. Certification renewal fee, biennial:	$240.00
6. License renewal fee, biennial:	$160.00
7. Late renewal fee:	$100.00
8. Duplicate certification fee:	$120.00
9. Duplicate license fee:	$100.00
10. Temporary license fee:	$100.00
11. Temporary visiting registration fee:	$ 50.00
12. Endorsement fee:	$ 75.00
13. Reinstatement fee:	$150.00
14. Duplicate wall certificate fee:	$ 40.00
15. Change of address fee:	$ 25.00
16. Verification of certification/licensure:	$ 40.00
17. Verification of continuing education credits:	$ 40.00
18. Federal surcharge, annual:	$ 25.00

*[(b) Charges for registration of providers of real estate appraiser education courses other than colleges and universities and members of the Appraisal Foundation are as follows:

1. Initial registration fee:	
i. During the first year of a biennial renewal period:	$500.00
ii. During the second year of a biennial renewal period:	$250.00
2. Registration renewal fee, biennial:	$500.00

(c) Charges for registration of providers of continuing education courses other than colleges and universities and members of the Appraisal Foundation are as follows:

1. Initial registration fee:

i. During the first year of a biennial renewal period: $150.00

ii. During the second year of a biennial renewal period: $ 75.00

2. Registration renewal fee, biennial: $150.00]*

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

OFFICE OF CABLE TELEVISION

Regulations of Cable Television Telephone System Performance

Adopted New Rules: N.J.A.C. 14:18-7.7

Proposed: August 5, 1991 at 23 N.J.R. 2273(a).

Adopted: November 1, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Regulatory Commissioners).

Filed: November 20, 1991 as R.1991 d.594, **without change.**

Authority: N.J.S.A. 48:5A-10.

Effective Date: December 16, 1991.

Expiration Date: July 26, 1995.

Commenters: Thomas C. Kelly, Esq., Counsel for the New Jersey Cable Television Association

John Stephens, TKR Cable Company

Hank Magers, United Artists Cable Company of New Jersey, Inc.

Helen Naimark, Consumer

Eugene Francis, United Artists Cable Company of New Jersey, Inc.

Summary of Public Comments and Agency Responses:

A public hearing was held on August 23, 1991, by the Board of Regulatory Commissioners. Written comments were submitted to the Office of Cable Television (Office), Board of Regulatory Commissioners (Board) formerly the Board of Public Utilities) by September 5, 1991. Five commenters presented written/oral comments to the rule. A copy of the transcript is available through the Board of Regulatory Commissioners, Two Gateway Center, Newark, New Jersey 07102. A summary of comments and responses follows:

COMMENT: The New Jersey Cable Television Association (NJCTA) commented that providing the statistics required by the rule would not pose a significant burden on the State's cable operators and that it appreciates the efforts of the Board to make it less burdensome.

RESPONSE: The Board accepts the comments of the NJCTA and agrees with its comment that the performance data requested should not present a significant burden to the State's cable operators.

COMMENT: The NJCTA commented that the Board's complaint recording procedure should be revised to more adequately reflect the nature of the complaints received. That is, the NJCTA suggested that subscriber inquiries should not be tallied as true complaints against a cable operator.

RESPONSE: The Board has taken the NJCTA's comments under advisement but notes that this generic subject matter is not primarily part of this rulemaking and, therefore, it is not appropriate to make extensive comments on it as part of this proceeding. However, during the course of the public hearing, staff did explain that the Office does distinguish between complaints and inquiries when appropriate. Further, the Board will consider the NJCTA's comment in connection with any review of internal policy.

COMMENT: The NJCTA suggested that the Board analyze the complaints received by the Office which make up the basis for this rule to make a determination of the circumstances surrounding the inaccessibility complaints. The NJCTA would like to know if the complaints were generated by significant events that might have caused problems with the cable operator's telephone system such as outages or that the subscriber could not reach the cable operator after office hours.

RESPONSE: The Board believes that the complaints have been sufficiently analyzed to provide a meaningful basis for the rule. The Board does not believe that because a cable operator experiences a disruptive event such as an outage, it is excused from providing some level of phone accessibility. While the Board recognizes that all calls cannot be answered at all times, it believes that a problem with telephone accessibility exists at times other than those anomalous periods. The level of complaints received by the Board suggests that telephone accessibility is a problem in more than a few isolated instances. Therefore, the Board believes, the reporting requirements as adpoted are appropriate.

COMMENT: The NJCTA and United Artists Cable of New Jersey, Inc. (UACNJ) commented that the rule's summary contained language that would allow the Board to pursue enforcement action against chronic problem cable operators. The NJCTA and UACNJ contended that the rule is not designed to allow for enforcement action but simply allows for the collection of data.

RESPONSE: The Board intends to use the information compiled by this rule to analyze the performance of each cable system in the State. The Board believes that the analysis could be used to create meaningful statistics, if necessary. The Board does not dispute the fact that the information could be used for investigative or enforcement actions if warranted by the circumstances and with proper notice. The Board believes any such use of the information is within regulatory discretion.

COMMENT: The NJCTA commented that subsection (d) of the rule allows for waivers of one or more of the reporting requirements. The NJCTA commented that the Board should exempt those systems which would be granted a waiver when the rule is promulgated instead of requiring a cable operator to apply for a waiver which may burden that cable operator with unnecessary expenses. The NJCTA also commented that from the time the cable operator applies for a waiver to the time it is granted or denied, the cable operator may possibly be in violation of the rule by not reporting.

RESPONSE: The Board does not believe it is appropriate to grant blanket waivers for certain cable systems. At this juncture, the Board is not in a position to know which systems can or cannot provide any or all of the information or whether waivers will depend exclusively on system size. In accordance with this rule, a cable company may be granted a waiver of all or some of the reporting requirements and it will be necessary to examine each individual system's request to determine its merits. In addition, a cable company might be required to provide alternate information, dependent on the individual system's capabilities. Again, the Board concludes that blanket waivers would be inappropriate. The Board hopes that cable operators will take steps to ensure that any request for a waiver is filed in a timely fashion; however, the Board would take into account a request for waiver when examining reporting violations which occur while a waiver request is pending.

COMMENT: The NJCTA commented that the rule has a provision to require cable operators to submit explanations of extraordinary events which effect telephone performance. The NJCTA commented that it supports the Board's inclusion of this provision, but requested that the Board provide a list or a key of what it would consider an "extraordinary" event.

RESPONSE: The Board believes that a cable operator should be able to determine whether or not an event is extraordinary in terms of its affect on telephone traffic. This rule provision is meant to allow operators to provide explanations of events which could cause dramatic increases in subscriber calling patterns, which could then be considered in any staff analysis.

COMMENT: The NJCTA and TKR Cable Company (TKR) commented that the cable industry in the State has started to self-regulate the telephone traffic problems it has experienced. The commenters believe that this reporting rule was based on research done and problems which existed in 1987 and that subscribers are no longer experiencing this past level of telephone accessibility problems. Both the NJCTA and TKR suggested that since most, if not all, operators have adopted the National Cable Television Association's (Association's) customer performance standards for answering telephones, the Board should allow the cable industry to continue to self-regulate its telephone traffic.

RESPONSE: The Board believes that some companies have attempted to alleviate the telephone accessibility problems experienced by the subscribing public. However, the record indicates that the many cable systems in the State still experience some degree of telephone inaccessibility or may experience such problems in the future. One purpose of this rule is to determine the pervasiveness of the telephone accessibility problems experienced by New Jersey cable subscribers.

Further, the commenters have not supplied the Board with any evidence that the Association's standards have been adopted by all New Jersey systems or that any systems meet the Association's standards.

COMMENT: NJCTA and TKR commented that the Board should set a standard which the operators could meet. The NJCTA suggested that if the Board were to adopt a standard, the Association's telephone availability standard, would be an appropriate standard to adopt.

RESPONSE: The Board disagrees with the commenters that a standard should be set without benefit of a record. In fact, this had been the position of the members of the industry from the earliest introduction of the telephone accessibility proceedings in 1987. The Board held a public hearing on December 1, 1987, Docket No. CX87091172, pursuant to which commenters stated that there was no evidence of a Statewide telephone accessibiilty problem and that the Board should further examine complaints and other records before proceeding with the promulgation of a telephone performance standard. An empirical record should indicate what a "livable" standard might be for both the cable operators and the cable subscribers as well as for the Board. Further, the Board could not arbitrarily adopt a standard without sufficient record which may be unfair to some or all cable operators or that would not provide relief for cable subscribers from the telephone accessibility problems experienced by them.

COMMENT: TKR commented that the Board should handle problem systems on an individual basis without burdening systems that do not experience telephone problems.

RESPONSE: In the past, Board staff has directed several cable operators to perform telephone studies on an individual system basis. However, the Board's complaint records indicate that many cable systems have experienced problems with their phone systems. Therefore, the Board believes it is appropriate to collect data from all cable operators to determine where problems exist. In addition, if there are cable systems that do not experience telephone traffic problems, the Board can use those systems' telephone performance as a benchmark by which to promulgate a Statewide performance standard.

COMMENT: UACNJ commented that this reporting rule must lead to a standard due to the burden placed on both the cable operator and the Board in retrieving, collecting and analyzing the performance statistics. UACNJ contended that not promulgating a rule as a result of the performance statistics collection and analysis would be a waste of time and resources for both the cable industry and the Board.

RESPONSE: The Board believes that the reporting rule may not necessarily lead to a telephone performance standard. Without in depth analysis of the cable industry's telephone practices, the Board is not in a position to comment on whether or not a standard will or should be promulgated. In addition, the performance statistics are minimal and should not cause any significant burden on the cable operator.

COMMENT: The NJCTA stated that a standard should have been set in 1987, if that was when the Board perceived that there was a problem.

RESPONSE: In 1987, New Jersey cable operators stressed the necessity for substantial empirical record before promulgation of a telephone standard. As stated above, at a public hearing on December 1, 1987, pertaining to the pre-proposal of a new rule concerning telephone service standards in New Jersey, commenters stated that the Board should fully examine all records available, and provide comparative data to the industry, before proceeeding with the adoption of a telephone performance standard. By adopting this data collection rule, the Board has taken steps to collect empirical data by which a standard may be set.

COMMENT: UACNJ commented that a telephone performance standard should not be based on performance statistics. UACNJ contended that a standard could be promulgated at this point based on the complaints received and what must be done to reduce or eliminate them. A standard should be introduced which would alleviate customer accessibility problems but that would consider the administrative and financial burden placed upon the cable operator.

RESPONSE: As stated above, the Board is not ready to promulgate a standard without benefit of a factual record. However, the information gathered from the rule will not be the sole basis for the promulgation of a telephone standard, should one prove necessary. The Board would account for complaints on record as well as other data available to it in the promulgation of a standard.

COMMENT: The NJCTA and UACNJ commented that it would like the Board to provide the State's cable industry with an ongoing analysis of the information collected and an explanation of what is the significance of the statistics collected.

RESPONSE: The Board believes that any analysis of the telephone performance data should be available to the cable industry. The Board is willing to share its ongoing analysis with the cable industry but is concerned about the administrative burden that the dissemination of this information might cause the Office. The Board is willing to supply the information to any party requesting such information and believes that this should eliminate unnecessary expense and administrative burden incurred by mailing to parties not desiring such information.

COMMENT: The NJCTA, UACNJ and TKR commented that before any standard is developed or promulgated, there must be an open dialogue between the Board and the State's cable operators.

RESPONSE: The Board agrees.

COMMENT: Ms. Helen Naimark, a cable consumer, lent her support for the adoption of the rule.

RESPONSE: The Board accepts the comments of Ms. Naimark.

Full text of the adopted new rule follows.

14:18-7.7 Telephone system performance

(a) Each cable television operator shall provide the Office with the following information for all telephone trunk lines normally used by subscribers and the general public for every office it maintains:

1. The total number of incoming calls received during each day of the listed month;

2. The percentage of time in which an inward dialed telephone call would receive a busy signal for each day for the listed month;

3. The average length of time of incoming calls held in queue (hold time) for each day for the listed month; and

4. The percentage of calls terminated by the caller (abandoned) while the call is held in queue during each day for the listed month.

(b) The data requested by (a) above shall be provided for the calendar months of January, March, May, July, September and November, and shall be accompanied by a certification from the system manager or other appropriate system personnel that the information is correct.

(c) Reports of the information required by (a) above shall be filed by the operator within 10 days of the end of the month for which the report is filed. The data shall be submitted in a summary format, on forms prescribed by the Director.

(d) The Office may direct a cable television operator to record and submit additional data or to conduct, or have conducted, other or more detailed telephone traffic analyses, if circumstances so require.

(e) All averages and percentages compiled pursuant to (a) above shall consider only the hours in which the cable television company's office is open to receive incoming calls.

(f) A cable television operator shall submit an explanation of any extraordinary change in telephone traffic patterns as indicated by the data provided to the Office. Explanations shall be provided for extraordinary changes caused by situations such as outages, phone equipment failure and rate changes.

(g) A cable television operator may request, in writing, a waiver of one or more of the reporting requirements or required report formats of (a) above from the Director. Any such waivers will be for periods of up to one year and are renewable. In considering such requests, the Director shall consider factors such as the size of the system, the burden on the cable television operator for providing the information, the capability of the cable television operator's telephone system and the nature and type of alternative information the cable television operator intends to provide.

TRANSPORTATION

(a)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 9 in Cape May County
Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: September 16, 1991 at 23 N.J.R. 2831(a).
Adopted: October 18, 1991 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: November 12, 1991 as R.1991 d.585, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: December 16, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.41 Route U.S. 9
(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic in Cape May County:
i. (No change.)
ii. Middle Township:
(1)-(2) (No change.)
(3) Zone 3: 30 miles per hour between Locust Lane and 1,000 feet north of Orbit Drive except for 25 miles per hour when passing through the Middle Township Elementary School Zone (mileposts 12.10 to 12.421) while "25 MPH when flashing" signs are operating, during recess or while children are going to or leaving school, during opening or closing hours (mileposts 11.94 to 13.34); thence
(4)-(5) (No change.)
iii.-iv. (No change.)
2. (No change.)
(b) (No change.)

(b)

NEW JERSEY TRANSIT CORPORATION
Destructive Competition Procedure for Claims
Adopted New Rule: N.J.A.C. 16:74

Proposed: June 3, 1991 at 23 N.J.R. 1773(a).
Adopted: November 18, 1991 by the New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Filed: November 19, 1991 as R.1991 d.593, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with portions not adopted (amendments to N.J.A.C. 16:74-1.1, 1.2, 2.1, 2.2, 2.4 and 2.5).**

Authority: N.J.S.A. 27:25-2(a), 5(e), (h), (k) and 27:25-7(b).

Effective Date: December 16, 1991.

Expiration Date: December 16, 1996, Pursuant to Executive Order No. 66(1978), N.J.A.C. 16:74 expired on October 20, 1991. The rule proposed for readoption with amendments are herein adopted as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Summary of Public Comments and Agency Response:
The New Jersey Transit Corporation (NJ TRANSIT) received comments from Academy Bus Tours, Inc. (Academy), Olympia Trails Bus Company, Inc. (Olympia) and the New Jersey Department of Transportation. A summary of their written comments and NJ TRANSIT's response follows:

1. COMMENT: Destructive competition is not adequately defined and, therefore, carriers do not know what competition could be construed as violating the rules.

RESPONSE: Defining destructive competition was discussed at length with the private bus carriers when the original regulations were adopted. Both NJ TRANSIT and the industry agreed that because of the difficulty in defining destructive competition and the number of variables that may be at play in any particular case, it was in everyone's best interest to only set forth factors for the Administrative Law Judge to consider in determining if a particular action was destructive.

2. COMMENT: The proposed amendment is superfluous and an unnecessary remedy for NJ TRANSIT in light of the other remedies available to NJ TRANSIT pursuant to its existing lease agreements.

RESPONSE: NJ TRANSIT presently leases buses and other capital equipment to numerous private carriers. If a carrier violates such a lease, it may be terminated. However, if a carrier engages in what NJ TRANSIT believes is destructive competition, this is not a violation of the existing lease agreements. The proposed amendments make it clear that NJ TRANSIT may file a claim against such a carrier and if it is found to be destructive competition, the carrier must cease or desist. The need for this remedy has been demonstrated by instances in which assisted private carriers have begun competition with NJ TRANSIT on its existing route or routes. However, the NJ TRANSIT has decided not to adopt the proposed changes.

3. COMMENT: The proposed amendment contradicts both the NJ TRANSIT enabling statute and Federal policy.

RESPONSE: The rules, which provide for a fair and impartial procedure to determine if NJ TRANSIT or a private carrier is engaging in destructive competition and a remedy if such is the case, do not contradict any provision of NJ TRANSIT's enabling legislation or any Federal policy. Olympia has cited certain provisions of NJ TRANSIT's enabling legislation but has not identified any provision that is violated by the proposed amendments. Similarly, Olympia has failed to identify any provision of Federal law, regulation or policy that is violated by the proposed amendments. However, the NJ TRANSIT has decided not to adopt the proposed amendments.

Summary of Agency-Initiated Changes:
Because of concerns by the New Jersey Department of Transportation and a possible conflict with the Commissioner of Transportation's regulatory authority, NJ TRANSIT decided not to adopt the proposed amendments (16:74-1.1, 1.2, 2.1, 2.2, 2.4 and 2.5).

Full text of the rules proposed for readoption, adopted herein as new rules, can be found in the New Jersey Administrative Code at N.J.A.C. 16:74.

Full text of the adopted amendments follows (additions to proposed indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

16:74-1.1 Purpose
The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State Government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the legislative findings set forth in the Act is that, in the provision of public transportation services, it is desirable to encourage to the maximum extent feasible the participation of private enterprise and to avoid destructive competition. To insure the accomplishment of this goal, N.J.S.A. 27:25-7(b) requires NJ TRANSIT to establish procedures for the handling of claims of destructive competition which are brought by carriers providing motor bus regular route service. *[In order to ensure that NJ TRANSIT has the ability to provide a coherent public transportation system in the most efficient and effective manner, it is also necessary to provide procedures for handling of destructive competiton claims made by NJ TRANSIT against a private carrier or by one private carrier against another.]*

16:74-1.2 Definitions

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

. . .

*["Actions by a carrier" means the operation of equipment or facilities by a carrier, its subsidiaries or affilates."

. . .

"Affiliate" means any individual, company, proprietorship, corporation, trust or partnership where by reason of the relationship of such entity with the carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or any other direct or indirect means) there is a reason to believe that the affairs of the carrier may be managed in the interest of such individual, company, proprietorship, corporation, trust or partnership.]*

. . .

"Carrier" means any individual, co-partnership, association, corporation, joint stock company, *[affiliate or affiliates,]* trustee or receiver operating or controlling regular route motor bus service on established routes within the State or between points in this State and points in adjacent states.

. . .

"Executive Director" means the Executive Director of NJ TRANSIT or his *[or her]* designee.

. . .

16:74-2.1 Filing of *[claims]* ***Claims***

(a) All claims *[against NJ TRANSIT]* must be filed in writing with NJ TRANSIT's Department of Compliance *[Corporate Affairs]*, Market Street and McCarter Highway, P.O. Box 10009, Newark, New Jersey 07101. *[All claims against a carrier must be filed in writing with the carrier's owner or its registered agent with a copy to NJ TRANSIT's Department of Corporate Affairs.]*

(b) Claims may be filed only by properly certified carriers providing regular route motor bus services *[or NJ TRANSIT]*.

(c) The claim must contain the following information or it will not be cognizable under this chapter or N.J.S.A. 27:25-7(b):

1.-2. (No change.)

3. A description of the actions of NJ TRANSIT *[or a carrier]* alleged to be destructively competitive including but not limited to the date of such actions and the actions taken by the carrier *[or NJ TRANSIT]* in response thereto. This statement must contain the facts upon which the carrier *[or NJ TRANSIT]* relies to support its claim of destructive competition;

4. The economic and operational impact of the alleged acts of destructive competition on *[NJ TRANSIT or]* the carrier or its employees and users;

5. A statement setting forth the carrier's *[or NJ TRANSIT's]* reasons why particular competitive actions of NJ TRANSIT *[or the carrier]* are alleged to be "destructively competitive"; *[and]*

6. A statement of the relief sought, including alternatives deemed appropriate by the carrier *[or NJ TRANSIT]*.

(d) Nothing in this section shall be construed to prevent the carrier *[or NJ TRANSIT]* from presenting additional facts to the Administrative Law Judge (ALJ) for his or her consideration.

16:74-2.3 Transmittal to Office of Administrative Law (OAL)

When *[NJ TRANSIT or]* the carrier has satisfied all of the *[above]* requirements ***of N.J.A.C. 16:74-2.1***, the matter shall be considered a contested case and the Executive Director or his or her designeee shall, within 30 days of receipt of the completed claim, refer the complaint to the OAL to be processed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

16:74-2.4 Factors to be considered

(a) The following factors may be considered by the Board in determining whether NJ TRANSIT *[or the carrier]* has engaged in destructive competition:

1. Which carrier was the first to provide the service;

2. Whether the action of NJ TRANSIT *[or the carrier]* was a significant cause of the adverse impact on the carrier *[or NJ TRANSIT]*;

3. Whether NJ TRANSIT *[or the carrier]* is complying with all applicable Federal and State laws, its Certificates of Public Convenience and Necessity and applicable tariffs, in providing the service alleged to be destructively competitive;

4. The inherent benefits of the services to the rider, including, but not limited to, destination, door to door travel time, frequency of service, comfort, cost transfer frequencies or proximity to the riders' residence;

5. Whether the NJ TRANSIT *[or the carrier's]* service alleged to be destructively competitive is in the public interest; and

6. Whether the level of service and/or fares of NJ TRANSIT *[or the carrier]* is destructively competitive.

(b) Nothing in this section should be construed to prevent the Board from considering factors other than those set forth in this section in determining whether NJ TRANSIT *[or the carrier]* has engaged in destructive competition.

16:74-2.5 Remedy and *[order]* ***Order***

(a) *[Except as provided in (c) below, the]* ***The*** sole remedy that may be considered by the Board pursuant to this chapter and N.J.S.A. 27:25-7(b)***,*** is to direct NJ TRANSIT *[or the carrier]* to cease and desist in whole or part from using its equipment or facilities in a destructively competitive manner.

(b) Upon receipt of the Initial Decision of the ALJ, the Executive Director shall present the matter to the Board and the Board shall adopt an order or final decision accepting, rejecting, or modifying the Initial Decision by the ALJ or remanding the decision to the OAL all in accordance with N.J.A.C. 1:1-16.5 and 1:1-16.6.

[(c) With regard to claims brought by a carrier or NJ TRANSIT against a carrier, failure of such carrier to comply with a final order or decision of the Board within 30 days of receipt thereof shall, unless stayed by a court of competent jurisdiction, constitute just cause for NJ TRANSIT to disqualify the carrier from any future participation in NJ TRANSIT's programs, including, but not limited to, the bus leasing, capital improvement, subsidy, contracting out, bus card and transfer programs and the senior citizen and handicapped half fare programs.]

HUMAN SERVICES

(a)

OFFICE OF THE COMMISSIONER

Department of Human Services Child Care Services Provision of Child Care Services Eligibility for Individual Child Care Service Programs Co-Payment Fees and Procedures

Adopted New Rules: N.J.A.C. 10:15, 15A, 15B and 15C

Proposed: October 7, 1991 at 23 N.J.R. 2960(a).

Adopted: November 20, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 20, 1991 as R.1991 d.600, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12 and the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, Sections 5081 and 5082.

Effective Date: December 16, 1991.

Operative Date: January 1, 1992.

Expiration Date: January 1, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Catholic Conference submitted a telephone comment on the proposed rules at N.J.A.C. 10:15, 10:15A, 10:15B, and 10:15C which appeared in the New Jersey Register on October 7, 1991 concerning the Department of Human Services Child Care Services Manual. The Manual details the two new child care programs authorized under the Federal Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), namely, the Aid to Families with Dependent Children At-Risk Child Care Program, and the Child Care and Development Block Grant Act of 1990. The organization indicated that text at N.J.A.C. 10:15A-1.3(b)1 should also reference the fact that private school-based centers are also exempt from the Division of Youth and Family Services Bureau of Licensing requirements as are the public school centers.

RESPONSE: Language was removed at N.J.A.C. 10:15A-1.3(b)1 referencing the public school exemption rather than delineating, all-inclusively, the other exemptions from the Bureau of Licensing requirements set forth at N.J.A.C. 10:122.

The Department of Human Services held three public hearings concerning the proposed rules on the aforementioned Child Care Services Manual and other related child care issues in the northern, central and southern geographic regions of the State on October 22, October 17, and October 24, 1991, respectively. Although public hearing dates were not published in the New Jersey Register, advance notices of the hearings were announced through other substantial means. A Legal Notice was submitted to four major New Jersey newspapers (Newark Star Ledger, Camden Courier Post, Asbury Park Press and the Trenton Times) for publication prior to October 2, 1991. The Division of Economic Assistance also disseminated an Informational Transmittal, dated October 1, 1991 to inform county welfare agencies, Legal Services and numerous other groups/individuals who might be affected by the proposed child care rules.

No recommendations were made by the Hearing Officer. A copy of the hearing record can be reviewed or obtained by writing to:

Aletha Wright, Director
Office of Child Care Development
Department of Human Services
CN 700
Trenton, New Jersey 08625
or
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625-0716

Testimony was heard from 88 representatives from child care advocacy groups, parent groups, concerned citizens, private-for-profit family day care networks, various child care organizations, comprehensive non-profit child care agencies, municipal child care agencies, child care centers, advisory boards, Head Start, private providers and child care resource and referral agencies. Pertinent issues pertaining to these rules which were presented at the hearings are addressed below.

COMMENT: The Gloucester County Child Care Coalition, the New Jersey Task Force on Employer Supported Child Care, Child Care Connection, Inc., the Family Day Care Organization of New Jersey, Childrens' Services of Morris County, the EIRC, and Family Day Care of Gloucester County endorse the Department's position providing for different levels of reimbursement to non-registered family day care providers. Additionally, the above entities and the Summit Child Care Centers, the Bergen County Office for Children, the New Jersey Association for the Education of Young Children (Essex-Hudson Chapter), and the Gloucester County Child Care Coalition support regulated child care services for family day care which meet reasonable standards for health and safety.

RESPONSE: The child care programs provided through the Department of Human Services have permitted parents to choose from a variety of child care arrangement options while at the same time trying to safeguard the health and safety of the child in the care setting. The child care programs set forth at N.J.A.C. 10:15, 15A, 15B and 15C continue this practice and require, at a minimum, a health and safety inspection/interview with the family day care provider for authorization of payment through the programs. The Department will continue its efforts at the Federal level to stress the importance of regulatory health and safety measures to ensure the safety of children placed in care arrangements utilizing public funds.

COMMENT: Several commenters stated that the maximum reimbursement rates established by the Department, which are standardized rates for the types of care arrangements, should instead reflect actual costs of care. Those commenters included: The New Jersey Child Care Association, Monday Morning Incorporated, the Newark Office of Children, the Morris County Child Care Directors Association, the Bergen County Office for Children, Childrens' Services of Morris County, the DYFS Policy Development Board, Little Children's World Inc., and the Essex-Hudson Chapter of the New Jersey Association for the Education of Young Children.

RESPONSE: While the maximum child care rates established by the Department for the various types of care arrangements may not cover the actual costs of care in all regions of the State, the Department has attempted, within the limits of available State resources, to provide as much child care assistance as possible. The Department recognizes that actual costs in higher cost-of-living areas may exceed the established rates; however, it has tried to provide equitable assistance to as many families as possible. The Department will continue to work toward improved rates by conducting frequent surveys and through its efforts at both the State and Federal legislative levels.

COMMENT: The EIRC, Southern Regional Child Care Resource Center supports the Department in its move to establish equalized rates for licensed child care centers regardless of the child care funding source for services provided. The EIRC views this action on the part of the Department as an attempt to make the system more equitable for struggling child care centers throughout the State.

COMMENT: A family day care network, Monday Morning Inc., stated that the voucher certificates to be utilized in the Child Care Development and Block Grant (CCDBG) and IV-A At-Risk Child Care programs should be utilized for family day care providers who have chosen to become part of the child care industry by registering as providers under the provisions of the Family Day Care Registration Act; relatives providing care to a related child(ren), who do not intend to continue as a child care provider to other youngsters after the related child(ren)'s needs are met (that is, to become registered), should not be permitted to participate in the certificate programs.

RESPONSE: Federal statute and regulations require under the parental choice provisions the use of relative care by families in their selection of a child care provider. The State programs must comply with the Federal requirements in order to participate and receive funding for the respective child care program.

COMMENT: The New Jersey Family Day Care Providers' Association, the Child Care Connection, Inc., the Family Day Care Organization of New Jersey, Childrens' Services of Morris County and Family Day Care of Gloucester County support the same maximum reimbursement rates for licensed center providers and registered family day care providers.

RESPONSE: The difference in the reimbursement rates resulted when the Department resolved to bring into parity the rates for centers among the various child care programs funded through the Department. The Department decided to focus on centers, most of which are hard-pressed in meeting escalating costs for liability insurance, staffing requirements, and maintenance of aging physical plants, among other fiscal concerns. This was not done in disregard of the financial concerns of family day care providers, but as an attempt to strengthen the center infrastructure before continuing to examine and address costs throughout the industry.

Several factors influenced the final center rates. First, the existing center rate formula was reviewed. That rate, received by the licensed center provider, was the sum total amount of the State subsidy, the donor match, and a parent co-payment fee amount based on family size and the family's income level predicated on the State Median Income levels of 1983, the year of inception of the co-payment fees. The Department examined the most recently available State Median Income levels (1989) and determined the impact of assessed family co-payment contributions based on this data. Lastly, the Department had to consider the impact of the Federal regulations which affect three of the child care programs, including the CCDBG and IV-A At-Risk programs, which require that the co-payment fee made by the family is to be substracted from the total State subsidy amount.

With the limited resources available in the 1992 SFY budget, the aforementioned information, and the estimated numbers of additional families to be serviced through all the child care funding streams, the data indicated that the most feasible course of action in the immediate future was to equalize the center rate. In so doing, the rate increased as a result of the previously mentioned factors. At this time funds are not available to extend the increase to registered family day care. In order to provide services to as many new families as possible, the Department chose to retain the current rates for registered providers. However, it remains the goal of the Department to work toward increasing the reimbursement rates for all child care programs. To that end, the Department will be undertaking an updated market rate survey in early 1992.

COMMENT: El Primer Paso Ltd., stated that the Department must ensure equal access to its child care programs by Hispanic parents and have available Spanish translations of materials and applications for the CCDBG and IV-A At-Risk child care programs.

RESPONSE: All appropriate materials for both child care programs have been translated into Spanish. Hispanic parents are guaranteed equal access to the program under Federal statute and regulation and through these rules as published.

COMMENT: The New Jersey Association for the Education of Young Children (Essex-Hudson Chapter) and the North Jersey Community Coordinated Child Care Agency emphasized that licensed child care centers and family day care providers should be provided with applications and program materials on the certificate child care programs.

RESPONSE: The Department, through the county designated agencies, is providing materials concerning the CCDBG and IV-A At-Risk child care programs to licensed child care centers and family day care sponsoring organizations under contract with the Department's Division of Youth and Family Services.

COMMENT: The New Jersey Head Start Association commented that the CCDBG and IV-A At-Risk programs are not serving the "poorest of the poor."

RESPONSE: The rules reflect an effort to serve New Jersey's poorest working families and/or those families trying to become self-sufficient by participating in educational or training programs. Such families are targeted for priority consideration (see N.J.A.C. 10:15B-1.2(a) and (b), and 2.1(c) and (d)).

COMMENT: The North Jersey Community Coordinated Child Care Agency advocated a special needs rate for licensed centers. Special needs care is more difficult to find as there are few providers offering such care. Costs for this specialized care are more and it is extremely difficult to recruit such providers.

RESPONSE: The Department recognizes the need to establish a special needs rate for licensed centers and family day care homes. However, it has been determined that a significant amount of additional funding would be required to include special needs rates in the certificate program.

Included in the adoption are corrected technical and typographical errors. The Form "Home Approval Checklist" published in Appendix B has been renamed the "Self-Arranged Care Inspection and Interview Checklist". References to this Form have been also changed in those locations where cited in these rules (see N.J.A.C. 10:15-2.3(a)11, 10:15A-1.3(d)1 and 10:15A-1.3(e). Changes which were more substantive follow.

N.J.A.C. 10:15-1.2 was amended and the terms "child care service agency," "county selected agency" and "county contracted agency" deleted and replaced with the term "county designated agency." The terms were aligned throughout the text in accordance with this modification.

References to N.J.A.C. 10:125B, which has not yet been proposed, have been deleted.

Language has been added at N.J.A.C. 10:15A-1.5(a), 10:15C-1.1(a)1 and (g) to clarify that if a family is in receipt of child care assistance benefits through another Departmental child care program and making co-payment for two children under the CCDBG or IV-A At-Risk program, then no additional co-payment would be assessed under that other Departmental program. If a family is participating in another Departmental program and in either the CCDBG or the IV-A At-Risk program, the co-payment shall be determined by the county agency under the CCDBG or IV-A program, and include that child from the other child care program, if necessary in the final co-payment determination. The new language was added for clarification to preclude unfair and duplicative co-payment assessment among the various Departmental child care programs, if a family has already satisfied co-payment requirements.

At N.J.A.C. 10:15B-2.1(e)2, text was inserted to conform that provision with the terminology at N.J.A.C. 10:15-1.2, describing the treatment activity relevant to a special needs child.

The Department has resolved that due to the changing nature of these programs that these rules will expire in three years on January 1, 1995.

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

CHAPTER 15
DEPARTMENT OF HUMAN SERVICES
CHILD CARE SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

10:15-1.1 Purpose and scope

(a) The purpose of this manual is to set forth the policies and procedures on a Statewide basis for the efficient and equitable provisions of child care services, through the supervision of the New Jersey Department of Human Services (DHS). The Department has been designated the lead State agency responsible for the development and implementation of a Statewide comprehensive child care system that supports the needs of eligible families in the State as a priority initiative of the Governor. Eventually, child care resources available in the State will be accessed through this single comprehensive system.

(b) The child care service programs, described herein, are made available through block grant monies of the Omnibus Budget Reconciliation Act (OBRA) of 1990, Public Law 101-508. The block grant child care service programs are: The Aid to Families with Dependent Children (AFDC) At-Risk Child Care (ARCC) Program as implemented by Section 5081 of OBRA 1990; and the Child Care and Development Block Grant (CCDBG) Act of 1990 as implemented by Section 5082 of OBRA 1990. Those funds are offered by the Administration for Children and Families (ACF), U.S. Department of Health and Human Services, to states with approved State Plans to increase the availability, affordability, and quality of child care.

(c) The AFDC At-Risk Program (also known as IV-A At-Risk Program) and the CCDBG eligibility requirements, specific for each of those funding streams, are described at N.J.A.C. 10:15B-1 and 10:15B-2 respectively. DHS shall operate these child care service programs through the coordination efforts of its Office of Child Care Development in conjunction with existing Departmental programs available through its Divisions of Youth and Family Services (DYFS) and Economic Assistance (DEA), as described in rules set forth at N.J.A.C. *[10:125B,]* 10:81 and 10:82. The policy provisions and terms in this chapter are general provisions which are applicable throughout all chapters N.J.A.C. 10:15A, 10:15B and 10:15C on child care services through the Department of Human Services.

1. The policies and procedures set forth in this manual are binding on those agencies contracting with the Department to provide services through these child care programs, and are enforceable through the Divisions of the Department that are jointly responsible for overseeing the programs, the Divisions of Youth and Family Services and Economic Assistance. Questions of interpretation shall be resolved by the aforementioned Divisions.

2. The child care programs shall be administered within the framework of Federal and State law and regulations. Requirements, other than those established pursuant to Federal and State law and these regulations, shall not be imposed as a condition of receiving child care services.

(d) New Jersey has the opportunity to expand, improve, and develop child care services for the families of this State. A primary objective of the New Jersey Department of Human Services (NJDHS) is to offer families comprehensive child care services that will enable them to secure or maintain employment and thus become self-sufficient from public assistance benefit programs. Additionally, both the IV-A "At-Risk" and the CCDBG programs emphasize the availability of child care services for families serving as substitute care settings for protective services children identified by DYFS. Such families must satisfy the eligibility criteria for those programs. Based on its extensive experience in child care and early education programs, the Department of Human Services sets forth the following principles for a comprehensive child care delivery system of child care services in the State.

1. New Jersey supports programs that encourage family stability and self-sufficiency. As such, the Department supports child care

services addressing the needs and concerns of working families, employers and government.

2. The Department believes that consumers of child care should have the maximum choice possible among types of child care options available (including center-based care, family child care, in-home care, and care by relatives) under contracts between providers and the DHS for the provision of child care services, or through the child care certificate process.

3. The Department encourages the development of diverse types of child care by type of sponsorship (employers, public schools, religious institutions, community organizations, and recreation programs), and by types of corporate status (both for profit and nonprofit).

4. The Department believes that mechanisms should exist for improving child care program quality, including, but not limited to, supports for the improvement of curriculum development and administration, a comprehensive training initiative for child care staff members, and monies for building repairs to child care sites.

5. The Department believes that child care should be provided in settings that meet basic health and life/safety guidelines. To this end, the Department authorizes payments for child care in programs in compliance with laws, and regulations pertaining to health and life/safety.

6. The Department incorporates into its ongoing child care planning process recommendations received from interdepartmental agencies of the State; child care organizations within the State, including, but not limited to, the New Jersey Child Care Advisory Council; the human services community; the State Human Services Advisory Council; units of local government; child care resource and referral agencies; providers of child care services; employers; and the general public. That input is used by the Department to support local child care needs.

7. The Department supports unlimited access by parents to their children and to the providers caring for their children during the normal hours of operations, or whenever such children are in the care of such providers.

8. The Department believes that an informed consumer of child care services is that individual who has available to him or her information on child care concerns, such as licensing and regulatory requirements, compliant procedures, and policies and practices relative to child care services available in the State. The Department shall make available consumer materials for that purpose.

9. The Department ensures that child care service programs shall be established in the respective counties of the State in accordance with Federal provisions as agreed upon in State Plan submittals to the Federal ACF on specific Federally-funded programs. DHS shall ensure compliance of the *[county selected child care service]* ***designated*** agencies within State Plan provisions. The State Plan(s) shall be updated by DHS routinely, as changes are made to program requirements by Federal and/or State government.

10. The Department, to the best of its ability within annual State Legislative appropriations, shall ensure that payment rates for services through the child care service programs are sufficient to ensure equal access for eligible children under these subsidized programs to comparable child care services in the State that are provided to children whose parents are not eligible to receive assistance under these programs.

11. The Department promotes the development of employer-supported child care. DYFS, in conjunction with the Department's Office of Child Care Development, continues to work with the Department of Community Affairs' Division on Women and the New Jersey Task Force on Employer-Supported Child Care in directing a program of information-sharing and technical assistance to promote the creation and expansion of employer-supported child care resources.

(e) Nothing in these rules shall be construed as conferring on an applicant or recipient of child care services an entitlement to those services. If the fiscal or other resources necessary for child care service provision to an applicant/recipient are unavailable, that individual shall not be deemed to have a right to such services and the individual and the county *[selected child care service]* ***designated*** agency shall be released from all obligations for those services under these rules.

(f) Financial assistance provided through the Department's child care service programs shall not be authorized when, during the same period, such needs are actually being provided by any other source, including child care resources under the various funding streams through the Department sponsored programs described at N.J.A.C. 10:81-14*[,]* ***and*** 10:82 *[and 10:125B]*.

(g) Each county shall coordinate child care service programs with units of local government; existing child care resource and referral agencies; with early childhood education programs in the county, including Head Start programs; preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Public Law 97-35); school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); with organizations sponsoring before-and-after school activities; with the REACH/JOBS program; SSBG centers; private providers; sectarian providers; and with Federal and/or State demonstration programs, such as the Urban Pre-Kindergarten Pilot program, the REACH/JOBS Capital Expansion Program, and the Mini-Child Care Center program.

10:15-1.2 Definitions

The following words and terms, when used in this chapter and N.J.A.C. 10:15A, 15B and 15C, shall have the following meanings, unless the context clearly indicates otherwise.

"Approved home" means a family day care provider not registered pursuant to the Family Day Care Provider Registration Act (see N.J.A.C. 10:126), whose home has been evaluated and which has passed a health and safety check to qualify for payment through the Department's child care service programs. Such providers may receive payment for a maximum of two nonsibling children, or all the sibling children of one family so long as the total number of children in the provider's care does not exceed seven children; and, the number of sibling children for whom payment is made does not exceed five.

"ARCC" means the IV-A "At-Risk" Child Care Program.

"At-Risk" means working low-income families whose income upon entry into the program is at or below 185 percent of the Federal Poverty Income Guidelines, which are published in the Federal Register. Such families must be in need of child care assistance in order to remain employed (or to accept employment) and to avoid dependency on public assistance (that is AFDC).

"Care by a relative" means a child care provider who is 18 years of age or older who provides child care services to children who are by blood relationship, marriage or court decree, the grandchild, niece or nephew of such provider.

"Caregiver" means an individual who is at least 18 years of age who provides child care services directly to an eligible child on a person-to-person basis and whose home has been evaluated for health and safety purposes.

"Caretaker family" means the family providing the substitute care setting for a protective services child(ren) identified by DYFS.

"Categories of care" means licensed center-based care, registered family day care, approved home care, in-home care, before-and/or after-school care, and summer camp.

"CCDBG" means Child Care and Development Block Grant.

"Center-based child care provider" means any person owning or legally responsible for operating a licensed child care center.

"Certificate" means an authorization that is issued by the county *[selected child care service]* ***designated*** agency to a parent, legal guardian or caretaker who may use such a certificate as assistance to obtain child care services from a provider of such service.

"Child care center" means any home or facility, by whatever name known, which is maintained for the care, development or supervision of six or more children under six years of age who attend for less than 24 hours a day.

"Child Care Development Block Grant" means the Child Care and Development Block Grant Act of 1990, Section 5082 of the Omnibus Budget Reconcilitation Act of 1990, Public Law 101-508.

"Child care services" means child care services pursuant to N.J.A.C. 10:15, 15A, 15B and 15C.

["Child care service agency" means the agency selected by each county, under contract, to administer the child care certificate program; also known as the county selected agency or the county contracted agency.]

"Co-payment" means a portion of the family income that is paid by the eligible family toward the cost of child care. The amount of the required co-payment is based on the family's annual gross income level, family size, and number of children in care.

"County *[selected]* ***designated*** agency" means the agency selected by each county, under contract, to administer the child care certificate program in the county; also known as the child care service agency or the county contracted agency.

"DEA" means the Division of Economic Assistance in the New Jersey Department of Human Services.

"Department" means the New Jersey Department of Human Services.

"DYFS" means the Division of Youth and Family Services in the New Jersey Department of Human Services.

"Early Childhood Development Program" means a program of services that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children, and which is not intended to serve as a substitute for compulsory academic programs.

"Eligible child" means a child who:

1. Is under 13 years of age;
2. Is under 19 years of age and is physically or mentally incapable of caring for himself or herself (that is, a "special needs" child);
3. Resides with a family that meets income eligibility guidelines; or
4. Is under the supervision of DYFS (that is, child in protective service).

"Family day care provider" means a person who provides child care services for fewer than 24 hours per day per child, as a sole caregiver, and in a private residence other than the child's residence. Payment for DHS child care services rendered may not exceed payment for more than five children.

"In-home child care provider" means an individual who provides child care services in the child's own home for fewer than 24 hours per day.

"IV-A At-Risk" means the Aid to Families with Dependent Children (IV-A) "At-Risk" Program, Section 5081 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508.

"Low income" for IV-A At-Risk means families with gross annual incomes at or below 185 percent of the Federal Poverty Income Guidelines, as determined by family size, which are published annually in the Federal Register.

"Low income for CCDBG" means families with annual gross incomes for the family size at or below 75 percent of the State's median income (SMI) as published in the Federal Register for a family of the same size; however, low income for application purposes for CCDBG means families with annual gross incomes for the family size at or below 60 percent of the SMI for a family of the same size.

"Manual" means the New Jersey Department of Human Services Child Care Services Manual which covers eligibility for child care services through OBRA 1990 grant funds (that is, ARCC and CCDBG programs) and consists of N.J.A.C. 10:15, 10:15A, 10:15B, and 10:15C.

"OCCD" means the Office of Child Care Development in the New Jersey Department of Human Services.

"Parent" means a parent by blood, marriage or adoption and also means a legal guardian, or any other person having responsibility for, or custody of, a child or standing in "loco parentis".

"Protective services" means services on behalf of any child, under age 18, considered at risk of abuse, neglect, or exploitation; or found to be abused, neglected, exploited or abandoned and whose condition or situation gives observable evidence of the injurious effects of failure on the part of parents or others responsible for meeting at least the minimum needs of the child, as identified by DYFS. The term includes services provided to children in their own home, in foster care, children in para-foster care, children in pre-adoptive homes, children under the guardianship of DYFS, and children surrendered to DYFS.

"Provider" means the entity providing child care services.

"Provider register" means a listing of providers who have contacted the county *[child care service]* ***designated*** agency expressing an interest in participating as a provider to families in need of child care services through DHS child care service programs.

"Registered home" means a family day care provider registered pursuant to the Family Day Care Provider Registration Act (see N.J.A.C. 10:126). Providers who serve three or more nonsibling children (but less than six) must be registered pursuant to the Act to receive payment through DHS child care service programs.

"Sectarian organization or sectarian child care provider" means religious organizations or providers generally, not merely those of a specific religious character or that are affiliated with a church or synagogue who can provide proof that the organization is sectarian, such as incorporation as a non-profit religious organization or tax-exempt status as a religious organization.

"Service eligibility period" means up to a 12 consecutive month period of child care services from the date child care services commence based on satisfying ongoing child care program eligibility criteria. Resources are allocated to the child care service programs for a State fiscal year (SFY) beginning July 1 of a calendar year and ending June 30 of the following calendar year.

"SMI" means State Median Income.

"Special needs child" means a child age 19 or younger who is physically or mentally incapable of self-care; or, for CCDBG and IV-A At-Risk eligibility, a child who has been identified through a written referral from a county welfare agency, legal, medical, social service agency, emergency shelter, or public school which indicates that the child has a serious physical, emotional or mental, or cognitive condition and child care services are required as part of a treatment plan designed to stabilize or ameliorate the situation.

"Substitute care setting" means a situation wherein a child is a protective services child identified by DYFS and living in an arrangement under custody of DYFS.

"Types of providers" means the different classes of providers under each category of care. Types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

"Voucher" means the child care voucher form developed and produced by DHS that the county *[child care service]* ***designated*** agency issues to participating providers in the CCDBG and ARCC programs for vendor payments.

10:15-1.3 Opportunity and decision to apply for child care service programs

(a) Any parent and his or her child(ren), or the child(ren) of a legal guardian, or the caretaker of a protective services child(ren) under the custody of DYFS shall be given the opportunity to apply without delay for child care service programs.

(b) Applicants shall be informed about the eligibility requirements and of their rights and obligations in applying for and receiving child care services through the Department's child care service programs.

(c) The decision to apply rests with the applicant.

(d) The applicant has the right to withdraw the application before eligibility or ineligibility has been determined.

10:15-1.4 Atmosphere of mutual respect

(a) Assistance and services through the child care service programs shall be rendered to all applicants/recipients in an atmosphere of mutual respect between county *[selected service]* ***designated*** agency employees and the families they serve.

(b) County *[selected child care service]* ***designated*** agencies shall ensure that assistance and services are:

1. Extended in a manner and environment which increases a person's sense of importance, dignity and self-esteem;
2. Administered in a manner which respects the human and civil rights of persons applying for or receiving child care services; and

3. Provided in the least restrictive, most appropriate setting to ensure privacy and confidentiality.

10:15-1.5 Nondiscrimination

There shall be no discrimination on grounds of race; color; religious affiliation; sex; national origin; ethnic background; marital, parental or birth status; or handicap by the Department, its Offices and Divisions or the county *[contracted child care service]* ***designated*** agencies in the administration of the child care service programs.

10:15-1.6 Confidential nature of information

(a) Information about applicants or recipients for child care service programs shall be used and disclosed only for purposes directly connected with the administration of child care service programs.

(b) The information requested by the Department and the county *[selected]* ***designated*** agency shall be information that is required:

1. To determine eligibility for child care service benefits without which child care services could not be provided; and

2. For Federal reporting purposes.

(c) The information required to establish eligibility is in accordance with this manual.

10:15-1.7 Primary source of information

(a) Applicants and recipients of child care service program benefits are in all instances that the primary source of information about themselves and their families.

(b) It is the responsibility of the county *[selected child care service]* ***designated*** agency to determine eligibility based on the information provided by the applicant/recipient and, as necessary, to secure verification from secondary sources. Such verification shall be limited to those facts which are essential to establish eligibility and shall be obtained only with the known consent of the applicant/recipient.

(c) The county *[selected child care service]* ***designated*** agency worker shall explain to the applicant/recipient that verification is necessary and that lack of consent on behalf of the applicant/recipient to obtain the necessary verification shall make processing of the application/reapplication impossible.

10:15-1.8 Financial eligibility determination

The county *[child care service]* ***designated*** agency worker shall determine financial eligibility (need) of the applicant family in accordance with N.J.A.C. 10:15B-1 or 10:15B-2 to determine the appropriate eligibility funding stream (IV-A At-Risk or Child Care and Development Block Grant).

10:15-1.9 Issuance and availability of manual

(a) The Department of Human Services Division of Economic Assistance (DEA) shall issue the manual and amendments to the manual, as necessary. It is the responsibility of each holder of the manual to maintain its accuracy by inserting new material as it is issued and by removing obsolete pages promptly.

(b) Copies of the manual shall be provided to Department and Divisional administrative and other appropriate staff associated with the child care service programs. Those individuals are expected to be thoroughly familiar with its contents in order that policy and procedures may be consistently applied.

(c) DEA shall ensure that each *[contracted]* ***county designated*** agency is provided with the number of copies of the manual as requested for initial use by its staff. Additional copies shall be available from DEA through written request, at the cost of printing and mailing.

(d) The director of the *[contracted]* county *[child care service]* ***designated*** agency shall make available copies of this manual to all staff members working with applicants and recipients of child care service programs. Likewise, all updates to manuals shall also be issued to staff. The *[contracted]* ***county designated*** agency has the responsibility and shall ensure that each staff member working with these service programs is thoroughly familiar with the manual's contents, and applies the required policy and procedures consistently.

(e) One administrative copy of obsolete material related to this manual shall be kept by the contracting entity. Such material reflects time frames of changes in policies and serves as a historical reference for the agency.

(f) This manual is a public document. It is important that all copies in use be up-to-date. It is available as follows:

1. Copies are available for examination or review during regular office hours on regular work days in the Department of Human Services, Office of Child Care Development; in the Divisions of Economic Assistance and Youth and Family Services; and in each county, at the office of the *[contracted county child care service]* ***county designated*** agency.

i. Specific policy material necessary for an applicant or recipient or his or her representative to determine the basis for a fair hearing request, or to prepare for a hearing, shall be provided to such persons without charge.

2. Public and university libraries which have agreed with the Department request to keep the manual up-to-date will have a copy available in accordance with the library reference procedures.

3. Each county legal services office shall be furnished with a copy of this manual.

4. County boards of social services shall be provided copies of this manual.

5. Other welfare, social service and nonprofit organizations shall be furnished with a copy of this manual (at no cost) through written request to DEA.

6. Employment, education and training organizations (that is, vocational/technical schools, community colleges, JTPA offices) shall be furnished with a copy of this manual.

7. A current up-to-date copy of the manual, or any portion of the manual, is available from DEA through a written request by the interested person, at the cost of printing and mailing.

8. All supplementary updates will routinely be sent to those who have been supplied with the manual. A mailing list shall be maintained and updated by DEA.

SUBCHAPTER 2. ADMINISTRATIVE RESPONSIBILITIES

10:15-2.1 Department of Human Services responsibilities in child care service programs

(a) The Department of Human Services (DHS) is the lead State agency responsible for child care service program delivery in the State. DHS, through its Office of Child Care Development, shall coordinate and supervise the administration of the Child Care and Development Block Grant (CCDBG) and IV-A "At-Risk" (ARCC) programs, by its Divisions of Youth and Family Services and Economic Assistance.

(b) DHS shall submit and update required State Plans and amendments for both the CCDBG and ARCC programs to the Federal Administration for Children and Families.

1. The CCDBG and ARCC programs in effect in the State shall comply with the provisions in the approved State Plans.

(c) DHS shall adhere to Federal laws and regulations pertaining to the administration of CCDBG and ARCC programs in these rules and shall establish program operational and fiscal procedures for the effective Statewide administration of these programs.

1. The fiscal procedures shall delineate the State's expenditure of CCDBG and ARCC funds.

2. The operational and fiscal procedures used by DHS to monitor, report and contract for services with other agencies and units of State and local government in the operation of the child care programs shall be established and made available to interested parties.

(d) DHS shall contract with county *[child care service]* ***designated*** agencies ***in the county*** to administer both the CCDBG and ARCC ***child care certificate*** programs at the local level. DHS shall *[ask for]* ***require*** assurances from the *[service]* ***county designated*** agency that no conflict of interest exists in the agency's provision of Departmental child care programs with existing contracts and/or agreements held by that agency in administering child care services.

(e) DHS shall provide child care services for children through contracts with providers, or through county *[contracted]* ***designated*** agencies through the Statewide child care certificate process.

(f) DHS shall make available to the general public educational information concerning licensing and regulatory requirements, complaint procedures, and policies relative to child care service programs.

(g) DHS shall have an appeals process through the respective Divisions (DEA and DYFS), in place to resolve issues concerning both the CCDBG and ARCC programs which are not satisfied at the level of the county *[contracted child care service]* ***designated*** agency as delineated at N.J.A.C. 10:15A-1.1(f).

(h) DHS shall monitor the county *[contracted child care service]* ***designated*** agencies for compliance with child care program policies.

(i) DHS shall work through the State appropriations process to ensure that payment rates for child care services under DHS child care programs are sufficient to provide equal access for eligible children under its programs to comparable child care services in the State that are provided to children whose parents are not eligible to receive assistance under these programs.

(j) DHS shall ensure that through its child care services' planning process, services are coordinated with existing Federal, State and local child care and early childhood development programs. Written agreements which delineate responsibilities and duties shall be executed by DHS for interagency coordination with other State departments.

(k) For activities to improve the quality of child care, DHS shall enter into purchase of service contracts and/or grants with eligible entities through the competitive State process (request for proposal). DHS plans to invest in:

1. Grants for renovation and start-up of child care sites;
2. Expanded monitoring activities by State staff in conjunction with local governments and child care resource and referral agencies to ensure that programs meet standards;
3. Training and technical assistance to child care providers in areas such as, but not limited to, parental choice, management and early childhood development; and
4. To increase the availability of early childhood development programs and to increase the availability of before- and after-school care services.

10:15-2.2 Divisional responsibilities

(a) The Division of Economic Assistance shall be responsible for the following activities in the administration of DHS child care service programs.

1. The development and issuance of eligibility forms and letters used in the child care service programs;
2. The supervision of the certificate system with the 21 community based organizations which will be administering the certificate program at the county level;
3. Collaboration with the Division of Youth and Family Services in the development of policies and procedures for the child care service programs;
4. Providing for an appeals process through Divisional proceedings when situations concerning certificate applicants and/or recipients are not resolved at the level of the local *[contracted child care service]* ***county designated*** agency in accordance with N.J.A.C. 10:81-6;
5. Submission of required reports to the Federal Administration for Children and Families on the IV-A "At-Risk" and CCDBG child care programs; and
6. Issuance of and updates to the manual, and maintenance of a current mailing list for dissemination of manual revisions.

(b) The Division of Youth and Family Services has responsibility for the following types of activities in the child care service programs:

1. The monitoring of licensed child care center providers and registered family care homes for regulatory compliance by the DYFS Bureau of Licensing to ensure compliance with all applicable State or local health and safety requirements. DYFS gives assistance to providers in meeting State and local standards, including routinely providing information on health and safety training;
2. Collaboration with the Division of Economic Assistance in the development of policies and procedures for the child care service programs; and
3. Periodically conducting a local market survey of child care costs for the various types of child care arrangements and full or part time care to ensure that the Department's rates for child care services are competitive with rates for unsubsidized care to ensure the continued availability of child care services for child care service program recipients.

10:15-2.3 County *[selected child care service]* ***designated*** agency responsibilities

(a) Each county *[child care service]* ***designated*** agency shall:

1. Inform families requesting child care benefits of their rights and responsibilities;
2. Respond to a request for child care assistance within a period of time as defined in procedures issued by the Department of Human Services;
3. Assist the caretaker to explore the types of child care arrangements authorized for payment through the child care service programs (that is, licensed child care centers, registered family day care homes, in-home care, approved family day care homes, school-age child care programs and summer camps) and provide the caretaker relative the opportunity to choose his or her child care arrangement from those available options;
4. Ensure that providers of care permit parental access to children in care during the normal hours of a provider's operation, or whenever such children are in the care of the provider;
5. Ensure that each of its staff members working with these child care service programs be thoroughly familiar with the child care service program policies and procedures and apply those required policies and procedures consistently;
6. Maintain current up-to-date policy and procedure manuals for staff use;
7. Maintain a record of substantiated parental complaints and make information regarding such complaints available to the public on request. Any records concerning child abuse/neglect are not available to the public.
8. Make available to parents and the general public consumer education information on child care service concerns including, but not limited to, State/local licensing requirements and complaint procedures;
9. Maintain a waiting list of families requesting child care subsidies through the child care service programs;
10. Maintain a register of providers interested in participating in child care service programs and make referral to DYFS, Bureau of Licensing, for registration of the home in accordance with the Family Day Care Provider Registration Act (see N.J.A.C. 10:126) upon request of the provider;
11. Conduct home evaluations on providers of family day care not registered pursuant to the Family Day Care Provider Registration Act (see N.J.A.C. 10:126) using the "Family Day Care Home Approval Checklist" (see Appendix B, N.J.A.C. 10:81 incorporated herein by reference) ***renamed as the "Self-Arranged Care Inspection and Interview Checklist" for use in these child care programs (see Appendix B of these rules);*** and minimum life-safety evaluations of school-age child care programs;
12. Ensure that child care providers comply with applicable State or local health and safety requirements;
13. Determine eligibility and availability of child care service funds for the child care service programs (CCDBG and ARCC) and verify the eligibility factors;
14. Issue certificates to eligible applicants/recipients for receipt of provider services;
15. Maintain records on agency contracted activities;
16. Provide for due process for applicant/recipient complaints and provider concerns. Issues not resolved at the local county agency level may be taken to the Divisional level (see N.J.A.C. 10:6);
17. Establish written agreements for services among the ***county designated*** agency, the recipient, and the provider regarding

agreed-upon arrangements, co-payment responsibilities, and the submission of vouchers for payment of service;

18. Determine payment to provider(s) from the program and the amount of the co-payment paid by the recipient;

19. Establish a written agreement between the county ***designated*** agency and the DYFS District Office in the county for protective service children;

20. Conduct redeterminations of eligibility for service programs at the beginning of each new service eligibility period as defined by DHS, or when reported changes necessitate such a redetermination;

21. Maintain and update the client database and case files in accordance with State and Federal standards and requirements;

22. Verify children's attendance in the care of providers participating in the child care service programs;

23. Provide information on the certificate program operation to applicant/recipients and the community;

24. Maintain an audit trail of all financial and accounting reports and transactions associated with the child care service program;

25. Account for all funds, both administrative and direct subsidies to providers of service, in accordance with State and Federal requirements;

26. Provide for the timely processing of payments to eligible providers via the certificate system in accordance with State requirements;

27. Provide assistance to providers in child care voucher completion;

28. Submit monthly and quarterly reports as defined and required in DHS operational and fiscal procedures;

29. Maintain a Federally acceptable cost allocation plan for the distribution of all administrative costs in accordance with DHS procedures;

30. Provide notices to participants and providers when changes in circumstances may affect child care service benefits; and

31. Assure the Department, in writing, that no conflict of interest shall occur with existing contracts and/or agreements held by that agency for administering child care services due to the agency's provision of Departmental child care services.

10:15-2.4 Provider responsibilities

(a) The provider shall comply with all applicable laws and regulations to ensure a safe environment for the children in care.

(b) The provider shall collect the parent co-payment and report the nonpayment of that co-payment to the county *[child care service]* ***designated*** agency to initiate the termination of the child care subsidy.

(c) The provider shall complete vouchers with child(ren)'s attendance data and co-payment information, obtains the caretaker's signature and sends vouchers to the county *[child care service]* ***designated*** agency within three business days of closing of reporting payment periods.

(d) The provider shall cooperate in the evaluation of the child care site in accordance with State and local regulations and requirements for health and safety checks.

10:15-2.5 Applicant or recipient responsibilities

(a) The applicant or recipient shall:

1. Provide for the documentation and verification of eligibility requirements for child care service programs;

2. Take the lead in interviewing providers of care to determine that provider(s) meets his or her family's needs;

3. Sign agreements for the provision of child care services with the county *[contracted child care service]* ***designated*** agency and the provider;

4. Sign provider vouchers to verify to the agency that the child(ren) in care attended care on those days for the hours indicated by the provider on the voucher;

5. Make timely payment of the co-payment amount determined by the county *[contracted child care service]* ***designated*** agency to the provider(s); and

6. Report all changes in circumstances regarding eligibility such as, but not limited to, loss of job, changes in income, status change in participation in educational or work/training activities, provider changes, and changes in family size, to the child care entity within five working days of the change in circumstance.

CHAPTER 15A
PROVISION OF CHILD CARE SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

10:15A-1.1 Child Care Service Program availability

(a) To the extent that such child care is necessary to permit an eligible family member to accept employment, to remain employed, or to participate in work/training or educational activities, child care service benefits are available based on the individual needs of each family. Additionally, child care services are also available for protective services children identified by DYFS if child care services are necessary as part of the child's treatment plan, and for protective services children in substitute care settings under the custody of DYFS. Payments through the child care service programs for child care shall not be made for care provided by the child's own parents, legal guardians, or members of the applicant's family unit, on the basis of their responsibility of caring for their own child(ren). Child care service programs include the IV-A "At-Risk" Program (see N.J.A.C. 10:15B-1) and the Child Care and Development Block Grant (CCDBG) Program (see N.J.A.C. 10:15B-2). Other child care service programs offered through DHS are set forth at N.J.A.C. 10:81-14.18 and 10:125B.

1. No child found eligible for ARCC or CCDBG child care services who is receiving such services shall be displaced by another child for the sole reason of service priority groups (see N.J.A.C. 10:15B-1.1(c) and 2.1(e)). The applicant child shall instead be placed on the waiting list with the county *[selected service]* ***designated*** agency by date of application for service benefits as received by the agency and by priority group status.

2. Each county *[child care service]* ***designated*** agency shall keep a waiting list of those persons who apply for and are found eligible for the CCDBG or ARCC program but for whom resources are not yet available.

3. The waiting list shall be kept by the ***county designated*** agency according to the date the application was received by the agency and by priority group status (see N.J.A.C. 10:15B-1.1(c) and 2.1(e)).

4. The waiting list shall be reviewed and waiting list families reevaluated for service when resources are available. If the family who is next on the waiting list is unable to utilize the vacancy when it occurs, the agency proceeds to the next family on the list.

5. Names shall be retained on the list for one year. At the end of the year, the family is to be contacted (if not contacted previously) to make a new application for services if still interested and if in need of child care.

6. Families found eligible to participate who are provided ARCC or CCDBG services shall be retained in child care for up to 12 consecutive months if the need for the service remains, the program eligibility criteria are met, and resources remain available.

i. A child shall not be retained in child care if the need for service no longer exists.

ii. An exception may be made in the case of loss of employment by the parent. In such situations, the child(ren) may be continued in child care for a period not to exceed one month, if the parent can demonstrate to the agency that he or she is actively seeking employment.

(b) To be eligible for services through the child care services programs, a child must:

1. Be under 13 years of age;

2. Be under 19 years of age and physically or mentally incapable of caring for himself or herself (that is, a "special needs" child as defined at N.J.A.C. 10:15-1.2), based on a determination by a physician or a licensed or certified psychologist, as verified by the county child care entity. The child's social or medical diagnosis shall be documented as a result of a standardized developmental or psychological test given by the certified professional or physician. The specific needs of the child shall be identified and delineated in the documentation; or

3. Be under the supervision of DYFS (that is, protective service child).

(c) In addition to the eligibility criteria set forth in (b) above, families shall also satisfy additional requirements for receipt of child care service benefits through the specific child care service programs, IV-A "At-Risk" and CCDBG. The eligibility criteria for each of those programs are set forth at N.J.A.C. 10:15B-1 and 10:15B-2, respectively.

(d) The parent and the county *[child care service]* ***designated*** agency, upon request of the applicant, will mutually arrange for child care for the parent's child(ren) while the individual is employed full-time or participating in full-time educational or work/training activity, or for a protective services child identified by DYFS as set forth in the application for child care services. Parental choice from among categories of care or types of providers is guaranteed to the extent practicable under Federal and State laws and regulations.

1. Child care arrangements shall be in the best interests of the child and parent or legal guardian and shall consider the individual needs of the child, including the reasonable accessibility of the care to the child's home and school, and the appropriateness of the care to the age and special needs of the child.

2. Child care arrangements shall be agreeable to the parent (to the maximum extent practicable). The hours provided or claimed for reimbursement shall be reasonably related to the hours of participation in the educational/training activity or employment and shall be sufficient to accommodate the hours required by the employer or the activity.

3. The caregiver providing child care shall allow unlimited parental access of parents to their children or to the caregiver caring for their children during the normal hours of operations or whenever such children are in the care of such providers.

4. Child care arrangements shall meet applicable standards of State and local law and regulations and be in accordance with N.J.A.C. 10:15A-1.3.

5. Child care is available to the extent that child care is necessary to permit a member of the family to accept or retain full-time employment or to participate in full-time educational or work/training activities if the family meets income eligibility levels; and for protective services children needing child care as part of the child's treatment plan or when such children are in a substitute care setting under the custody of DYFS, and to the extent that fiscal or other resources necessary for child care service provision are available.

(e) Refusal of child care benefits may be inferred if the applicant does not select a child care provider within 10 calendar days of the date the participant and the *[child care entity]* ***county designated agency*** evaluate the participant's child care needs and preference of providers and made referral(s) to appropriate child care provider(s); does not provide the information necessary for determining eligibility and co-payment amount, including verification of earnings; does not sign the Agreement for the receipt of care; or does not co-sign the child care voucher.

1. Refusal of child care benefits shall be documented in the case record by the county *[child care service]* ***designated*** agency.

2. In instances where refusal of child care is disputed, it is the responsibility of the child care service agency to show that referrals for appropriate care were made, and it is the responsibility of the participant to show that he or she complied with the referrals timely, and in good faith.

3. The county *[child care service]* ***designated*** agency shall take reasonable precautions to guard against fraud and abuse in the funding and provision of child care benefits.

(f) Applicants and recipients of child care service programs are entitled to hearings and notices through the county *[contracted child care]* ***designated*** agency on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to terminate or reduce child care benefits.

1. Timely and adequate notice must be given if child care benefits are denied, reduced, or terminated due to ineligibility or nonpayment of the co-payment. Timely notice to the parent or guardian means at least 10 calendar days prior to the change taking effect. Adequate notice means advising the parent of the reasons for and circumstances surrounding the denial, reduction or termination of child care benefits.

2. If the individual had been receiving child care benefits and is awaiting a hearing concerning those benefits because such benefits were reduced, he or she is not entitled to receive child care benefits at the prior unreduced level. Benefits shall continue at the determined reduced level pending the hearing. If the individual had not been receiving any child care benefits and is awaiting a hearing due to nonreceipt of child care benefits, he or she is not entitled to receive any child care benefits pending the hearing.

3. If a particular issue is not resolved at the county agency level, *[(]*a hearing shall be provided in accordance with N.J.A.C. 10:81-6 for those participants receiving care through the certificate (voucher) process or through DYFS for contracted child care services (N.J.A.C. 10:120-3 *[and 10:125B-2.11(c)]*).

10:15A-1.2 Payment policies

(a) Child care payments are available for care of an infant, toddler, preschool child, school-aged child or child with special needs in various types of arrangements, including full and part-time day care and care before and after school.

(b) Payment for care of school-aged children, which is normally limited to part-time or after school care during the school year, shall be made at the full-day rates during summer vacations and recognized vacations and holidays during the school year, for example, Christmas, spring vacation, and so forth.

(c) The maximum child care payment rates are set forth in Tables I, II and III below. The maximum child care payment rates utilized in the Department of Human Services child care service programs are available through a written request to the Office of Child Care Development, New Jersey Department of Human Services, CN 700, Trenton, NJ 08625, or the local Division of Youth and Family Services Regional Office, the county welfare agency or the county *[child care service]* ***designated*** agency.

1. Table I includes maximum rates for licensed child care centers, school-age programs and day camps (see N.J.A.C. 10:15A-1.3(b)).

2. Table II includes maximum rates for registered family day care provider homes (see N.J.A.C. 10:15A-1.3(c))*[, including the "special needs" rates for such children as defined at N.J.A.C. 10:15-1.2]*.

3. Table III includes maximum rates for approved family day care provider homes (see N.J.A.C. 10:15A-1.3(d))*[, including the "special needs" rates for such children as defined at N.J.A.C. 10:15-1.2]*.

4. Tables I, II, and III specify weekly and daily rates for the various age categories of children based on the hours of care provided.

Table I

CHILD CARE VOUCHER MAXIMUM DAILY RATES
LICENSED CHILD CARE CENTERS,
SCHOOL-AGE PROGRAMS, DAY CAMPS

HOURS OF CARE PROVIDED

Child's Service Category	Full-Time 6 hrs. or more per day	Part-Time less than 6 hrs. per day
Infants/Toddlers		
Weekly	$113.00	$56.50
Daily	$ 22.60	$11.30
Pre-schoolers (2.5 up to 5 yrs)		
Weekly	$92.00	$46.00
Daily	$18.40	$ 9.20
Kindergarteners & School-Agers (5-13 yrs) ***and Special Needs Child (13 to 19 yrs)***		
Weekly	$92.00	$46.00
Daily	$18.40	$ 9.20

Table II

CHILD CARE VOUCHER MAXIMUM DAILY RATES

REGISTERED FAMILY DAY CARE HOMES

HOURS OF CARE PROVIDED

Child's Service Category	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50
Pre-schoolers (2.5 up to 5 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$110.00	$82.50	$55.00	$27.50
Daily	$ 22.00	$16.50	$11.00	$ 5.50
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

Table III

CHILD CARE VOUCHER MAXIMUM DAILY RATES

APPROVED HOME DAY CARE

HOURS OF CARE PROVIDED

Child's Service Category	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75
Pre-schoolers (2.5 up to 5 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.20	$ 6.15	$ 4.10	$ 2.05
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.20	$ 6.15	$ 4.10	$ 2.05
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$66.00	$49.50	$33.00	$16.50
Daily	$13.20	$ 9.90	$ 6.60	$ 3.30
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

(d) Notwithstanding when the family requests child care, eligibility for child care continues for a period of up to 12 consecutive months before reevaluation of eligibility for continued receipt of child care service program benefits, or upon notification of change in eligibility or as determined necessary by the *[child care service]* ***county designated*** agency. The possible 12-month period shall consist of up to 52 consecutive weeks. Employment or participation in work/training activities throughout this 12-month period shall be presumed unless the participant reports otherwise.

(e) The following conditions must be met for receipt of child care service program benefits:

1. The applicant shall request child care benefits and provide the information necessary, including verification of earnings, for determining eligibility and co-payment and the family meets the financial eligibility requirements for either the IV-A "at-Risk" program or the CCDBG program as set forth at N.J.A.C. 10:15B-1 and N.J.A.C. 10:15B-2, respectively, or the child is a protective services child.

2. The applicant shall sign an agreement covering the period during which the child care is to be provided;

3. The applicant shall select a provider as set forth in the agreement;

4. The recipient shall pay the required co-payment (see N.J.A.C. 10:15C-1.1(a)1 for the exception to co-payment) to the provider of care; and

5. The recipient shall report changes in circumstances to the county *[child care service]* ***designated*** agency.

(f) The family is not eligible for child care for any remaining portion of the 12-month period if the caretaker:

1. Terminates full-time employment or training or educational programs without good cause, or the wages/income exceed eligibility levels;

2. Fails to pay the required co-payment to the provider(s); or

3. Otherwise does not meet eligibility criteria.

(g) If the caretaker loses a job with good cause, and then begins employment within one month of the loss of the previous job, the family can qualify for the one month of care during the transition between jobs as well as for the remaining portion of up to 12 months in the child care eligibility period. However, child care service benefits shall be terminated and eligibility shall not be reestablished if the recipient loses a job without good cause, or does not attend or stops participation without good cause in educational or work/training activities. (Protective services children shall be treated in accordance with N.J.A.C. 10:15A-1.5(d).) That individual shall be placed on the waiting list for services.

10:15A-1.3 Provider requirements

(a) Payments to providers of child care through child care service programs are available according to the following conditions and are in accordance with existing payment procedures for child care providers set forth at N.J.A.C. 10:81-14.18.

(b) To qualify for child care payments, a child care center or program shall meet one of the following requirements as set forth at N.J.A.C. 10:122, Manual of Requirements for Child Care Centers, (N.J.S.A. 30:5B-1 through 15); (see also N.J.A.C. 10:81-14.18(f)1):

1. Centers providing care for infant and pre-school children shall be licensed by DYFS, Bureau of Licensing or shall have a letter of exemption from DYFS, Bureau of Licensing; *[or shall be operated under the auspices of the public school system;]*

2. Child care programs for school-age children shall meet local occupancy building and fire codes and shall have satisfactorily completed an inspection using the DHS' "School-Age Child Care Interim Guidelines Checklist" (see Appendix A, incorporated herein by reference) or shall be operated under the auspices of the public school system or a DYFS contract; or

3. Summer camps shall be approved by the New Jersey Department of Health. (see N.J.A.C. 8:25)

(c) All family day care providers who serve three or more nonsibling children must be registered pursuant to the Family Day Care Provider Registration Act (see N.J.A.C. 10:126) in order to qualify for payment of child care services through these programs.

1. Family day care providers of one or two children may choose to register under the Family Day Care Provider Registration Act or to provide family day care as an approved home.

2. Payment shall be made to the provider who has secured a Certificate of Registration or a temporary registration certificate, as defined by rules promulgated under the Family Day Care Provider Registration Act (see N.J.A.C. 10:126).

(d) Providers of family day care who are not living in the home of the child care applicant/recipient and who are not registered under (c) above shall be approved by the Department of Human Services in order to qualify for payment through any child care service program. Unregistered relatives, friends or neighbors are eligible for approved home status.

1. The minimum requirements for approval of the home are an inspection of the home using the *["Family Day Care Home Approval Checklist"]* ***"Self-Arranged Care Inspection and Interview Checklist"*** (see Appendix B, incorporated herein by reference), and standard interview procedures with the provider and family members (see N.J.A.C. 10:81-14.18(f)2).

2. As an approved home, providers may receive payment for a maximum of two nonsibling children or of all the sibling children of one family so long as the total number of children in the home does not exceed seven children, five of which are for payment purposes; and, the number of sibling children for whom payment is made does not exceed five.

(e) Providers of in-home care, that is, care of a child in the child's own home, shall be evaluated using the *["Family Day Care Home Approval Checklist,"]* ***"Self-Arranged Care Inspection and Interview Checklist",*** in order to qualify for payment through the child *[are]* ***care*** service programs.

(f) Providers of child care not in the categories (b) through (e) above are not entitled to payment through the child care service programs.

10:15A-1.4 Payment methods

(a) The child care service programs' methods for issuing payments for child care are vendor payments (voucher process) to the provider and through contracts with licensed day care centers.

(b) Vendor payments to providers are the primary method for issuing child care payments in the child care service programs. Under this method, a voucher is issued to the child care provider after the completion and signing of a provider agreement. The provider completes the voucher, lists the dates of care, signs the voucher, secures the parent's signature and returns it to the agency responsible for issuing payment. Upon verification of the voucher information, the agency issues child care payment to the provider.

(c) There are instances in which a contract with a licensed child care center may be the only viable option for the provision of day care services. Such contracts shall be negotiated by the Divsion of Youth and Family Services *[(see N.J.A.C. 10:125B)]*.

10:15A-1.5 Requirement of co-payment

(a) Each family receiving child care is required to contribute a co-payment toward the cost of such care. The exception to the co-payment requirement applies to protective services child(ren) as identified by DYFS (see N.J.A.C. 10:15-1.2) living in a substitute care setting under the custody of DYFS. ***Additionally, no co-payment is required for purposes of other Departmental child care programs if the family has children in care through the CCDBG or IV-A At-Risk programs and the family is making a co-payment for two children under either of these child care program requirements.***

(b) A co-payment scale established by the Department of Human Services will provide for some level of contribution by most recipients of child care. The co-payment scale shall consider: family income, family size, number of children, and number of children in care. The co-payment scale is set forth at N.J.A.C. 10:15C-1.1(d).

(c) Individuals who fail to cooperate in paying the required co-payment will, subject to appropriate notice and hearing requirements, lose eligibility for child care benefits for so long as back co-payments are owed, unless satisfactory arrangements are made with each provider to make full payment of arrearages.

(d) Children under DYFS supervision and placed with a caretaker family shall not be terminated from services until:

1. The referring DYFS District Office or community referral agency has been notified;

2. Alternate child care arrangements have been made; and

3. The termination of child care services has been approved by the DYFS case manager, in writing, to the *[child care service]* ***designated*** agency.

(e) Any emergency termination of service initiated by a child care provider of a protective services child for reasons other than loss of financial eligibility or failure to comply with other rules or contractual provisions shall be reported to the DYFS Regional Contract Administrator.

APPENDIX A

SCHOOL-AGE CHILD CARE PROGRAM

Interim Evaluation Guidelines

Program Site ______________________

NAME: ______________________ FEDERAL ID SOCIAL SECURITY NO: ____________

STREET ADDRESS: ______________________

CITY, STATE: ______________________ ZIP CODE: __________ TELEPHONE: __________

NAME OF PERSON RESPONSIBLE AT SITE: ______________________

AGENCY CONDUCTING EVALUATION: ______________________

DATE OF EVALUATION: ______________________

		YES	NO
A.	PURPOSE OF PROGRAM Is the main purpose of the program the care and supervision of children?	[ ]	[ ]
B.	CHILD TO STAFF RATIOS Are the staff-child ratios for children of the following age groups receiving care in this program no greater than:		
	a. 6 years through 9 years 1:15	[ ]	[ ]
	b. 10 years through 12 years 1:20	[ ]	[ ]
C.	NONDISCRIMINATION Are all services in the facility available without discrimination on the basis of race, color, national origin, handicap, age, or sex?	[ ]	[ ]
D.	SUITABILITY OF THE CHILD CARE ENVIRONMENT		
	1. Are organized activities available for children? Describe briefly:	[ ]	[ ]
	2. Are there games and materials available that are appropriate for the variety of children in care? Describe briefly:	[ ]	[ ]
	3. Are there adequate kitchen and restroom facilities?	[ ]	[ ]
E.	SAFETY AND SANITATION		
	1. A health and sanitation inspection must have been conducted within the past 12 months. A copy of a current health and sanitation certificate is attached.	[ ]	[ ]
	2. A fire/building safety inspection must have been conducted within the past 12 months. A copy of a permit or inspection report by state or local authorities is attached.	[ ]	[ ]
	3. Are fire drills held in accordance with local fire/building safety requirements?	[ ]	[ ]
F.	HEALTH SERVICES		
	1. Has a procedure been established to ensure the prompt notification of the parent or guardian in the event a child becomes ill or injured?	[ ]	[ ]
	2. A written policy regarding the prompt notification of a parent/guardian when a child becomes ill or injured must be available to staff. A copy of the written policy is attached.	[ ]	[ ]

I understand that this information is being given in connection with the receipt of payments for Child Care Services that the evaluation agency, may, for cause, verify information; that the information provided on this form is true to the best of my knowledge and that deliberate misrepresentation may subject me to prosecution or civil action under applicable state and federal criminal or civil statutes.

SIGNATURE OF AUTHORIZED
PROGRAM REPRESENTATIVE ____________ TITLE ______________________ DATE ______________

FOR EVALUATOR ONLY

Program Approved _______ Denied _______

COMMENTS ______________________

____

Date: ______________________ Evaluator's Signature: ______________________

APPENDIX B

[HOME APPROVAL] ***SELF-ARRANGED CARE INSPECTION AND INTERVIEW*** CHECKLIST

This checklist shall be used by agency conducting evaluation at a preliminary visit to home of new caregiver applicant.

Agency conducting evaluation ______________________

Evaluator ______________ Date of Visit ______________

Applicant ______________________

Address ______________________

City ______________ State __________ Zip Code ______

County ______________ Telephone ______________

Applicant's Social Security Number ______________

For office use only:
Approved:
Denied:

	(Children's Name)	(Date of Birth)	(Sex)	(Case Numbers)
Referred by ________ For	________	________	____	________
	________	________	____	________

Language Spoken In Home ______________ Case Manager ______________________

A. INSPECTION CHECKLIST

Mark each item: C=compliance NC=Non-compliance NA=Not applicable

I. Physical environment	Compliance	Comments
1. Adequate floor space		
2. Minimum temperature 65°F		
3. Surfaces clean, in good repair		
4. Adequate ventilation		
5. Warm and cold running water available		
6. Working indoor toilets accessible		
7. Indoor and outdoor equipment stury, safe, non-toxic, easy to clean, free of hazards		
8. Sufficient furniture and equipment for children		
9. Working telephone in home		
10. If no working telephone in home		
i. Provider demonstrates inability to afford telephone		
ii. If able to afford telephone, provider agrees to install in 90 days		
iii. Working telephone accessible within 5 minutes at all times when enrolled children present		

II. Fire Safety

1. Working smoke detector on each floor
2. Lockable interior doors can be unlocked from outside
3. Heating/cooling devices vented, protected by guards, kept clear of combustible materials

4. Woodburning stoves have barriers, are not accessible to children
5. Portable liquid fuel-burning appliances are not used when children are in care
6. Stairways, hallways, exits unobstructed
7. Electrical cords in good condition

III. General Safety

1. Home and furnishings present no hazard
2. All toxic substances out of reach
3. Non-permanent barriers on stairs, ramps, balconies, porches, elevated play areas
4. Electrical outlets accessible to children are covered
5. Working flashlight available

IV. Outdoor Space

1. Adequate, safe outdoor play area adjacent to or within walking distance of home

V. Accidents, Injuries and Emergencies

First aid supplies accessible

VI. Sanitation

Individual towels and washcloths or disposable towels and washcloths

VII. Program

1. Safe toys, play equpment, creative materials for all ages, interests, and number of children
2. Materials for preschoolers include:
   i. Dramatic play/language development
   ii. Visual/small muscle development
   iii. Auditory development
   iv. Creative expression
   v. Large muscle development

VIII. Rest and sleep

1. Daily rest/sleep for each child in clean safe area according to needs
2. Children under 18 months/non-walkers sleep in crib, playpen, cot, bed with rails, or floor mat 1″ thick
3. Crib and playpen slats no more than 2⅜″ apart
4. Drinking water available?

B. STANDARD INTERVIEW PROCEDURE

Name	Relationship to Caregiver	Sex	Date of Birth

Other Children Living in Home

Name	Relationship to Caregiver	Sex	Date of Birth

QUESTION RESPONSE

1. Are you over 18 years of age?
2. What other adults and/or children will be in your home during the time the children are in your care? What type of contact will they have with the children?
3. How long can you provide the day care? (Days/weeks/months).
4. Full time?/Part time?
5. Holidays?/Summers?
6. Have you ever been convicted of a crime? If yes, explain

   (Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as a caregiver. Such determination shall be made on a case by case basis.)
7. Do you have any illnesses or medical condition that would prevent you from providing child care services?
8. Based on compliance with the policy outlined above are you willing to provide day care to the child/children of the client?
9. Have you had other experiences in working with children?

   Describe

10. What methods of discipline will you use with the child in your care?
11. How will you handle medical emergencies if you or the child should get sick during the hours child care is being provided?
12. Who, other than the child's parent, will be able to pickup the child at the end of the day? Do you have a telephone number in order to contact this person?
13. What arrangements have been made to provide nutritious meals to the child/children in your care?

C. OBSERVATIONS

1. Describe the applicant's home in relation to assessing their home management skills.

____

____

____

2. Have you observed any condition or situation that would cause you to deny this applicant?

If yes, explain ______________________________

____

____

3. If applicant is being approved for child care, has emergency card been provided?

____

____

____

For evaluator only: (check)

Home Approved ________

Home Denied ________ Reason ______________________________

____

Date: ______________________________ Evaluator's signature ______________________________

CHAPTER 10:15B
ELIGIBILITY FOR INDIVIDUAL CHILD CARE SERVICE PROGRAMS

SUBCHAPTER 1. IV-A "AT-RISK" CHILD CARE PROGRAM

10:15B-1.1 Description of IV-A "At-Risk" Program

(a) The Title IV-A "At-Risk" Child Care (ARCC) Program provides child care assistance to low-income working families who might otherwise be vulnerable to welfare dependency if not provided the opportunity for affordable, stabilized child care arrangements. It is anticipated that the families served will be more likely to remain employed if given child care assistance, thereby reducing the likelihood that those families will need the help of public assistance benefit programs.

(b) Child care assistance is also available to a protective services child who resides with a family whose income meets the definition of low income as set forth in N.J.A.C. 10:15B-1.2(b).

(c) Services shall be provided to the extent of the State's entitlement to Federal monies, by targeting those most "at-risk" of becoming AFDC-dependent. Groups identified as most "at-risk" for participation include:

1. Families who are former AFDC recipients and who have completed their 12-months of REACH/JOBS transitional child care eligibility (see N.J.A.C. 10:81-14.18);

2. Families who are ineligible for Federal REACH/JOBS transitional child care benefits;

3. Families who are enrolled in the non-public assistance Food Stamp Program; and

4. Families who have children identified as being in need of protective services; or, who are at-risk of becoming homeless; or, who are teen parents (not on AFDC) who are employed and otherwise eligible for IV-A "At-Risk" assistance.

10:15B-1.2 Eligibility for IV-A "At-Risk" Child Care (ARCC) Program

(a) Families shall be in need of IV-A "At-Risk" child care assistance in order to remain employed or to accept employment and shall be eligible to apply for ARCC benefits.

(b) Families shall be working low-income families or a working low-income family that has a protective services child in need of child care services residing in the family's home.

1. "Low-income" families are defined for purposes of this program as families whose gross annual income fo the family size is at or below 185 percent of the Federal Poverty Income Guidelines published annually in the Federal Register (reference the Federal Register, Vol. 56, No. 34, dated February 20, 1991, page 5860). Subsequent updates to these Guidelines in the Federal Register will be published as a public notice by the Department in the New Jersey Register.

2. The annual gross income of the family must fall at or below 185 percent of the Federal Poverty Income Guidelines for the family size to establish income eligibility.

i. Priority attention shall be given to those families at the lower end of the income spectrum, that is, at or below 150 percent of poverty.

(c) Children shall be eligible for IV-A "At-Risk" assistance if they meet the general eligibility requirement set forth at N.J.A.C. 10:15A-1.1(b).

(d) The family cannot be receiving AFDC.

(e) The family must be at-risk of becoming eligible for AFDC, as defined in N.J.A.C. 10:15B-1.1(c) through 4.

(f) Families shall meet the conditions set forth at N.J.A.C. *[10:15CA 2.1(e)]* ***10:15A-1.2(e)*** for receipt of IV-A "At-Risk" assistance.

(g) Families shall comply with the rules set forth in N.J.A.C. 10:15 and 10:15A through 10:15C for receipt of child care assistance through the ARCC program.

(h) Families shall make a co-payment toward the cost of care in accordance with N.J.A.C. 10:15C. The exception to the co-payment requirement exists when the child is identified as a protective services child by DYFS as defined at N.J.A.C. 10:15-1.2 who is living in a substitute care setting under the custody of DYFS. No co-payment is determined for such children (see also N.J.A.C. 10:15C-1.1 *[and 10:125B]*).

10:15B-1.3 Accessing ARCC assistance

(a) Eligible families shall access ARCC assistance in the county through the county *[selected child care service]* ***designated*** agency.

(b) Application for ARCC assistance and the ARCC income eligibility determination are handled by the county *[child care service]* ***designated*** agency.

(c) Other child care service provisions established in these rules (see N.J.A.C. 10:15 and 10:15A-15C) are applicable to the IV-A "At-Risk" Child Care Program.

SUBCHAPTER 2. CHILD CARE AND DEVELOPMENT BLOCK GRANT PROGRAM (CCDBG)

10:15B-2.1 Description of CCDBG Program

(a) The Child Care and Development Block Grant Program provides low-income families with the child care assistance necessary to find and afford quality child care for their children or children who have been identified by DYFS as protective services children and placed in the family's care.

(b) Monies through the CCDBG Program shall be used by the Department to expand child care services and provide for improvements to the child care system of the State. Funding is provided through the CCDBG Program to improve the availability and quality of child care and for early childhood development and before-and-after-school services.

(c) CCDBG assistance is intended for "low-income" families with a parent who is working or attending a training or educational program or who has a protective services child, as identified by DYFS, residing in the home.

1. "Low income" for purposes of the CCDBG Program for recipient families is defined as an annual gross family income for the family size that does not exceed 75 percent of the State's median income (SMI) for a family of the same size if the family has been receiving child care services through Departmental child care programs. "Low income" for purposes of the CCDBG program for new applicant families is defined as an annual gross family income for the family size that does not exceed 60 percent of the SMI for a family of the same size. (The SMI for states is published by the Federal Administration for Children and Families in the Federal Register. The SMI was last published in the Federal Register, Vol. 53, No. 64, April 4, 1988. Subsequent update to the SMI will be published as a public notice by the Department in the New Jersey Register.)

(d) Priority consideration and placement of children through CCDBG assistance is given to children who are from families with "very low income," as well as children who have been identified as protective services children or as having special needs (see N.J.A.C. 10:15-1.2 for definition of a special needs child).

1. Families with "very low income" are defined as families with incomes at or below 185 percent of the Federal Poverty Level, as determined by family size.

(e) Groups identified for priority CCDBG participation include:

1. Children in need of protective services as identified by the Department's Division of Youth and Family Services (DYFS) and defined at N.J.A.C. 10:15-1.2.

2. Children identified as having special needs ***(see N.J.A.C. 10:15-1.2)*** and/or in special circumstances, that is, a child that is not under DYFS supervision who has been identified through a written referral from a county welfare agency; legal, medical, or social service agency; emergency shelter; or public school which indicates that the child is from a family experiencing medical or social problems or adverse living conditions. Such children require short-term special child care arrangements to help ***to stabilize or to*** ameliorate the situation and/or prevent the placement of the child or other family member(s) outside the home.

3. Children in families with very low incomes at or below 185 percent of the Federal Poverty Level.

4. Children from families receiving assistance under the Title IV-A "At-Risk" Child Care Program who are at-risk of becoming ineligible for that child care service assistance, due to an increase in earnings, and who continue to need child care services in order to remain in full-time employment.

10:15B-2.2 Eligibility for CCDBG Program

(a) Families shall be in need of CCDBG child care assistance in order to remain employed or to accept full-time employment or to attend full-time educational and/or work/training programs; or the family has a protective services child in need of child care services residing with the family.

(b) The child(ren) shall be residing with a family whose annual gross income does not exceed 75 percent of the State's median income for a family of the same size (see N.J.A.C. 10:15B-2.1(c)) for recipient families who have been receiving child care services through other Departmental child care service programs; or be residing with an applicant family whose annual gross income does not exceed 60 percent of the SMI for a family of the same size.

(c) The child(ren) under protective service supervision where child care has been identified as part of the case plan to ensure that such children receive necessary child care services.

(d) Children shall be eligible for CCDBG assistance if they meet the general eligibility requirements set forth at N.J.A.C. 10:15A-1.1(b).

(e) Families shall meet the conditions set forth at N.J.A.C. 10:15A-1.2(e) for receipt of CCDBG assistance.

(f) Families shall comply with the rules set forth in N.J.A.C. 10:15, and 10:15A through 10:15C for receipt of child care assistance through the CCDBG program.

(g) Families shall make a co-payment toward the cost of care in accordance with N.J.A.C. 10:15C. The exception to the co-payment requirement exists when the child is identified as a protective services child by DYFS (see N.J.A.C. 10:15-1.2) who is living in a substitute care setting under the custody of DYFS. No co-payment is determined for such children (see also N.J.A.C. 10:15C-1.1 *[and 10:125B]*).

10:15B-2.3 Accessing CCDBG assistance

(a) Eligible families shall access CCDBG assistance in the county through the county *[selected child care service]* ***designated*** agency.

(b) Application for CCDBG assistance and the CCDBG income eligibility determination are handled by the county *[child care service]* ***designated*** agency.

(c) Other child care service provisions established in these rules (see N.J.A.C. 10:15, 10:15A and 10:15C) are applicable to the CCDBG Child Care Program.

CHAPTER 15C
CO-PAYMENTS AND PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

10:15C-1.1 Co-payment procedures

(a) All eligible families shall pay a fee toward the cost of child care services. This fee is termed a co-payment.

1. The exception to the co-payment requirement exists when the child is identified as a protective services child by DYFS (see N.J.A.C. 10:15-1.2) who is living in a substitute care setting under the custody of DYFS. No co-payment is determined for such children *[(see also N.J.A.C. 10:125B)]*. ***Additionally, no co-payment is required for purposes of the other Departmental child care programs (for example, the Social Services Block Grant (SSBG) child care program) if the family has children in care through IV-A At-Risk or CCDBG and the family is making a co-payment for two children under that program's requirements; the county designated agency shall verify and document the facts concerning co-payment circumstances under the IV-A At-Risk or CCDBG program. The county designated agency shall make contact with the appropriate agency(s) in the county assessing co-payment for the other respective Departmental child care program and inform that agency that the requirement for the co-payment has been met under either the CCDBG or IV-A At-Risk program.***

(b) By the adoption of a Statewide co-payment scale for child care service programs provided to families, the programs seek to:

1. Enable an eligible family to accept and maintain employment or to participate in work/training or educational activities through child care service program aid or to provide child care services to a protective services child as identified by DYFS;

2. Ensure that the family has freedom of choice in selecting child care arrangements and is provided with flexibility to choose the location and type of provider that best meets their child care needs under the child care service programs; and

3. Require that all recipient families of child care service program benefits (with the exception of protective service children living in substitute care settings under the custody of DYFS) pay a portion of the cost of care based on ability to pay, as required by the Omnibus Budget Reconciliation Act of 1990 (Public Law 100-508).

(c) Once assessed, the co-payment is deducted from the amount to be paid to the provider by the Program. This assessed co-payment for child care services is then paid directly by the parent to the provider of care; any remaining balance of the cost of care, up to the maximum rates established by the Department (see N.J.A.C. 10:15A-1.2(c)), is paid by the Program. The child care co-payment policy and procedures are applicable for all types of care arrangements available through the child care service programs including:

1. Licensed child care centers;
2. Registered family day care homes;
3. Self-arranged care (including in-home care);
4. Summer camps which are approved by the Department of Health (see N.J.A.C. 8:25); and
5. School-age child care programs.

(d) The amount of the required co-payment is based on the family's annual gross income level, family size, number of children, and number of children in care. Assessed co-payments are apportioned weekly and are due for the entire period of time that subsidized child care assistance is received. Holidays, emergency closings, and absences do not exclude or reduce the required co-payment. There are two co-payment scales:

TABLE I
CO-PAYMENT SCALE

By Family Size
(Full-Time Care)**

Full Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 2	3	4	5	6
1.00	0%- 5%	0- 1,768	0- 2,184	0- 2,600	0- 3,016	0- 3,432
4.00	6%-10%	1,769- 3,536	2,185- 4,368	2,601- 5,200	3,017- 6,031	3,433- 6,863
6.00	11%-15%	3,537- 5,304	4,369- 6,552	5,201- 7,799	6,032- 9,047	6,864-10,295
9.00	16%-20%	5,305- 7,071	6,553- 8,735	7,800-10,399	9,048-12,063	10,296-13,727
11.00	21%-25%	7,072- 8,839	8,736-10,919	10,400-12,999	12,064-15,079	13,728-17,159
14.00	26%-30%	8,840-10,607	10,920-13,103	13,000-15,599	15,080-18,094	17,160-20,590
18.00	31%-35%	10,608-12,375	13,104-15,287	15,600-18,198	18,095-21,110	20,591-24,022
22.00	36%-40%	12,376-14,143	15,288-17,471	18,199-20,798	21,111-24,126	24,023-27,454
27.00	41%-45%	14,144-15,911	17,472-19,655	20,799-23,398	24,127-27,141	27,455-30,885
32.00	46%-50%	15,912-17,679	19,656-21,839	23,399-25,998	27,142-30,157	30,886-34,317
37.00	51%-55%	17,680-19,446	21,840-24,022	25,999-28,597	30,158-33,173	34,318-37,749
43.00	56%-60%	19,447-21,214	24,023-26,206	28,598-31,197	33,174-36,188	37,750-41,180
50.00	61%-65%	21,215-22,982	26,207-28,390	31,198-33,797	36,189-39,204	41,181-44,612
57.00	66%-70%	22,983-24,750	28,391-30,574	33,798-36,397	39,205-42,220	44,613-48,044
61.00	71%-75%	24,751-26,518	30,575-32,758	36,398-38,996	42,221-45,236	48,045-51,476

**Full-time care is defined as six or more hours of care per day or 30 or more hours of care per week.

TABLE II
CO-PAYMENT SCALE
By Family Size
(Part-Time Care)

Part Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 2	3	4	5	6
0.00	0%- 5%	0- 1,768	0- 2,184	0- 2,600	0- 3,016	0- 3,432
2.00	6%-10%	1,769- 3,536	2,185- 4,368	2,601- 5,200	3,017- 6,031	3,433- 6,863
3.00	11%-15%	3,537- 5,304	4,369- 6,552	5,201- 7,799	6,032- 9,047	6,864-10,295
4.00	16%-20%	5,305- 7,071	6,553- 8,735	7,800-10,399	9,048-12,063	10,296-13,727
5.00	21%-25%	7,072- 8,839	8,736-10,919	10,400-12,999	12,064-15,079	13,728-17,159
7.00	26%-30%	8,840-10,607	10,920-13,103	13,000-15,599	15,080-18,094	17,160-20,590
9.00	31%-35%	10,608-12,375	13,104-15,287	15,600-18,198	18,095-21,110	20,591-24,022
11.00	36%-40%	12,376-14,143	15,288-17,471	18,199-20,798	21,111-24,126	24,023-27,454
13.00	41%-45%	14,144-15,911	17,472-19,655	20,799-23,398	24,127-27,141	27,455-30,885
16.00	46%-50%	15,912-17,679	19,656-21,839	23,399-25,998	27,142-30,157	30,886-34,317
18.00	51%-55%	17,680-19,446	21,840-24,022	25,999-28,597	30,158-33,173	34,318-37,749
21.00	56%-60%	19,447-21,214	24,023-26,206	28,598-31,197	33,174-36,188	37,750-41,180
25.00	61%-65%	21,215-22,982	26,207-28,390	31,198-33,797	36,189-39,204	41,181-44,612
28.00	66%-70%	22,983-24,750	28,391-30,574	33,798-36,397	39,205-42,220	44,613-48,044
30.00	71%-75%	24,751-26,518	30,575-32,758	36,398-38,996	42,221-45,236	48,045-51,476

(e) The criteria for determination and re-determination of the co-payment are as follows:

1. Family size, which consists of the applicant, the applicant's spouse and all children for whom the applicant is a legal guardian;

2. Family income, which includes all gross earned and unearned income received by all members of the family unit defined in (e)1i above. The gross annual family income amount must be verified by wage stubs or similar documentation as a condition of receiving child care benefits; and

3. The number of hours child care services are being provided to the child.

i. Full-time care is defined as care for 30 hours or more per week for co-payment purposes.

ii. Part-time care is defined as care for less than 30 hours per week for co-payment purposes.

iii. In no case may the co-payment exceed the cost of care.

(f) Once the co-payment is determined, it will remain unchanged for the duration of the eligibility period (up to 12 months) unless there is an increase in family size, a reduction in gross family income or a change in care from full-time to part-time or vice versa. The participant must notify the county *[child care service]* ***designated*** agency of any changes occurring in the family related to family size, income, work status or training attendance. The *[child care entity]* ***county designated agency*** shall then determine any changes in the co-payment based on reported circumstances affecting co-payment calculation.

(g) The co-payment assessment is based on up to two children in care in a family. If more than two children in a family are in care, no co-payment is required for the third and subsequent children in the family. The co-payment is determined on a per week basis. ***If a family has child(ren) in another of the Departmental child care programs, the county designated agency shall contact the appropriate agency concerning that other child care program to determine the final co-payment amount for both programs.***

10:15C-1.2 Process for co-payment assessment

(a) The weekly co-payment is based on whether the care is full-time or part-time care, on the number of children (up to two per family) in the family needing such care through the program, and on the family's annual gross income level.

(b) If only one child is in care, the weekly co-payment is the payment which results from Table I or Table II at N.J.A.C. 10:15C-1.1(d). That co-payment is assessed on that family's size, the family's annual gross income, and whether the care is full-time or part-time care for that child, resulting in the co-payment from Table I or Table II.

(c) If two or more children in the family receive child care services through the Program, the weekly co-payment amount is a composite total payment for up to two children in the family receiving such services. The weekly co-payment sum equals the full co-payment assessed for the first child from Table I or Table II, plus one-half of the full assessed co-payment for the second child in care from Table I or Table II. The two children are selected for determination of the co-payment from all children in the family in care, based first, on the number of children in the family in full-time care arangements.

1. If two or more children in the family are in full-time care arrangements, the full co-payment amount is assessed on two children in full-time care. A full co-payment amount is assessed for the first child in full-time care from Table I; to that co-payment amount is added one-half of the full co-payment amount for the second child in full-time care from Table I. The resulting composite co-payment equals one and one-half of the full-time co-payment amount from Table I based on the family's size and annual income level.

2. If at least one child in the family is in a full-time care arrangement and the second and subsequent children are in part-time care arrangements, the full weekly co-payment amount is assessed from Table I on the first child in full-time care; to that co-payment amount is added one-half of the part-time co-payment amount from Table II for the second child in part-time care. The resulting composite co-payment equals the full-time co-payment assessed amount from Table I plus one-half of the part-time co-payment amount from Table II.

3. If all children in the family are in part-time care arrangements, the full weekly co-payment amount is based on up to two children in care and is one and one-half times the part-time co-payment amount from Table II for the family's size and income amount.

10:15C-1.3 Provider's receipt of co-payment

(a) The composite co-payment is paid to only one provider of care based on the care arrangements of the family. That is, the composite co-payment amount is paid in total to the provider of the highest cost of care arrangement (that is, either the full-time care provider or the provider with the highest reimbursement rate per category of care). The following situations may result and the co-payment shall be distributed as follows:

1. When one child is receiving child care services through the Program, the full assessed co-payment from Table I or Table II is made by the recipient to that provider of care.

2. If one child is receiving child care services through the Program but more than one provider is involved in giving care, the co-payment from Table I or Table II is paid by the recipient to that child care

provider who provides the highest cost care arrangement (see (a) above).

3. When two children are receiving child care services from the same provider, the composite co-payment amount is determined in accordance with N.J.A.C. 10:15C-1.2(c) above, and the sum total is paid by the recipient to that provider of care. The composite total is based on the respective type of care (full-time or part-time) provided each child; the full assessed co-payment fee from Table I or Table II for the first child is added to one-half of the full assessed fee from Table I or Table II for the second child in care with the provider, for the total co-payment amount.

4. When both children are receiving different child care services from separate providers, the child care provider who provides either full-time care or receives the highest reimbursement rate per category of care, will receive from the recipient the full amount of the composite co-payment assessed for both children from Tables I and II based on the respective type of care provided (full-time or part-time care) for both children.

5. When both children are receiving the same child care services but from different providers (for example both receiving full-time care) the provider assessed at the highest cost of care arrangement receives the full composite assessed co-payment from the recipient.

(b) No co-payment shall be assessed for the third and additional children in a family receiving child care service program benefits.

(c) Co-payments shall be rounded down to the nearest dollar.

10:15C-1.4 Collection, reporting and monitoring of the co-payment; notice of termination

(a) The child care voucher process will be used by the provider to report child care co-payment collection and nonpayment to the county *[child care service]* ***designated*** agency. Co-payments are not required for protective service children identified by DYFS who are living in a substitute care setting.

(b) The county selected *[child care service]* ***designated*** agency is responsible for advising the provider and the parent/guardian of the co-payment requirement, for training the provider and parent/guardian in voucher completion, and for advising both the provider and the parent/guardian of the consequences of failure to make required co-payments.

(c) Co-payment collection, monitoring, and procedures for late payment or nonpayment of co-payments and termination of child care benefits are as follows:

1. It is the responsibility of the child care service provider to collect co-payments and report nonpayment of co-payments to the county *[child care service]* ***designated*** agency in accordance with Departmental procedures. Whenever the child care co-payment has not been paid to the provider by the end of the voucher service period, the co-payment is considered unpaid.

i. In the event of nonpayment of the co-payment by the participant, the provider will complete the voucher, indicate on the voucher the child(ren) for whom the participant failed to pay the required co-payment and return the voucher to the *[designated]* county *[child care service]* ***designated*** agency. This action by the provider will initiate the process for terminating child care benefits.

ii. The provider must continue to attempt to collect the co-payment from the participant and must document such collection efforts.

2. It is the responsibility of the county *[child care service]* ***designated*** agency to monitor co-payment collection by examining the completed vouchers returned by providers and responding to nonpayment of co-payments reported on the voucher.

3. Following receipt of a voucher from a provider indicating nonpayment of the assessed co-payment by the participant, the county *[child care service]* ***designated*** agency worker shall:

i. Determine the effective date that child care benefits will be terminated; and

ii. Complete a letter notifying the participant and provider of termination of child care services.

4. The purpose of the letter in (c)3ii above is to provide written notice to:

i. Advise the parent or guardian of the amount of assessed co-payment monies which have not been paid;

ii. Advise the parent or guardian of the right to request and obtain a hearing;

iii. Serve as formal notice to the participant that child care services will be terminated by a specific date unless overdue co-payments are paid;

iv. Serve as written confirmation for the provider and the *[child care service]* ***county designated*** agency that child care services will be terminated due to the late or nonpayment status of the parent or guardian; and

v. Advise the parent or guardian to pay the required co-payment arrearages and to contact the county *[child care service]* ***designated*** agency immediately if overdue co-payment(s) have been paid so that benefits may be continued.

5. Three copies of the notification of termination letter must be completed and signed by the agency worker. The agency worker will:

i. Send the original to the parent or guardian;

ii. Distribute a copy to the provider; and

iii. Retain an agency copy in the parent or guardian's file.

6. Protective services children identified by DYFS shall not be terminated until the conditions at N.J.A.C. 10:15A-1.5(d) are met.

7. When child care services are terminated due to nonpayment of the co-payment, the parent or guardian of a child receiving child care services retains the right to request a hearing of the agency. If child care services are terminated, no payment shall be rendered by the agency under the program from the date of termination until a hearing is held by the agency and a final determination is made (see N.J.A.C. 10:15A-1.1(f)).

i. In all cases where a hearing is requested of the county ***designated*** agency, the agency must adhere to its established procedures. If the issue is not resolved through the due process proceedings at the county ***designated*** agency level, a fair hearing may be requested at the Divisional level in accordance with DEA hearing procedures at N.J.A.C. 10:81-6 for those participants receiving care through the certificate (voucher) process or through DYFS for contracted child care services (see N.J.A.C. 10:120-3 *[and 10:125B-2.11(e)]*).

(a)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual
REACH/JOBS Child Care

Adopted Amendments: N.J.A.C. 10:81-14.18, 14.18A and 14.18B

Proposed: October 7, 1991 at 23 N.J.R. 2981(a).

Adopted: November 20, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 20, 1991 as R.1991 d.601, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:7-7, 44:10-3 and 44:10-1 et seq.

Effective Date: December 16, 1991.

Operative Date: January 1, 1992.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:
No comments were received.

The text of N.J.A.C. 19:81-14.18(d) published in this notice of adoption includes revisions to that paragraph as adopted by the Department in the November 4, 1991 New Jersey Register at 23 N.J.R. 3365(a), and a clarifying change of a REACH program.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

10:81-14.18 REACH/JOBS support services: child care

(a) (No change.)

(b) Payment for the cost of child care to support participation is available through the REACH program at rates established by the Department of Human Services.

1. When child care that is in the best interests of the child has been arranged, the case manager has the responsibility to determine eligibility and authorize payment for the child care that will obtain the maximum Federal financial participation for the particular employment-directed activity. In determining payment of the cost of child care, the following sequence will be applied:

i.-iii. (No change.)

iv. The participant's funds for the amount of the required post-AFDC child care co-payment (see (e) below); and

v. (No change.)

2. (No change.)

3. Effective date: In all counties, REACH child care payments will be available as each begins the operation of the REACH program, as defined by the Department of Human Services. Payment of the required post-AFDC child care co-payment will be effective for participants becoming ineligible for AFDC on or after April 1, 1990 in accordance with criteria at (e)3i below.

(c) (No change.)

(d) Duration of payment: REACH/JOBS child care benefits are routinely available to participants for participation in a REACH/JOBS employment-directed activity; for a limited time to bridge the period between participation in REACH*/JOBS* employment-directed activities or between a REACH/JOBS employment-directed activity and employment; for the post-employment period after commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, as a direct payment or to supplement as necessary, child care paid by the participant as required by the Social Security Act (see (g)4 below); and, after the commencement of employment that results in ineligibility for AFDC, one year post-AFDC child care, subject to payment of a post-AFDC child care co-payment.

1.-4. (No change.)

(e) Post-AFDC child care pertains to child care available to families whose eligibility for AFDC has ceased due to increased earnings, increased hours of employment (including new employment) which result in increased earnings, or as a result of the loss of earned income disregards due to the expiration of time limits at N.J.A.C. 10:82-4.

1.-2. (No change.)

3. Eligibility for post-AFDC child care: A family is eligible for post-AFDC child care provided the following conditions are met:

i.-v. (No change.)

vi. The family pays the required co-payment, if the family ceased to be eligible for AFDC on or after April 1, 1990; and

vii. (No change.)

4. (No change.)

5. Ineligibility for post-AFDC child care: The family is not eligible for post-AFDC child care for any remaining portion of the 12-month period if the caretaker relative:

i.-ii. (No change.)

iii. Fails to pay required co-payment (see (e)7iii below).

6. (No change.)

7. Co-payment requirement for post-AFDC child care: Each family receiving post-AFDC child care is required to contribute a co-payment toward the cost of such care.

i. Co-payment scale: A co-payment scale established by the Department of Human Services will provide for some level of contribution by all recipients of post-AFDC child care. The co-payment scale shall consider: family income, family size, number of children, and number of children in care. The co-payment scale is set forth in N.J.A.C. 10:81-14.18A.

ii. Collection of co-payments: Pursuant to requirements established by the Department of Human Services, each county must establish methods and procedures for the collection of co-payments, and may vary the period of collection for different fee levels. The requirements for co-payment collection are set forth in N.J.A.C. 10:81-14.18B.

iii. Failure to pay the required co-payment: Individuals who fail to cooperate in paying the required co-payment will, subject to appropriate notice and hearing requirements, lose eligibility for post-AFDC child care benefits for so long as back co-payments are owed, unless satisfactory arrangements are made to make full payment.

8. (No change.)

9. Notice and hearings for post-AFDC child care: Provision of post-AFDC child care benefits is subject to timely and adequate notice and hearing requirements at N.J.A.C. 10:81-6, 10:81-7, and 10:90-2.5 (also see N.J.A.C. 10:81-14.7).

i. Timely and adequate notice must be given if post-AFDC child care benefits are reduced, discontinued or suspended due to nonpayment of the co-payment; or if a change in the manner of payment results in a discontinuance, suspension, reduction or termination of benefits; or forces a change in child care arrangements.

ii. (No change.)

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

10:81-14.18A REACH post-AFDC co-payment scale

(a) By the adoption of a Statewide co-payment scale for REACH post-AFDC child care benefits provided to families ineligible for AFDC as a result of increased earnings, increased hours of work or the loss of time-limited earned income disregards on or after April 1, 1990, the REACH Program seeks to:

1.-3. (No change.)

(b) The REACH post-AFDC child care co-payment scales, based on the family size and gross income of the AFDC eligible unit at case closing, are used to determine the co-payment. Once assessed, the co-payment is deducted from the amount to be paid to the provider by the REACH Program up to the maximum REACH rates. This assessed co-payment for child care services is then paid directly by the parent to the provider of care. Any balance remaining (up to the maximum REACH rates) is paid by the REACH Program for the total cost of care. The REACH post-AFDC child care co-payment policy and procedures are applicable for all types of care arrangements available through the REACH Program and approved by the appropriate child care evaluating agency, as follows:

1.-5. (No change.)

(c) All AFDC families who become ineligible for AFDC on or after April 1, 1990 due to (increased) income from employment shall pay a co-payment toward the cost of REACH Post-AFDC child care services.

(d) The co-payment scales are as follows:

1. The amount of the required co-payment is based on the family's income level, family size, number of children, and number of children in care. There are two co-payment scales:

i. Co-payment Scale Table I—Full-Time Care; and

ii. Co-payment Scale Table II—Part-Time Care.

2. Assessed co-payments are apportioned weekly and are due for the entire 52-week period that subsidized child care assistance is received. Holidays, emergency closings, and absences do not exclude or reduce the required fee co-payment.

TABLE I
CO-PAYMENT SCALE

By Family Size
(Full-Time Care)**

Full Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 2	3	4	5	6
1.00	0%- 5%	0- 1,768	0- 2,184	0- 2,600	0- 3,016	0- 3,432
4.00	6%-10%	1,769- 3,536	2,185- 4,368	2,601- 5,200	3,017- 6,031	3,433- 6,863
6.00	11%-15%	3,537- 5,304	4,369- 6,552	5,201- 7,799	6,032- 9,047	6,864-10,295
9.00	16%-20%	5,305- 7,071	6,553- 8,735	7,800-10,399	9,048-12,063	10,296-13,727
11.00	21%-25%	7,072- 8,839	8,736-10,919	10,400-12,999	12,064-15,079	13,728-17,159
14.00	26%-30%	8,840-10,607	10,920-13,103	13,000-15,599	15,080-18,094	17,160-20,590
18.00	31%-35%	10,608-12,375	13,104-15,287	15,600-18,198	18,095-21,110	20,591-24,022
22.00	36%-40%	12,376-14,143	15,288-17,471	18,199-20,798	21,111-24,126	24,023-27,454
27.00	41%-45%	14,144-15,911	17,472-19,655	20,799-23,398	24,127-27,141	27,455-30,885
32.00	46%-50%	15,912-17,679	19,656-21,839	23,399-25,998	27,142-30,157	30,886-34,317
37.00	51%-55%	17,680-19,446	21,840-24,022	25,999-28,597	30,158-33,173	34,318-37,749
43.00	56%-60%	19,447-21,214	24,023-26,206	28,598-31,197	33,174-36,188	37,750-41,180
50.00	61%-65%	21,215-22,982	26,207-28,390	31,198-33,797	36,189-39,204	41,181-44,612
57.00	66%-70%	22,983-24,750	28,391-30,574	33,798-36,397	39,205-42,220	44,613-48,044
61.00	71%-75%	24,751-26,518	30,575-32,758	36,398-38,996	42,221-45,236	48,045-51,476

**Full-time care is defined as six or more hours of care per day or 30 or more hours of care per week.

TABLE II
CO-PAYMENT SCALE

By Family Size
(Part-Time Care)

Part Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 2	3	4	5	6
0.00	0%- 5%	0- 1,768	0- 2,184	0- 2,600	0- 3,016	0- 3,432
2.00	6%-10%	1,769- 3,536	2,185- 4,368	2,601- 5,200	3,017- 6,031	3,433- 6,863
3.00	11%-15%	3,537- 5,304	4,369- 6,552	5,201- 7,799	6,032- 9,047	6,864-10,295
4.00	16%-20%	5,305- 7,071	6,553- 8,735	7,800-10,399	9,048-12,063	10,296-13,727
5.00	21%-25%	7,072- 8,839	8,736-10,919	10,400-12,999	12,064-15,079	13,728-17,159
7.00	26%-30%	8,840-10,607	10,920-13,103	13,000-15,599	15,080-18,094	17,160-20,590
9.00	31%-35%	10,608-12,375	13,104-15,287	15,600-18,198	18,095-21,110	20,591-24,022
11.00	36%-40%	12,376-14,143	15,288-17,471	18,199-20,798	21,111-24,126	24,023-27,454
13.00	41%-45%	14,144-15,911	17,472-19,655	20,799-23,398	24,127-27,141	27,455-30,885
16.00	46%-50%	15,912-17,679	19,656-21,839	23,399-25,998	27,142-30,157	30,886-34,317
18.00	51%-55%	17,680-19,446	21,840-24,022	25,999-28,597	30,158-33,173	34,318-37,749
21.00	56%-60%	19,447-21,214	24,023-26,206	28,598-31,197	33,174-36,188	37,750-41,180
25.00	61%-65%	21,215-22,982	26,207-28,390	31,198-33,797	36,189-39,204	41,181-44,612
28.00	66%-70%	22,983-24,750	28,391-30,574	33,798-36,397	39,205-42,220	44,613-48,044
30.00	71%-75%	24,751-26,518	30,575-32,758	36,398-38,996	42,221-45,236	48,045-51,476

(e) The criteria for determination and re-determination of the co-payment are as follows:

1. The criteria for determining the amount of the co-payment are family size and family annual gross income.

i-ii. (No change.)

2. The co-payment is determined by the number of hours child care services are being provided to the child.

i.-ii. (No change.)

iii. In no case may the co-payment [fee] exceed the cost of care.

3. Once the co-payment is determined, it will remain unchanged for the duration of the eligibility period for the 12-month post-AFDC period, unless there is an increase in family size, or a reduction in gross family income. The participant must notify the CWA of any such changes occurring in the family. The CWA (case management) shall determine any changes in the co-payment based on reported circumstances affecting co-payment calculation.

(f) The process for co-payment assessment is as follows:

1. The process for co-payment assessment is based on up to two children in care in a family. If more than two children in a family are in care, no co-payment is required for the third and subsequent children. The co-payment is determined on a per week basis.

2. The weekly co-payment is based on whether the care is full-time or part-time care, on the number of children (up to two per family) in the family needing such care through the program, and on the family's annual gross income level.

3. If only one child is in care, the weekly co-payment is the payment which results from Table I or Table II in (d)1 above. That co-payment is assessed on that family's size, the family's annual gross income, and whether the care is full-time or part-time care for that child, resulting in the co-payment from Table I or Table II.

4. If two or more children in the family receive child care services through the Program, the weekly co-payment amount is a composite total payment for up to two children in the family receiving such service.

i. The weekly co-payment sum equals the full co-payment assessed for the first child from Table I or Table II plus one-half of the full assessed co-payment for the second child in care from Table I or Table II. The two children are selected for determination of the co-payment from all children in the family in care, based first, on the number of children in the family in full-time care arrangements.

(1) If two or more children in the family are in full-time care arrangements, the full co-payment amount is assessed on two children in full-time care. A full co-payment amount is assessed for the first child in full-time care from Table I; to that co-payment amount is added one-half of the full co-payment amount for the second child in full-time care from Table I. The resulting composite co-payment equals one and one-half of the full-time co-payment amount from Table I based on the family's size and annual income level.

(2) If at least one child in the family is in a full-time care arrangement and the second and subsequent children are in part-time care arrangements, the full weekly co-payment amount is assessed from Table I on the first child in full-time care; to that co-payment amount is added one-half of the part-time co-payment amount from Table II for the second child in part-time care. The resulting composite co-payment equals the full-time co-payment assessed amount from Table I plus one-half of the part-time co-payment amount from Table II.

(3) If all children in the family are in part-time care arrangements, the full weekly co-payment amount is based on up to two children in care and is one and one-half times the part-time co-payment amount from Table II for the family's size and income amount.

(g) The requirements for a provider's receipt of co-payment are as follows:

1. The composite co-payment is paid to only one provider of care based on the care arrangements of the family. That is, the composite co-payment amount is paid in total to the provider of the highest cost of care arrangement (that is, either the full-time care provider or the provider with the highest reimbursement rate per category of care). The following situations may result and the co-payment is distributed as follows:

i. When one child is receiving child care services through the Program, the full assessed co-payment from Table I or Table II is made by the recipient to that provider of care.

ii. If one child is receiving child care services through the Program but more than one provider is involved in giving care, the co-payment from Table I or Table II is paid by the recipient to that child care provider who provides the highest cost of care arrangement.

iii. When two children are receiving child care services from the same provider, the composite co-payment amount is determined in accordance with (f) above, and the sum total is paid by the recipient to that provider of care. The composite total is based on the respective type of care (full-time or part-time) provided each child; the full assessed co-payment fee from Table I or Table II for the first child is added to one-half of the full assessed fee from Table I or Table II for the second child in care with the provider, for the total co-payment amount.

iv. When both children are receiving different child care services from separate providers, the child care provider providing either full-time care or who receives the highest reimbursement rate per category of care will receive from the recipient the full amount of the composite co-payment assessed for both children from Table I and Table II based on the respective type of care provided (full-time or part-time care) for both children.

v. When both children are receiving the same child care services but from different providers (for example, both receiving full-time care), the provider assessed at the highest cost of care arrangement receives the full composite assessed co-payment from the recipient.

vi. No co-payment shall be assessed for the third and additional children in a family receiving child care service program benefits.

vii. Fees shall be rounded down to the nearest dollar.

(h) The requirements for refunds of co-payments are as follows:

1. Refunds are made to the participant by the REACH program as a lump sum payment when:

i. A fair hearing decision results in a reduced co-payment; or

ii. An error in co-payment computation has resulted in overcharges to the participant.

2. Overcharges are refunded within 30 calendar days of the fair hearing decision or discovery of the error.

10:81-14.18B Co-payment determination, collection and monitoring

(a) This section sets forth procedures for determining the amount of a REACH participant's co-payment toward the cost of post-AFDC child care, for the collection of the co-payment, monitoring payment (and nonpayment) of the co-payment, and for notification of nonpayment of co-payments, and termination of post-AFDC child care benefits for continued nonpayment of co-payments.

1. The procedures are listed according to the entities involved in the co-payment determination and collection process: the county welfare agency income maintenance staff, the county REACH case management staff, the provider of child care, and the county REACH lead child care entity.

2. Counties are responsible for the entire co-payment determination and collection process and functions, according to the standard procedures detailed in this section. Counties may adapt the procedures to local operations, and may reassign functions among the entities listed below. However, counties must make sure that the tasks are completed, benefits are processed in a timely manner that affords participants maximum benefits, co-payments are accurately determined, and participants are not denied benefits they are otherwise eligible to receive.

(b) Procedures for determining REACH post-AFDC child care co-payments are as follows:

1. County welfare agency (CWA) income maintenance (IM) functions are as follows:

i.-ii. (No change.)

iii. If earned income received or expected to be received renders the family ineligible for AFDC, the IM worker will initiate AFDC case closing and the processing of post-AFDC REACH benefits, including extended Medicaid benefits and post-AFDC child care.

(1) The IM worker will do the following:

(A) Enter the amount of verified earnings into FAMIS at the time the action is taken on computer to close the AFDC case. These earnings will be used to compute the co-payment that the participant must pay toward cost of post-AFDC child care, if the participant elects to apply for such benefits.

(B) (No change.)

(C) Send out Form R-10, REACH Benefit Letter, advising the participant of:

(I) The availability of post-AFDC REACH benefits—extended Medicaid and post-AFDC child care:

(II) The requirement to pay a co-payment toward the cost of post-AFDC child care; and

(III) The need to apply for post-AFDC child care by contacting (by phone, mail or in-person) the REACH case manager listed at the bottom of Form R-10.

(2) (No change.)

iv. To the extent possible, the IM worker should complete the AFDC case closing, income verification process and mailing of Form R-10 before the AFDC case is closed. This will ensure that participants receive child care benefits in a timely and uninterrupted manner, and ensure that providers receive payment of co-payments and REACH voucher payments. If this is not possible, the process should be completed as soon as possible after the AFDC case is closed, during the first month of AFDC ineligibility.

v. (No change.)

i.-iii. (No change.)

iv. Upon receipt of a rsponse from a participant requesting REACH post-AFDC child care benefits, the REACH case manager and the participant will discuss the child care arrangements, including the requirement to pay a co-payment toward the cost of care. The REACH case manager will determine the amount of the participant's co-payment based on verified earnings, family size and the number of children in post-AFDC child care. The case manager and participant will then complete a REACH Agreement for Support Services indicating the child(ren) for whom child care is to be provided, the duration of the child care benefits, the name(s) and address(es) of the child care provider(s), and the amount of the child care benefits.

(1)-(2) (No change.)

v. The case manager, in consultation with the REACH participant, will complete Form R-20, Notification of REACH Post-AFDC Child Care Co-payment. Form R-20 is a four-part form which contains information about the REACH post-AFDC child care co-payment arrangement. It sets forth the requirement of the REACH participant to pay a co-payment toward the cost of care and of the REACH program to pay the balance of the approved cost of child care. It contains the amount(s) of co-payment(s) computed for the first and, if necessary, second child in care, the total co-payment to be paid. It provides instructions about co-payment arrangements, proof of payment and accounting of co-payments collected. The form specifies actions to be taken for nonpayment of the co-payment, including written notice from case management and termination of all post-AFDC child care benefits for continued nonpayment (with right to a fair hearing). Form R-20 is signed by the REACH case manager, and may be signed by additional agency representatives.

(1) The purposes of Form R-20 are to:

(A) Provide the participant receiving REACH post-AFDC child care benefits with written documentation of his or her co-payment obligation;

(B) (No change.)

(C) Establish a basis for monitoring compliance with the REACH post-AFDC co-payment policy.

(2) Form R-20 is to be completed and signed for each child for whom a co-payment is assessed.

(3) (No change.)

vi. The biweekly REACH child care voucher process will be used to report post-AFDC child care co-payment collection and nonpayment. Case management (or other entity designated by the county REACH program to process its REACH vouchers) will issue the voucher biweekly listing the name(s) of the post-AFDC REACH participant's child(ren). Case management or the county entity will ensure that a method for recording payment or nonpayment of the fee is included in this voucher issuance. Acceptable methods include a separate form attached to the voucher, a computer-printed message on the voucher, or any other method approved in writing by the county's Division of Economic Assistance representative.

3. Child care service provider functions are as follows:

i. Upon receipt of the Form R-20, Notification of REACH Post-AFDC Child Care Fee, from case management, the participant and the provider must negotiate the frequency of co-payments and collection (either weekly or biweekly), and date or day of co-payment. Frequency and day of co-payment can be based on individual circumstances, including the participant's source and frequency of income and the co-payment procedures already established by the provider, but the co-payment must be paid by the last day of the voucher service period. Collection periods must coincide with the periods covered by the REACH post-AFDC child care voucher.

(1) (No change.)

ii. The provider should implement a system designed to ensure an efficient, error-free method of recording and accounting for all co-payment collections. The Lead Child Care Entity is available to provide technical assistance to providers in establishing such a system. The provider may wish to adapt recordkeeping systems used in the Social Services Block Grant (SSBG) system, such as the One-Write Fee Collection System or a comparable method.

(1) Providers must establish procedures for the collection of the co-payment from the participant.

iii. The provider and REACH participant will then follow the terms of the Form R-20 notification. The provider will collect the assessed co-payments from the participant during the voucher service period. The child care provider has the responsibility to make reasonable efforts to collect assessed co-payments from the REACH post-AFDC participant.

iv. At the end of the voucher service period the provider will complete the voucher indicating the child(ren)'s attendance, the amount of the REACH payment due for child care services provided and whether the REACH participant(s) paid the required co-payments. The provider must return the voucher to obtain payment for REACH services provided, to document co-payments not paid and thereby to preserve his or her right to possible reimbursement for unpaid co-payments.

v. The income and co-payment information recorded on the Form R-20 notification is confidential. The provider, Lead Child Care Entity, and REACH Case Manager are responsible for ensuring that access to this information is restricted to those individuals rsponsible for assessing and collecting co-payments.

4. REACH Lead Child Care Entity functions are as follows:

i. The Lead Child Care Entity is responsible for advising the provider at time of recruitment into REACH of the post-AFDC co-payment requirements, including the requirement that the participant must pay a portion of the cost of care; training the provider in voucher completion; and providing assistance in co-payment collection and monitoring, as determined by the county.

ii. (No change.)

5. Reassignment of Functions shall be accomplished as follows:

i. (No change.)

ii. A county must use the Form R-20 in its REACH post-AFDC operations. Each county must provide to the Division of Economic Assistance a copy of its notice of co-payment payment and nonpayment. This is completed by the provider and its notice of termination of REACH post-AFDC benefits.

(c) Co-payment collection, monitoring, and procedures for late payment or nonpayment of co-payments and termination of REACH post-AFDC child care benefits are as follows:

1. The following are provider functions:

i. It is the responsibility of the child care service provider to collect co-payments and report nonpayment of co-payments in accordance with the terms of the R-20 notification.

ii. Whenever the REACH post-AFDC child care co-payment has not been paid to the provider by the end of the voucher service period, the co-payment is considered unpaid.

iii. In the event of nonpayment of assessed co-payments by the participant, the provider will complete the voucher, indicate on the voucher the child(ren) for whom the participant(s) failed to pay the required co-payment; and return the voucher to the designated entity in the county REACH program. This action by the provider in conjunction with the REACH case manager will initiate the process for terminating REACH post-AFDC child care benefits.

iv. The provider must continue to attempt to collect co-payments from the participant and must document such collection efforts.

v. Under no circumstances may the participant be charged a late co-payment penalty.

2. (No change.)

3. REACH case management functions are as follows:

i. It is the responsibility of case management to monitor co-payment collection by examining the completed REACH post-AFDC vouchers returned by providers and responding to nonpayment of co-payments reported in the voucher.

ii. Following receipt of a REACH voucher from a provider indicating nonpayment of assessed co-payments by the participant, the REACH case manager will do the following:

(1) (No change.)

(2) Complete a letter notifying the participant of termination of REACH post-AFDC child care services. A county may develop a letter specifically for this purpose or may amend an existing notification letter. The letter must contain at a minimum the information in the sample form, Notice of Termination of REACH Child Care Support Agreement, in Appendix A. The purpose of this notice is to provide written notice to:

(A) Advise the participant of a child receiving REACH post-AFDC child care services of the amount of assessed co-payments which have not been paid;

(B) (No change.)

(C) Serve as formal notice to the participant that REACH post-AFDC child care services will be terminated by a specific date unless overdue co-payments are paid;

(D) (No change.)

(E) Advise the participant to pay the required co-payments and to contact the county REACH program immediately if she has already paid the overdue co-payment(s) so that benefits may be continued.

(3) (No change.)

4. When post-AFDC child care services are terminated due to nonpayment of co-payments, the participant of a child receiving REACH post-AFDC child care services retains the right to request a fair hearing. If timely request (within 10 days) is made, the REACH Program will continue to make payment to the provider for the REACH portion of child care services rendered until a fair hearing is held, and a final determination is made.

i. (No change.)

5. Reassignment of functions shall be accomplished as follows:

i. (No change.)

ii. A county must use the Form R-20 in its REACH post-AFDC operations. Each county must provide to the Division of Economic Assistance a copy of its notice of co-payment payment and nonpayment that is completed by the provider and its notice of termination of REACH post-AFDC benefits.

6. Reimbursement of unpaid co-payments shall be accomplished as follows:

i. If a REACH participant fails to pay assessed co-payments for care provided to her child(ren), the provider(s) may be reimbursed by the REACH program for the amount of unpaid co-payments subject to the following.

(1) Reimbursement by the REACH program will be made if all of the following conditions are met:

(A) (No change.)

(B) The provider has documented on the REACH voucher nonpayment of the co-payments for each voucher service period for which a claim of nonpayment is made; and

(C) (No change.)

(2) Reimbursement of unpaid co-payments is limited to a maximum period of two months. Exceptions may be granted in extreme circumstances with prior written approval by the Division of Economic Assistance representative for the county.

(3) Reimbursement of unpaid co-payments to the provider must be paid from State REACH funds.

ii. If a participant whose post-AFDC REACH benefits have been terminated due to nonpayment of co-payments reapplies for post-AFDC child care benefits, the participant must reimburse the amount of the unpaid co-payments before eligibility for post-AFDC child care benefits will be granted for the balance of the post-AFDC period.

(1) If the county REACH program has already paid the provider(s) for previous unpaid co-payments, the participant must reimburse the county for the full amount of co-payment arrearages due. Reimbursement may be in the form of a lump sum or installment payments as determined by the county.

(2) If the county REACH program has not yet paid the provider(s) for previous unpaid co-payment arrearages, the participant must reimburse the provider(s) for the full amount of co-payments due. Reimbursement may be in the form of a lump sum or installment payments as determined by the county and the provider(s).

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook
Resources

Adopted Amendment: N.J.A.C. 10:82-3.1

Proposed: September 3, 1991 at 23 N.J.R. 2625(a).

Adopted: November 18, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 21, 1991 as R.1991 d.603, **without change.**

Authority: N.J.S.A. 44:10-3.

Effective Date: December 16, 1991.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:

Comments were received from the Mercer County Board of Social Services.

COMMENT: The proposed amendment should address the timing of when the assets are discovered. Most cases that fit into this category are discovered through a resource match and are not initially reported by an applicant; therefore, the initial eligibility determination is often a retroactive determination conducted by a claims worker instead of an eligibility worker during the application process. This presents difficulty in accomplishing a satisfactory resolution.

RESPONSE: The Department does not agree that the point in time of asset discovery in the context of this particular rulemaking should be addressed here or separately developed. It is submitted that the disclosure of resources by an applicant of public assistance is an integral part of the application process and is used by the agency to make an accurate assessment of eligibility. The same obligation is a requirement on the part of the recipient to report the acquisition of liquid or non-liquid resources during the tenure of the case. To the extent such obligation, regardless of the time period involved, is not observed by the public assistance beneficiary is productive of erroneous determination of eligibility and/or issuance of incorrect benefit amounts. After the fact discoveries may, therefore, lead to case eligibility and payment reconstruction and reconciliation of overpayments and underpayments and the undertaking of corrective measures pursuant to law and pertinent regulations. Since claims determination and eligibility staff are same local agency employees, the Department does not agree that the observation has merit inasmuch as such employees have access to the same instructions and training as appropriate.

COMMENT: The proposed amendment gives greater credence to the applicant's statement in spite of the fact that the local agency is frequently in a position to produce evidence indicating control and/or ownership by the client, that is, withdrawal slips, signed checks, deposit slips, and so forth. Commenter states that this is unacceptable because it is a practice in law to give greater credibility to evidence submitted by the disinterested party as opposed to the evidence submitted by the person who stands to gain from the decision.

RESPONSE: The Department does not agree with the commenter's assessment of the thrust and intent of the proposed amendment. It submits that the text of the proposed rule does indeed provide for the weighing and consideration of preponderance of credible evidence and directs the administrative agency to make a decision as to resource ownership employing all such evidence not just the applicant's self-serving statement.

Full text of the adoption follows.

10:82-3.1 General provisions

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

(f) "And"/"or" bank accounts are to be treated as follows:

1. For checking and savings accounts in which the names of the owners are stated in the conjunctive ("and" accounts), the eligible family member shall be presumed to possess the funds in proportion to the number of owners listed on the account. Such presumption is rebuttable and shall not apply if the eligible family member and/or the other owner(s) demonstrate to the CWA that actual ownership (based on the contributions by each of the parties to the sums on deposit) of the funds is in a different proportion. For example, a disabled yet competent sibling sets up an "and" account with his or her healthy sibling. As this type of account usually requires the signatures of both parties for withdrawal purposes, the "and" account would allow the disabled sibling a measure of control and supervision of his or her finances. However, should two or more signatures be required to withdraw monies and another party to the account (that is, a non-client) is uncooperative, the account shall be considered an inaccessible resource. In the event any monies are subsequently withdrawn by the client through the cooperation of the other party, the funds withdrawn shall be treated as an available resource.

2. For checking and savings accounts in which the names of the owners are stated in the disjunctive ("or" accounts), the eligible family member shall be presumed to possess all the funds therein regardless of their source. Such presumption is rebuttable and shall not apply if the eligible family member and or the other owner(s) demonstrate to the CWA that ownership of the funds is in a different

proportion, predicated on contributions by each party to the sums on deposit. For example, an elderly parent wishing to ensure 100 percent accessibility of his or her funds to a child in case of sudden illness or incapacity may wish to set up an "or" account to allow for prompt payment of debts and expenses if the need arises.

3. If it can be demonstrated that funds in either type of account are not legally owned by an eligible family member, such funds shall not be counted toward the resource maximum. In such situations a signed statement attesting to the lack of ownership should be obtained from the eligible family member.

LABOR

(a)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Vocational Rehabilitation Services Program Rules

Readoption with Amendments: N.J.A.C. 12:51.

Proposed: October 7, 1991 at 23 N.J.R. 2927(b).

Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: November 22, 1991 as R.1991 d.604, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:16-27, 34:1-20, 34:1A-3; 34:16-20 et seq., 29 USCA, Sec. 701 et seq. and 34 CFR 361.1 et seq.

Effective Date: November 22, 1991, Readoption;
December 16, 1991, Amendments.

Expiration Date: November 22, 1996.

Summary of Public Comments and Agency Responses:

Pursuant to a waiver of Executive Order No. 66(1978) by Governor James J. Florio on June 19, 1991, N.J.A.C. 12:51 expires on December 31, 1991 (See 23 N.J.R. 1893(a)). The Department of Labor, Division of Vocational Rehabilitation Services, reviewed the rules governing vocational rehabilitation facilities and determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposed their readoption, with amendment, and afforded all interested parties an opportunity to comment on the proposal. Notice of the opportunity to respond to the proposal appeared in the New Jersey Register on October 7, 1991 at 23 N.J.R. 2927(a) and the official comment period ended on November 6, 1991. A full record of this opportunity to be heard can be inspected by contacting the Department of Labor, Division of Vocational Rehabilitation Services, CN 398, Trenton, New Jersey 08625.

The Department received 17 comments during the 30-day period prescribed in the original proposal notice on the proposal. The comments were very helpful in clarifying and improving the new rules. The following individuals and organizations have commented on the proposal:

Joseph S. Bender, Executive Director
Occupational Training Center of Burlington County, Inc.
Walter Howard, Executive Director
New Jersey Association of Rehabilitation Facilities
Mohammad Shafiq, Director
Harbor House
Donald Springer, Executive Director
Friendship House
Allen L. Waters

These comments and the Department's responses are synopsized below:

COMMENT: Proposed N.J.A.C. 12:51-3.1(b) should define a facility utilizing the same language as appears in P.L.1991, Chapter 147.

RESPONSE: The referenced section is not intended to define a facility, but merely states that to be incorporated as a not-for-profit organization, it must hold a letter of exemption under Section 501(c)3 of the Internal Revenue Code of 1954. Hence, the recommendation was not incorporated.

COMMENT: In N.J.A.C. 12:51-3.2(d), the word "workshop" should be changed to "facility" in order to maintain consistency and to eliminate confusion regarding the applicability of the standard to all entities which the facilities unit of the Division supervises.

RESPONSE: The Department agrees. N.J.A.C. 12:51-3.2(d) has been modified accordingly.

COMMENT: N.J.A.C. 12:51-4.1(a)3, which indicates that one five-week extension may be considered, should be changed to provide that "... extensions may be given in five-week intervals up to a twenty week maximum."

RESPONSE: The Department agrees that further clarity is needed. Accordingly, modifications have been made to N.J.A.C. 12:51-4.1(a)2 and 3 to address the two types of evaluation periods that are presently utilized by the Division. The second sentence of N.J.A.C. 12:51-4.1(a)2 has been changed to read, "Those facilities that have not received approval for a five-week evaluation will continue to provide a 10-week evaluation at the approved 10-week evaluation fee." The second sentence of N.J.A.C. 12:51-4.1(a)2iii is modified to read, "If the client produces at nine percent of normal productivity rates, one five-week extension may be considered for facilities with a five-week vocational evaluation program and two five-week extensions may be considered for facilities with a 10-week vocational evaluation process." The intent of the proposed amendment pertaining to extensions for client assessments is to provide an extension for the facilities which amounts to a 100 percent increase in the time frame within which they conduct the evaluation. Because facilities presently conduct evaluations over either a five-week or 10-week evaluation period, the language has been clarified to explain the extension of time as it relates to each type of evaluation program.

COMMENT: N.J.A.C. 12:51-4.2(b) should be changed to read, "The evaluation staff conference will be conducted at the end of the five-week evaluation period. A two-week situational assessment period will be authorized by DVR at the WAT rate during which time an appropriate program of vocational rehabilitation will be developed for the client," with an attendant change in N.J.A.C. 12:51-4.2(c) from "... timely manner" to "... by the end of the situational assessment period."

RESPONSE: The recommendation constitutes a substantive change to the proposal inasmuch as it provides for an additional two-week evaluation period above and beyond that which is contained in the proposal. Accordingly, it may not be adopted at this time. Moreover, because of the costs associated with the proposal and other possible programmatic issues, the Department believes that this recommendation should be considered by the Professional Advisory Committee before any proposal is published.

COMMENT: Regulations should be added which address the program element of skills training since such programs require special approval.

RESPONSE: The commenter's proposal constitutes a substantive change to the proposal inasmuch as it relates to an additional, albeit related, program service. Accordingly, it may not be adopted at this time. Moreover, these suggested regulations on skills training should be comprehensive and should be considered by the Professional Advisory Committee. The Division expects to develop such regulations in conjunction with the Professional Advisory Committee within the next six months. Such a proposal would be published and subject to public comment.

COMMENT: N.J.A.C. 12:51-6.1(a) should read, "Extended (Sheltered) Employment is a program designed to provide long term employment in the facility for a client/worker whose functional limitations or handicapping conditions are such as to make employment outside the facility an unrealistic goal, or the client needs extended work conditioning in preparation for nonsheltered competitive employment."

RESPONSE: The Department agrees that the suggested change more precisely describes the program. Accordingly, the recommendation has been incorporated with technical changes in the proposed text.

COMMENT: "Work services" was omitted from the list of services which must be provided to extended employees.

RESPONSE: The Department agrees that work services are indeed an essential part of the extended program. Accordingly, the modification has been incorporated to more accurately describe the services which are presently provided to extended employees.

COMMENT: N.J.A.C. 12:51-6.5(c) should be revised to reflect recent organizational changes.

RESPONSE: The Department agrees that the proposal contains references which do not reflect the current organizational construct of the Department. Accordingly, the last sentence which contains the outdated reference has been deleted.

COMMENT: N.J.A.C. 12:51-7.5(c) and (d) which address the reduction in the number of weeks from 22 to 18 for vocational development training in the psycho-social programs should be restored because, although negotiations are in progress, no formal agreement has been reached with regard to this point between the Division and representatives of psycho-social programs.

RESPONSE: While agreement by the representatives of psycho-social programs is not a pre-condition to the adoption of such a change, the Department will refrain from instituting this change at this time to insure that the matters which are the subject of on-going discussions are addressed comprehensively.

COMMENT: In light of the deletion of N.J.A.C. 12:51-8.5, further amplification of N.J.A.C. 12:51-8.3(a) is needed specifying that both new and existing facilities must submit the requisite description under certain circumstances to clarify the regulation.

RESPONSE: The Department agrees that the suggested change more specifically articulates the intended scope of the section. Accordingly, the modification has been incorporated.

COMMENT: The heading for N.J.A.C. 12:51-8.4 should be changed to "Procedure for program/facility approval" because as presently titled, it incorrectly indicates that this section applies only to existing programs.

RESPONSE: The Department agrees that the suggested change would provide greater clarity. Accordingly, the proposed modification has been incorporated.

COMMENT: Since the DVRS upper management structure has changed over the life of the rules, the second sentence of N.J.A.C. 12:51-8.4(g) should be revised to read, "This package will be delivered through the facilities unit to the appropriate DVRS administrative staff for final approval."

RESPONSE: The Department agrees that the proposed change prevents the standard from becoming outdated in the event of a DVRS reorganization. Accordingly, the proposed modification has been incorporated.

COMMENT: Much more restrictive language should be incorporated in N.J.A.C. 12:51-8.4(h) as it applies to the inclusion of new vendors.

RESPONSE: Inasmuch as the recommendation requests that the Division set forth criteria which were not contained in the original proposal, it constitutes a substantive change to the proposal which may not be adopted at this time. Moreover, the primary issue in establishing a "certificate of need" procedure is not that it be restrictive, but that there be an established need and reliable criteria upon which such a need is established. The Division is aware that certain definite criteria must be established; however, doing so requires careful deliberation and consideration of a number of issues. In the upcoming year, the Division expects to formulate a more specific and detailed "certificate of need" procedure in conjunction with the Professional Advisory Committee. Such a proposal would be published and subject to public comment.

COMMENT: The reference in N.J.A.C. 12:51-9.1(b) to the Institute for the Crippled and Disabled should be changed because the organization has changed its name to the International Center for the Disabled.

RESPONSE: The Department agrees tht the new name of the organization should be utilized and the recommendation has accordingly been incorporated.

COMMENT: The absence of any reference to specific periodic intervals for staff meetings creates a standard that for audit purposes is too vague.

RESPONSE: The Department appreciates the observation and has, accordingly, retained the requirement that staff meetings be held periodicallty, but the requirement has been changed from two weeks to at least once a month.

COMMENT: N.J.A.C. 12:51-13.1(b) should be more specific regarding the frequency of meetings of the Professional Advisory Committee, as for example, twice a year and require the publication of a formal report not later than six months prior to any reauthorization.

RESPONSE: The Department agrees that greater specificity is appropriate. For this reason, as well as the potential audit consequences referenced in a prior comment, the modification has been made requiring meetings at least twice a year, the distribution of written minutes and the publication of a formal report recommending any changes in the regulations not later than six months prior to their readoption.

COMMENT: The first sentence of N.J.A.C. 12:51-17.1(b) which allows for 10 percent absenteeism is no longer valid.

RESPONSE: The Department agrees. Accordingly, the recommendation has been incorporated to reflect the current prohibition against paying for days of absence, as well as the policy pertaining to paid holidays. During a 1980 Federal audit of the Division of Vocational Rehabilitation Services, the Federal government determined that the Division's policy of paying a 10 percent absenteeism rate could not be reimbursed. As a result, the Division ceased paying for client absenteeism, although this change was not reflected in the rules. The change in the rule upon adoption is intended to conform the regulations with the Division's actual practices over the last eight years.

The personnel requirements in N.J.A.C. 12:51-9.1(i)9ii and 11ii were changed from mandatory to recommended. The change upon adoption is intended to conform these subparagraphs to the requirements found elsewhere in the paragraph.

In addition, three technical corrections, pursuant to N.J.A.C. 1:30-4.3, have been made to correct typographic errors in the proposal and the subparagraphs contained in N.J.A.C. 12:51-4.1 have been reformatted.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:51.

Full text of the changes between proposal and adoption follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 51
VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

12:51-1.1 Scope and purpose

Prior to this submission, the New Jersey Department of Labor, Division of Vocational Rehabilitation Services (DVRS) published Standards for vocational rehabilitation facilities which have had the force of policy. This chapter is intended to strengthen the legal impact of these standards. The purpose of this chapter is to define the criteria for operation of a program which is eligible to vend services to the Division of Vocational Rehabilitation Services.

12:51-1.2 (No change.)

SUBCHAPTER 2. INTRODUCTION

12:51-2.1 Standards

(a) (No change.)

(b) The facilities staff of the Division of Vocational Rehabilitation Services has called together from time to time a committee to assist and give counsel in the development of appropriate standards for the various rehabilitation facilities in New Jersey. This committee has been composed of representatives of the New Jersey Association of Rehabilitation Facilities and the facilities staff. Initial standards were developed in June, 1967, similar to those published by the National Policy and Performance Council under the sponsorship of the Vocational Rehabilitation Administration.

(c) The basic rationale for the development of these standards of operations consists of the following:

1. (No change.)
2. Established, recognized standards give evidence of a professional discipline, help facilities provide the consumer with quality services, and establish accountability of operations.
3. Standards for rehabilitation facilities are necessitated by the enactment of State and Federal legislation to help establish and improve rehabilitation facilities. These standards will be utilized as a minimum basis for establishing the approval of assistance grants under the Federal Vocational Rehabilitation Act and other legislation, and for the use of such rehabilitation services, and by the New Jersey Commission for the Blind and Visually Impaired. They shall also be applicable to the purchase of services and the payment of fees to the rehabilitation facility by the Division of Vocational Rehabilitation Services and the New Jersey Commission for the Blind and Visually Impaired.

SUBCHAPTER 3. CORPORATE ORGANIZATION AND ADMINISTRATION

12:51-3.1 Organization and by-laws

(a) (No change.)

(b) The facility will be incorporated as a not-for-profit organization and will hold a letter of exemption under Section 501(c)3 of the Internal Revenue Service Code of 1954.

1. The agency's charter from the State of New Jersey will identify the corporate entity, state the objective of the corporate entity, and describe categories of the qualifications for membership, if applicable.

2. (No change.)

(c) (No change.)

(d) The purpose of the facility will be related to the human needs it serves. The facility will describe how its programs contribute to these purposes and conditions or restrictions on admission or provision of services.

1. The by-laws will:

i. Provide for a governing body/board;

ii. Describe qualifications for election to the governing body/board and tenure of office;

iii. Provide for the election and specification of duties of officers;

iv. Establish regular and special meetings of the governing body/board, in no event fewer than four meetings each year;

v. Provide for committees of the governing body/board;

vi. Describe the parliamentary procedures which will be followed in the conduct of business meetings;

vii. Describe methods of amending the by-laws;

viii. Establish a quorum with requirements of at least one-third of the governing body/board; and

ix. Require recording of minutes.

2. (No change.)

12:51-3.2 Governing body/board

(a) The governing body/board has a legal and moral responsibility for the formulation of basic policies concerned with the achievement of its purposes and conduct of its program.

(b) The governing body/board shall be constituted so as to provide effective ethical leadership, resourcefulness, and stability for the facility.

(c) The governing body/board, to the extent practicable, on a rotating basis, will reflect a wide range of community interests, including consumer participation.

(d) The governing body/board, whose members shall serve without pay, and whose membership will not result in financial gain, shall be responsible for establishing all broad *[workshop]* ***facility*** policies of administration and operation.

1. The governing body/board will be broadly representative of the community and reflect the major areas of activities in which the workshop is engaged. The governing body/board should reflect such professional and related fields as management, personnel, rehabilitation, manufacturing, public relations, finance or accounting, medicine, law and public welfare. A disabled person, associations for the disabled, and organized labor should also be represented.

2. The governing body/board will be organized into committees corresponding to the major activities of the workshop. The minimum committees include an Executive Committee, Personnel Committee, Finance Committee, and Nominating Committee.

3. There will be a provision in the Articles of Incorporation and/or the By-Laws stating a maximum length of time for a term of office of a governing body/board member to ensure rotation of membership.

4. The governing body/board, or its executive committee, shall meet at least quarterly and minutes of all meetings will be on file and distributed to all governing body/board members.

(e) The governing body/board will formulate a mission statement, approve and evaluate programs, stimulate continuing program planning, and adopt recommendations for program growth, including:

1. Establishing policy regarding property, funds, personnel operations; and

2. Obtaining adequate financial support for the workshop and providing funding for the building and equipment needs for the organization as part of its responsibilities.

(f) The governing body/board will have the responsibility for the establishment and maintenance of high standards of operations for the facility and for its continuing development.

(g) The governing body/board will approve the initiation, expansion, or modification of the facility's program based upon the rehabilitation needs of the community and the capability of the facility to affect those needs within its established goals and objectives.

(h) The governing body/board will adopt an annual budget, establish policies for administration of funds, and it will quarterly review the financial status of the facility.

(i) The governing body/board will consist of no less than seven people. No maximum is set at this time.

(j) Staff members of the facility other than the executive director, and staff members of DVRS, will not serve as members of the governing body/board.

12:51-3.3 Executive director

(a) The governing body/board will appoint an executive director or equivalent. It will formally state his or her relationship to the governing body or its designated authority and duties, and delegate to him or her in writing such authority and responsibility as is necessary to direct the facility in accordance with its policies.

(b) The executive director will maintain an effective liaison with the governing body/board and standing committees, except when his or her personal status is under consideration.

(c) The executive director will develop a written orientation package for members of the governing body/board. He or she will assist the governing body/board in the formulation of policy by presenting and interpreting operating reports, including reports reflecting the efficiency and effectiveness of the facility, and by presenting and interpreting financial statements, short-term and long-term plans, changing concepts, needs and related information.

(d) The executive director will assist the governing body/board as required in such functions as fund-raising, community relations, and related duties.

(e) The executive director will coordinate and direct activities of the facility in accordance with the policies of the governing body/board. He or she will develop the organizational structure for the facilities staff.

(f) The executive director will maintain personnel policies. He or she will control the operation of the facility through day-to-day decisions and authorization of expenditures, and other procedures in accordance with the policies established by the governing body/board.

(g) The executive director shall upgrade the operation of the facility by studying and analyzing reports of the various services comparing the performance against budgetary, administrative, and professional standards and the extent to which facility goals and objectives are being attained, and taking appropriate corrective measures. He or she will also keep informed of local and national rehabilitation developments.

(h) The executive director will be held responsible to the governing body/board and its executive committee for the overall and entire administration of the facility's operations and programs and offer to them appropriate information, guidance, and recommendations with respect to any matter thereto or as otherwise required by his or her job description.

12:51-3.4 Staff organization

(a) There will be a staff organization under the executive director which sets forth lines of authority, responsibility, and communication in accordance with policies established by the governing body/board. The organizational structure will be designed to promote efficient and effective operation of the facility's programs. The organizational chart will be updated annually.

1.-2. (No change.)

3. Each department head will be responsible to the executive director or his or her designee for fulfillment of assigned duties. Each department head will:

i. Carry out the administration of his or her department in keeping with policies established by the governing body/board and by the executive director;

ii. Have direct access to the executive director or his or her designee;

iii. Participate in decisions affecting his or her department, such as the establishment of department goals and objectives, budgeting, staffing, space allocation, travel, client selection, in-service training, consultants, public relations, and program development;

iv. Be responsible for employee's scheduling, job performance, and periodic rating of employee's effectiveness; and

v. Be responsible for interns, trainees, aides, and volunteers assigned to his or her department.

12:51-3.5 Business and financial practices

(a) The rehabilitation facility will observe sound business and financial practices in all areas and will manage its fiscal affairs consistent with the purposes of the organization, applicable legal requirements, and generally accepted principles of financing.

1. The facility will operate on an annual budget. The budget should be prepared by the facility's executive director. It shall be submitted to and approved by the governing body/board or its designated authority, and will be used during the year covered as a yardstick to assess accomplishment of budgetary goals.

2. The rehabilitation facility's accounting system will follow the standards established by the Commission on the Accreditation of Rehabilitation Facilities (101 N. Wilmont Rd., Suite 500, Tucson, Arizona 85711) and the American Institute of Certified Public Accountants (AICPA) Audit Guide for Audits of Voluntary Health and Welfare Organizations, as amended and supplemented, incorporated herein by reference. The Audit Guide is available from AICPA, 666 Fifth Ave., New York, New York 10019. Such an accounting system will be functional and enable the organization to identify clearly the cost of rehabilitation services, production activities, administration, and other expenses of operation. The financial records of accounts must be kept on the premises of the facility.

3. Fiscal reports will be prepared and communicated to the governing body/board or its designated authority at no less than quarterly intervals, or more frequently, if needed.

4. An annual report, demonstrating stewardship of resources received and services rendered, will be published and made available to the public. The report should include information on financial status, administration, and program activities as well as composition of the governing body/board.

5. The governing body/board and the executive director shall have an audit conducted which meets the requirements for the Single Audit Act, Federal OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations," as amended and supplemented, incorporated herein by reference (Federal Register, Vol. 55, No. 52, Friday, March 16, 1990). This audit shall be conducted in accordance with generally accepted auditing standards and the AICPA Industry Guide for Voluntary Health and Welfare Organizations and a copy shall be filed with the Division of Vocational Rehabilitation Services each year.

6.-7. (No change.)

8. Fund-raising programs will conform to legal requirements and established ethical standards for fund-raising activities.

9. (No change.)

10. In quoting bids for contract work, an overhead mark-up averaging at least 80 percent on direct labor, supported by the precise analysis of costs of normal direct labor, should be charged for subcontract work. The value of any services, equipment or space provided by the contractor for the contract operation may be included in the determination of this mark-up. Bid quotations for contract work should not be less than the minimum hourly overhead rate established (usually known as the "shop rate") for the workshop and take into consideration the following:

i. Knowledge of local industry prevailing piece or time rates for comparable work;

ii. Determination of production norms of the clients;

iii. Production rate norms established when industry rates are not available; and

iv. Costs of supplies, equipment peculiar to the work, and administration overhead.

11. (No change.)

12. Subcontract prices and selling prices of manufactured items will be reviewed at least annually to assure that they remain fair and competitive. The workshop will not knowingly accept work from companies whose workers are legally on strike at the time they accept it.

13.-14. (No change.)

15. The facility must comply with all Federal and State wage and hour laws and regulations, and be certified when applicable, by the Wage and Hour Public Contracts Division of the U.S. Department of Labor and by the State of New Jersey. All clients under the age of 18 are required to have working papers issued by the local board of education. The facility will comply with Federal, State, and local laws and regulations covering the physical facility, staff, client benefits, and will also comply as nearly as practicable with local industrial and/or business practices relating to fringe benefits, including Social Security coverage for all clients so eligible.

16. Active membership should be maintained in the appropriate State and national professional associations such as the National Rehabilitation Association, the New Jersey Rehabilitation Association and their affiliates, the National Association of Rehabilitation Facilities, the New Jersey Association of Rehabilitation Facilities, the New Jersey Psychiatric Rehabilitation Association, and any other allied health and welfare organizations.

17. All financial records will be made available to authorized representatives of the New Jersey Department of Labor and the New Jersey Commission for the Blind and Visually Impaired facilities staff and will be subject to examination and audit upon satisfactory notice thereof.

18. The facility will file with the Division of Vocational Rehabilitation Services an annual copy of its certified audit and the management letter.

19. The Division of Vocational Rehabilitation Services will suspend payment to any facility that does not keep appropriate records.

SUBCHAPTER 4. VOCATIONAL EVALUATION

12:51-4.1 Vocational evaluation

(a) Vocational evaluation is a comprehensive, individual process that utilizes work, real or simulated, as the primary focus for assessment for the purpose of determining individual vocational objectives, assets, limitations, and behaviors in the context of work environments in which the individual might function and includes specific recommendations to reduce or eliminate barriers to obtaining specific vocational objective(s). Vocational evaluation takes into consideration medical, psychological, social, previous work history, educational***,*** cultural, and economic data is ***in*** the attainment of vocational goals.

1. The vocational evaluation process must include intake procedures as well as an orientation procedure in order to define reasonable expectations for all parties involved. In addition, psychometrics, and one or more of the following techniques: work samples, simulated job stations or on-the-job evaluation, will be considered necessary for a comprehensive vocational evaluation.

2. The length of the basic evaluation should be based upon the time necessary to accomplish the individual's *[evaluation]* ***vocational*** goals which generally should be completed within a five-week (25 days of work) period, but may be more intensive and thereby shorter by mutual agreement. ***Those facilities that have not received approval for a five-week evaluation will continue to provide a 10-week evaluation at the approved 10-week evaluation fee.*** Further time extensions will depend entirely upon justification, viable staff conferences and written reports. The evaluation period will be complete when one of the following goals is accomplished:

*[1.]****i.*** Development of a facility rehabilitation plan with a specific vocational objective; or

*[2.]****ii.*** Determination that the facility's program is not suitable to meet the client's needs.

*[3.]****iii.*** Production rate by the client must be 12 percent of standard production rates at the end of the evaluation process in those programs where production activities, which may include work samples, are part of the evaluation process. If the client produces at nine percent of normal productivity rates, one five-week extension may be considered ***for facilities with a five-week vocational evaluation program and two five-week extensions may be considered for**

facilities with a 10-week vocational evaluation process*. The client's productivity should be sampled over the last three-day period prior to the preparation of the report. If at the end of the evaluation, the client is not producing at 12 percent of standard productivity, the client will be deemed to have minimal vocational potential and will, therefore, be terminated from DVRS sponsorship and referred for appropriate program services.

12:51-4.2 Procedure

(a) The rehabilitation facility will maintain a current description of the tools, forms, and materials used for the vocational evaluation process, noting when such tools are utilized. DVRS may contract with a facility for a short term evaluation utilizing a specific system such as Apticon. In these instances, the maximum fees and length of time will be those on file with the facilities unit.

(b) The evaluation staff conference will be conducted no later than the fourth week and will include all parties interested/involved in the individual's rehabilitation.

(c) The evaluation report will be prepared following the staff conference and should arrive at the DVRS office during the fifth week and will be processed for further action by DVRS. DVRS will be responsible for providing appropriate documentation of such action to the facility in a timely manner. The vocational evaluation report will be comprehensive in nature and include information as referenced in the most recently published CARF standards manual concerning the range and scope of vocational evaluation.

(d) Vocational evaluation, other than simulated job stations, on-floor work observation, and on-the-job evaluation, shall be carried out in a separate room with appropriate space, light, and ventilation. Sound levels shall not exceed 70 decibels.

SUBCHAPTER 5. WORK ADJUSTMENT TRAINING (WAT)

12:51-5.1 Work adjustment training

(a) Work adjustment training (WAT) is designed to help the handicapped individual form a work personality that will help increase his or her productivity and handling of the day-to-day demands of competitive employment, by developing one or more of the following: self-confidence, self-control, work tolerance, ability to handle interpersonal relationships and understanding of work. There may also be varying degrees of skill acquisition involved.

(b) Clients who are earning between 20 percent and 40 percent of standard production rates at the end of 18 weeks should be retained as extended (sheltered) employees at that time. Clients who are earning above 40 percent of standard production rates may be considered for up to two nine-week extensions if there is a definable upward trend in their production. Clients earning between 15 percent and 20 percent of standard production rates may be given one nine-week extension of work adjustment training if patterns of performance indicate that there is reason to believe they can achieve the extended (sheltered) level of employment. If a client cannot achieve extended (sheltered) level of employement, an attempt should be made to find another appropriate program for the individual.

(c) It is recognized that the acceptable level for extended (sheltered) employees' production vary from shop to shop dependent on several factors such as the level of sophistication of contract work. These figures are meant to serve as minimums and do not preclude a shop's setting higher minimum standards for extended (sheltered) employees so long as those standards are forwarded in writing to DVRS.

(d) During work adjustment training, staff conferences are to be held no less than every six weeks. Written notes of these conferences will be submitted to DVRS during the week following the conference. A comprehensive review of the client's progress will be conducted at the staff conference two weeks prior to the end of the authorization (approximately week 16 for a 90-day authorization and week seven for a 45-day authorization). The same relative schedule for processing will be binding on both parties.

SUBCHAPTER 6. EXTENDED (SHELTERED) EMPLOYMENT

12:51-6.1 Extended (sheltered) employment

(a) Extended (sheltered) employment is a program designed to *[prepare an individual for competitive employment, where feasible, at a rate tailored to his or her own needs]* ***provide long term employment in the facility for a client/worker whose functional limitations or handicapping conditions are such as to make employment outside the facility an unrealistic goal, or who needs extended work conditioning in preparation for nonsheltered competitive employment***. The program has available all the services of the basic vocational rehabilitation program provided by DVRS at a lower level of intensity and without the time constraints of the basic vocational rehabilitation program. After completion of a certified Title I program and the achievement of at least 20 percent of the normal production level, these persons will be individually certified by DVRS.

(b) The services available to extended (sheltered) employees must include evaluation, counseling*,* *[and]* placement*, **and work services***. A case record shall be maintained on each individual which shall include documentation of all services provided to the extended (sheltered) employee.

(c) The case record will also include a facility individual rehabilitation plan which will be developed in concert with the evaluation of the extended (sheltered) employee. The case record is the primary source of documentation and must be updated every three months.

(d) Each extended (sheltered) employee will have a formal semi-annual review conducted by appropriate professional staff and modification will be made of the individual's facility rehabilitation plan as indicated by progress or lack of the same.

(e) Case records will include regular quarterly notation of client earnings as a percentage of competitive pay on jobs. Specific explanations are required in those instances where an individual is earning over 50 percent of the competitive rate and is not involved in active efforts toward competitive placement. Active placement efforts in progress must be documented.

(f) The ratio for floor supervision shall be one supervisor to 20 clients. Floor supervisors shall not be absent from the floor due to other assigned duties not related to floor supervision (for example, contract procurement). Staff meetings, safety committee, etc., are considered regular supervisory responsibilities.

(g) In computing supervisor ratio in satellite facilities, off-site, or crew labor programs, these will be considered as separate entities. While counseling and placement services need not be "on site" full time, all services must be available on a regularly scheduled basis.

(h) When a staff vacancy exists through illness or separation that is expected to last more than 10 consecutive days, the facility must notify the DVRS facility specialist. If it appears the vacancy will exist beyond 10 days, the facility will submit, in writing, a plan for assuring continued services to clients.

(i) For the purposes of standards compliance, a position will be considered vacant for 40 work days. After 40 work days, the position will be considered not to exist until such time as it is filled.

(j) Each facility ***is expected*** to place a percentage of its extended (sheltered) employees in competitive employment each year. It is recognized that economic considerations will impact on performance in this area and consideration will be given for economic factors.

(k) Physical plant facilities must comply the Commission on Accreditation of Rehabilitation Facilities (CARF) standards for "Physical Facilities, Health, and Safety", as amended and supplemented, incorporated herein by reference.

(l) A client who is released early for medical appointments shall be considered to have attended the full day for purposes of counting program days unless such early releases occur on more than five percent of the days he or she is present.

12:51-6.2 Reporting

(a) (No change.)

(b) A narrative report shall also be submitted on June 15 of each year, relative to the Extended (sheltered) Employment Program, which shall detail the major accomplishments of the program and explain any problems that were encountered.

12:51-6.3 Business and financial practices; records; requirements

(a) Contractor's accounting records are required to include the following information:

1. Individual client attendance records summarizing periodically on a calendar basis the number of days the client is present and absent, and the reason. The scheduled "working day" of a facility's extended (sheltered) employment program will consist of not less than five working or instructional hours. This record will be maintained either for all clients in a single binder or individually in each client's case file.

2. Total wages or other payments to all individual clients on an annual basis for the agency's fiscal or calendar year.

3. Supplementary cost records: Records shall also be maintained that will enable the State auditor to readily and accurately determine the separate cost for direct labor, indirect labor, and payments made in excess of those required by minimum Wage and Hour regulations (often called wage supplements or "subsidies").

4. Annual auditor's reports, copies of the auditor's adjustments and work papers, if any, to explain the adjustments and depreciation schedules. An analysis of the agency's costs will not be completed until this information has been reviewed by State auditors. In the absence of this information, the agency's book figures and the State auditor's estimates will be used in computing the agency's program costs.

5. The validity and reliability of the expenses (costs recorded in agency records) are determined to a large extent by the agency's internal control procedures and organization and maintenance of source documents. To the extent that they do not adequately provide for accounting of the agency's financial transactions in accordance with generally accepted accounting principles, recommendations will be made, if necessary, to bring them into conformity with such.

6. Such records and procedures as may be necessary or required to meet the requirements of Contract Sections VII, VIII, XII, XIII, XV, XIX, XX, et al., and this chapter.

12:51-6.4 Wage and hour compliance

Contracts will comply with all applicable State and Federal wage and hour regulations including the possession of all certificates legally required and on a current basis.

12:51-6.5 Reevaluation of extended (sheltered) employees

(a) Annual reevaluation and ongoing services to extended (sheltered) employees is the responsibility of the vocational rehabilitation facility. This activity is supported by DVRS under the funding of the Extended Employment Act.

(b) (No change.)

(c) Vocational rehabilitation services to individuals to maintain them in extended (sheltered) employment are also a matter of individual consideration. If the vocational goal continues to be extended (sheltered) employment, the Plan of Services and all justification must be reviewed and signed by the Manager. *[In Manager II offices, the District Supervisor must also review and sign same.]*

SUBCHAPTER 7. PSYCHO-SOCIAL CENTERS

12:51-7.1 Psycho-social centers

(a) Psycho-social rehabilitation is a structured program of vocational preparation which endeavors to:

1. Discover and develop the individual's strengths and assets;

2. Build positive and adaptive skills; and

3. Increase and extend the individual's repertoire of skilled behavior in the physical, emotional and intellectual areas. The purpose of the center is to teach living, learning and working skills necessary to function effectively in the individual's community with the least possible support.

(b) Psycho-social rehabilitation is distinguishable from treatment or maintenance programs by its emphasis on vocational performance skills acquisition. Treatment seeks to alleviate discomfort, reduce symptoms and minimize "sickness" in a non-threatening environment with minimum demands. Vocational rehabilitation begins when work ceases to be a treatment modality and becomes the program goal toward which all psycho-social activities and all performance expectations are oriented.

(c) The tactic of providing vocational performance skill acquisition is designed to make the client increasingly less dependent upon the program itself and upon the mental health system. Rather than solving the immediate problems, or assisting through a crisis, the rehabilitation goal is ultimately to teach the individual the skills necessary to prevent future problems, enabling him or her to live and work effectively and independently. Effective rehabilitation programs are those in which all activities are systematically synchronized to progress deliberately toward that goal utilizing existing resources and linking the client to program services that ultimately enhance his **or her** independence in the community.

(d) The minimum staff required for approval of a facility in this classification should consist of the following:

1. Executive director (agency);
2. Program director or supervisor (full time);
3. Rehabilitation counselor (full time);
4. Work supervisor (full time);
5. Employment specialist (full time); and
6. Consulting psychiatrist.

(e) At least two of the above, exclusive of the executive director and consulting psychiatrist, must have a master's degree or a B.A. and at least three-years' experience in providing vocational programming to the psychiatrically disabled. A staff-to-client ratio of one to 12 exclusive of the executive director and consulting psychiatrist must be maintained.

(f) Specific staff qualifications appear at N.J.A.C. 12:51-9.1(i)1 through 24 and will be followed. The staff personnel in (d) above must be approved by DVRS.

(g) Demonstration of compliance with standards for New Jersey vocational rehabilitation facilities is the responsibility of the facility.

12:51-7.2 Program description: vocational readiness assessment

(a) A vocational readiness assessment (VRA) is designed as a short-term period of time during which a facility evaluates the readiness of a client to engage in and benefit from a variety of vocational services. A determination is made at the end of this short-term assessment that the client understands and is committed to the goal of employment upon completion of the rehabilitation process.

(b) Community living skills are often the greatest barrier to employment for psychiatric clients. In recognition of this fact, the VRA shall evaluate the various skills and their potential impact on vocational service provision. These skills include, but are not limited to: medication, housing, transportation, self-maintenance, including grooming and appearance, money management, home maintenance (cooking, cleaning, shopping, etc.), psychological and psychiatric factors including interpersonal skills, and ability to utilize leisure time. The VRA shall also evaluate the client's ability to participate in vocational activities.

(c) A VRA can be accomplished through a variety of activities and services, examples of which are interviewing, group and individual counseling, service procurement, activities of daily living, leisure time activity groups, psychometrics, community contacts and work activities such as facility work situations, contracts or volunteer work.

(d) A VRA can be authorized to a maximum of 10 program days over a period of 20 working days. An agency must provide the following services over this period:

1. Vocational activities (40 percent of time);
2. Related activities (ADL, use of leisure time, etc.) (40 percent of time);
3. Assessment related counseling (15 percent of time);
4. Community contacts (five percent of time).

(e) (No change.)

(f) On the ninth or tenth day of VRA a staff conference will be held which will be attended by appropriate facility staff and the DVRS counselor.

(g) Written notes of the staff conference shall be submitted which address the results of the assessment including the potential impact of community living issues, potential adjustment to a vocational program, a determination as to the feasibility of further vocational services and a tentative rehabilitation diagnostic plan for those services. If an agency has determined that the client is not appropriate for further vocational services at this time, recommendations for referral, type of service, and mechanisms for linkage shall be made. Psycho-social centers shall make every effort to utilize other existing services to assist their clients in realizing their full potential prior to the development of such services at the facility.

12:51-7.3 Program description: rehabilitation assessment

(a) The primary purpose of a rehabilitation assessment is to evaluate the client's present level of skilled performance and to ascertain the level of skilled performance needed to live, learn and work in his or her community with the least possible amount of support.

(b) The ultimate outcome of rehabilitation assessment is the formulation of the individual facility rehabilitation plan that will specify the individual client's rehabilitation goals and will provide the standards against which progress is measured.

(c) An agency offering a rehabilitation assessment must provide the client with the following minimum time in direct service.

1. Two hours of vocational activities per day, which must include either a facility or community site situational assessment in at least two occupational areas. The use of work samples, contract work and psychometrics is desirable but optional. The vocational activities shall be provided in a systematic organized basis for the purpose of determining client conditions and job objectives in the context of the work environment in which he or she shall function. Direct observation of the client within the context of the work environment shall become the basis for the evaluation.

2. Two hours of related activities, such as interactional group activities, activities of daily living, etc., per day, which should be consistent with the client's level of functioning and complement the vocational activities in terms of how the client's interactional style and related skills development affect the client's potential for employment and the employment maintenance.

3. Two hours of counseling a week must be an integral part of the rehabilitation assessment provided by the facility. It should be directed towards vocational or related issues which impact on a client's progress toward competitive employment.

(d) A rehabilitation assessment may be authorized up to 10 weeks. The evaluation period will be completed when one of the following goals is accomplished:

1. Development of a facility rehabilitation plan; or

2. Determination that the facility program is not suitable to the client's needs.

(e) The evaluation report shall include answers to questions such as:

1. Was the client's originally stated vocational goal realistic? If not, why wasn't it and has a realistic goal been formulated?

2. Is the client ready for a transitional work experience or competitive employment? If so, what occupational area?

3.-5. (No change.)

(f) As a result of the rehabilitation diagnosis, the agency may decide to discontinue the client's program and refer him or her to another appropriate service through the Division of Vocational Rehabilitation Services counselor.

12:51-7.4 Program description: rehabilitation plan

(a) The rehabilitation plan will describe the means by which the client will progress from the present level of skilled performance to the needed level of skill performance.

(b) Each rehabilitation plan will specify long-range and short-range goals.

(c) Each goal statement will describe observable, measurable behavior to be addressed, the environment in which the behavior occurs, the technique or method to be used, the measure of effectiveness, and the staff person responsible.

(d) Progress reports will address each individual short-range goal. The facility shall make every effort to identify and utilize existing services at other agencies to assist its clients in realizing their full potential as part of the rehabilitation plan.

(e) The diagnostic report will be prepared following the staff conference conducted at the end of the eighth week of the diagnostic phase. The report should arrive at the DVRS office during the ninth week and will be processed for further action by the DVRS during the tenth week. If significant information develops during weeks nine and 10, it should be communicated to DVRS by phone and a handwritten note will be entered on the diagnostic report by the responsible counselor.

(f) Any significant development or event at any time during the rehabilitation process must be reported immediately to the DVRS counselors.

12:51-7.5 Program description: vocational development training

(a) Vocational development training is a process of increasing and extending the individual's repertoire of performance skills (behaviors) in the physical, emotional and intellectual areas of functioning for the purpose of providing the individual with the living, learning and working skills necessary to function effectively in employment and independently in the community in spite of his or her emotional handicap. The process involves exposure to situational experiences and related activities that enhance inter-personal interaction, personal attitudes, work habits, skills work and stress tolerance and motivation.

(b) An agency providing vocational development training must provide the client with the following minimum time in direct services:

1. Four hours of vocational activities per day which may include facility site operations in food service, janitorial/maintenance, clerical, other services or contract work.

2. Two hours of related activity such as interactional group activities, activities of daily living, etc., per week. These related activities should complement the vocational activities in terms of improving the client's interactional style and related skills development so as to affect the client's potential for employment and employment maintenance.

3. One hour of counseling per week must be an integral part of vocational development training provided by the agency. It should be directed towards vocational or related issues which impede a client's progress toward competitive employment.

4. Transitional work experience may be utilized in lieu of the four hours of work activities and two hours of related activities during the initial authorization as long as the following three criteria are met.

i. The client is on the job site for a minimum of four hours per day;

ii. There is a work-site visit by the professional facility staff at least once per week; and

iii. There exists some related activity at least once per week to maintain the client's connection with the facility.

(c) Vocational development training can be authorized initially up to *[18]* **22** weeks. An initial *[nine]***eight**-week extension can be authorized. This initial extension shall be utilized with the client participating in transitional work experience. A facility may request continuation of agency site programming rather than transitional work experience only with justification and concurrence of the DVRS counselor.

(d) During vocational development training staff conferences are to be held no less than every six weeks. Written notes of these staff conferences will be submitted to DVRS during the week following the staff conferences. A comprehensive review of the client's progress will be conducted at the staff conference two weeks prior to the end of the authorization (approximately week *[16]* **20** for a *[90]***110**-day authorization and week *[eight]* **seven** for a *[45]***40**-day authorization). The same relative schedule for processing will be binding on both parties.

12:51-7.6 Program description: transitional work experience

(a) Transitional work experience is a realistic experience in the community that allows the client to test his or her employment skills in a real work setting. This can be either subsidized or unsubsidized and may take the form of the transitional employment, formal volunteer situations or some variations. Compliance with all applicable wage and hour regulations is required.

(b) An agency providing transitional work experience must provide the client with the following minimum time in the program:

1. Four hours of transitional work experience per day;

2. A minimum of one site visit by an agency professional staff person per week; and

3. Some related activity at least once per week to maintain the client's connection with the facility.

(c) Transitional work experience will have had an initial nine-week authorization during vocational development training. An additional nine weeks of transitional work experience may be authorized as indicated based on client progress.

12:51-7.7 Program description: job maintenance

(a) Job maintenance is a stabilization process after job placement has occurred to assist the client in maintaining the job he or she has acquired. This has been demonstrated to be a crucial service for clients with significant emotional difficulties. During this service, problems that the client and the employer experience can be resolved with the assistance of the facility professional staff person. Since service needs in this area will vary, a unit fee structure will be employed. A unit is a session of individual or group counseling or a job site visit. They are called units because in terms of actual staff time expenditure, they would be basically comparable with three to four hours of time.

(b) Job maintenance may be accomplished through group or individual counseling which addresses specific employment or employment related problems as well as through job site visits.

(c) An initial 22 units of job maintenance is provided during the initial 60 working day period. These units can be utilized in any combination of individual/group counseling or job site visits. Upon completion of 60 working days and participation by the client and facility professional staff person in the job maintenance program, a rehabilitation plan will be submitted to the referring DVRS counselor with one of the following recommendations.

1. No further maintenance is needed, therefore, the case can be closed; or

2. An extension be requested for a maximum of 20 job maintenance units in segments of 10 job maintenance units.

SUBCHAPTER 8. FEES

12:51-8.1 Classifications; fees and program requirements

Federal regulations require that payments for vocational rehabilitation services be based on the reasonable cost of providing them. Reasonable cost will be defined and determined by the Division of Vocational Rehabilitation Services based on the Federal Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," as amended and supplemented, incorporated herein by reference (Federal Register, Vol. 45, No. 132, Tuesday, July 8, 1980).

12:51-8.2 Establishment and changes in fees

(a) A fee schedule consisting of an appropriate fee structure for each classification will be maintained by the Division of Vocational Rehabilitation Services which will provide reasonable compensation to the rehabilitation facilities for services provided.

(b) Each approved facility will be reviewed periodically by the facilities and audit staffs of DVRS for the purpose of determining its program effectiveness and results, and efficiency and compliance with applicable laws and regulations. The appropriateness of fees and other support of funding which a facility receives as it relates to the costs of its programs will be determined in accordance with principles and procedures for determining costs promulgated in Federal OMB Circular A-122 and reported in accordance with Federal OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(c) The following Organizational CARF Standards are of prime importance in this evaluation:

1. (No change.)

2. The rehabilitation facility will be organized and administered so as to achieve its stated mission.

3.-4. (No change.)

5. The rehabilitation facility will maintain accurate and complete records necessary to conduct its programs. It will prepare and distribute reports that demonstrate and interpret the level of fulfillment of its purposes.

6. (No change.)

7. The rehabilitation facility will be designed, located, constructed, equipped and operated so as to promote the efficient and effective conduct of its programs and to protect the health and safety of persons served and staff.

8.-9. (No change.)

(d) (No change.)

(e) In the event that the total revenues earned from DVRS for these programs are determined by this review and analysis to exceed the actual cost of these programs by more than 10 percent during the most recently completed fiscal year, the total "excess revenues" will be treated as an unabsorbed cost for the fiscal year and carried-forward and added to the total cost for the following fiscal year. A cost analysis, including the roll-forward for these unabsorbed costs, will be completed for the following fiscal year. In the event the total DVRS revenues exceed the actual program operating costs for the second fiscal year and the unabsorbed costs carried-forward from the preceding fiscal year, an appropriate revision of the fees for these programs will be considered and implemented upon approval of the Director of DVRS at that time.

12:51-8.3 Program requirements, existing and new programs

(a) A written narrative description of all the facility's programs, services and administrative procedures shall be maintained and made available to interested parties. This description will *[also]* be submitted to DVRS ***by new facilities applying for program approval as well as existing facilities whenever changes are made in the facility's programs, services, or administrative procedures***.

(b) Services shall be geared to the objective development of the client's maximum potential for employment in a competitive labor market, or in a sheltered workshop if the client's needs are best served in such an environment.

1. To accomplish (b) above, the following services should be provided:

i. Medical, psychological, social, educational, and vocational evaluation at the time of intake. There will be written criteria for procedures for admissions;

ii. The following kinds of services should be made available to clients, trainees, and employees: vocational evaluation, work adjustment training, on-the-job training, skill training, placement and follow-up.

(c) An internal system of program evaluation will be developed which offers continuous information about the quality of services provided and the results achieved by persons following their provision.

(d) Programming of facility services for clients shall be based upon professional evaluations of the individual's assets, needs, progress and vocational goal. A facilities rehabilitation plan will be developed for each client and revised periodically; it will also be coordinated with the individual written rehabilitation plan (IWRP) developed by the local DVRS office.

(e) Professional ethics will be maintained at all times with respect to confidentiality in the use of the client's records. It is recommended that a central comprehensive client record system be kept in a secured place; for example, all client records may be kept in a central location and controlled by a designated person.

1. These records should include the following:

i. Completed facility application;

ii. Medical history;

iii. Medical examination report and work precautions;

iv. Social history and case information;

v. Psychological reports and/or psychiatric reports;

vi. Evaluation reports, prognosis, and summary reports and facilities rehabilitation plan;

vii. Information on wages paid and written report on the discussion of wages with the client;

viii. A summary description fully setting forth the reasons for nonacceptance or closure of the case;

ix. A written record of follow-up placement efforts; and

x. A continuous running record, updated monthly, of client activity.

(f) (No change.)

(g) Each client in extended employment will be evaluated twice a year and appropriate modification will be made to the client's rehabilitation plan.

(h) Records will be kept which reflect the productivity of each client/worker on a continuing basis.

(i) The facility will have a carefully planned placement program for clients who are ready for employment in the competitive labor market, including an adequate follow-up program.

(j) The facility will evaluate every three years its total program, its coordination with related rehabilitation programs in the community, the capacity of the facility for providing services needed in the community, follow-up of clients served, and the adequacy of the total program. Information derived from the facility's system of program evaluation should be utilized in this regard.

(k) The written consent of the client, guardian, and, if necessary, cooperating agencies shall be obtained prior to the use of facility clientele for public relations and publicity purposes.

(l) A facility shall have a written grievance procedure for distribution to clients, trainees, and employees, which facilitates receiving and hearing complaints and discussing problems of a general or specific nature.

(m) All records of both client and facility pertaining to DVRS sponsored clients will be made available to (DVRS) facility specialist and/or facility and auditors upon request.

12:51-8.4 Procedure for program***/facility*** approval

(a) A facility that wishes to implement a new program on a "fee for service" basis should first discuss the proposed program with the manager and staff of the local office. It should be noted that the endorsement of the manager and staff of the local office will have great significance on the final disposition of its request.

(b) The next step would be to discuss the concept with the facilities specialist assigned to the area. The facilities specialist should be used as a consultant in designing and detailing the program to be offered.

(c) The program description must be detailed and must clearly show how the proposed program differs from existing previously approved programs; the creation of new programs is not routine procedure.

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

(f) Once the final proposal is completed in sufficient detail, a cost analysis must be prepared and a fee request made. These items must be attached to the program description and forwarded to the facilities specialist.

(g) The facilities specialist will assemble the "Program Request Package," which includes the detailed written comments of the local office manager and the specialist's own written endorsement. This package will be delivered through the *[Chief of Rehabilitation Services to the audit staff who will prepare a recommendation on the Fee Request and present the package to the Deputy Director of Administration for DVRS in conjunction with the Deputy Director of Field Services for DVRS]* ***facilities unit to the appropriate administrative staff*** for final approval.

(h) In order to vend services to the Division of Vocational Rehabilitation Services, a facility must apply for and be granted a certificate from that agency. This certificate will be issued by the Director of the Division of Vocational Rehabilitation Services upon his or her being satisfied that:

i. There is a need for the service to be vended; and

ii. The facility is in compliance with the rules and regulations governing vocational rehabilitation facilities.

(i) Certificates will be issued covering several specific service areas including, but not restricted to:

i. Vocational evaluation;

ii. Work adjustment training;

iii. Sheltered employment;

iv. Psycho-social vocational rehabilitation services; or

v. Skill training.

SUBCHAPTER 9. STAFFING

12:51-9.1 Staffing requirements, procedures and qualifications

(a) In the process of developing maximum work capacity, a client/worker may require assistance with personal problems, including the development of vocational goals, his or her role as a worker, acceptance and adjustment to his or her disability and adequate interpersonal relationships, and acceptance of supervision. The availability of competent licensed ethical and qualified professional disciplines of medicine, psychiatry, psychology, social work, vocational rehabilitation counseling, teaching, and a variety of therapies assures the effective use of the workshop for rehabilitation purposes in realizing the goal of employment of the handicapped for more effective living.

1. The executive director will maintain a functional organizational chart which is available at all times.

(b) The facility will provide a staff improvement program designed to encourage professional growth and development of the staff; for example, University Training Programs. Part of this program should include attendance at professional conferences each year pertaining to the work of the staff member, such as Association of Rehabilitation Facilities and State Association meetings and programs which are offered by Cornell University and the *[Institute for the Crippled and]* ***International Center for the*** Disabled (ICD).

(c) The staffing pattern of the facility will be based upon an endeavor to provide a program of services designed to fulfill the individual needs of the handicapped clients being served. Generally speaking, the professional and supervisory staff-client ratio should be no more than one to 12. The staff referred to are those directly involved in services to the client. When dealing with the more severely handicapped, this ratio should be much less.

(d) Personnel policies, procedures and practices, and job descriptions must be stated in writing, a matter of official record, and given to all staff members. Such personnel codes shall be reviewed annually.

(e) Staff meetings at which appropriate staff members are present must be held periodically ***(at least once per month)***, and the minutes for every meeting will be kept on file and distributed for the use of the staff members involved.

(f) The executive director and the governing body/board will conduct a periodic review of professional staff salary ranges.

(g) Evidence that the director and staff actively participate in interagency and community planning activities should be available.

(h) All staff members will have an annual written evaluation of their performance.

(i) Minimum qualifications for staff personnel are:

1. Executive director should possess:

i. A Bachelor's Degree and some of the college and university education should have included training in business administration, personnel management, the social sciences, industrial engineering, or management;

ii. Three years of experience in an administrative capacity directing professional, technical or supervisory personnel. Graduate degree(s) work may be substituted for two years experience; and

iii. Experience as a staff member in a rehabilitation facility.

2. Supervisor (production) should possess:

i. A high school or technical school education or equivalency; and

ii. Supervisory experience in industrial production.

3. Rehabilitation counselor should possess a Bachelor's Degree in vocational rehabilitation or related fields.

4. Bookkeeper should possess a high school education or business school training in bookkeeping and/or accounting.

5. Vocational evaluator should possess an undergraduate degree, with emphasis in the rehabilitation area, and must attend a DVRS approved training program within six months of employment. Post graduate training in vocational evaluation may be substituted for the DVRS training program.

6. Vocational instructor should possess:

i. Accreditation by the New Jersey State Department of Education, or qualified as a journeyman in his or her field; and

ii. One year's experience in teaching a trade with teaching experience acceptable to the Division of Vocational Rehabilitation Services.

7. Director of professional services should possess:

i. A Master's Degree in vocational rehabilitation or related field;

ii. At least one year of experience in an administrative capacity directing professional, technical, or supervisory personnel; and

iii. Experience as a staff member in a rehabilitation facility.

8. Psychiatrist should possess board certification.

9. Program director (psycho-social), who will be responsible for the overall development, implementation and maintenance of the psycho-social program and may have direct service responsibility, should possess:

i. A Master's Degree in vocational rehabilitation or a related field;

ii. At least three years' experience, one of which *[must]* ***should*** be in an administrative capacity, directing professional, technical or supervisory personnel; and

iii. Experience in direct vocational service with the psychiatrically disabled.

10. Work supervisor (psycho-social) should possess:

i. A high school education or equivalent; and

ii. Five years of work experience in occupational areas similar to those being offered at the facility. The individual must have a clear understanding of the demands and expectations in business and industry, particularly related to the occupational area supervised. The individual must understand the functional limitations imposed by a psychiatric handicap. Any combination of college or technical school may be substituted for experience on a year for year basis. College credits should be within the helping professions.

11. Employment specialist (psycho-social) should possess:

i. A Bachelor of Arts degree in human services or a related field; and

ii. Two years' experience in working with the disabled, particularly with individuals who have significant emotional problems. He or she *[must]* ***should*** have an understanding of the functional limitations imposed by such a handicap and must be familiar with the demands and expectations of business and industry. Experience in job placement should also be required.

SUBCHAPTER 10. REPORTING

12:51-10.1 Reporting

(a) It is the responsibility of the Division of Vocational Rehabilitation Services to monitor activity within vocational rehabilitation facilities to insure both the quality of service and availability of service.

(b) (No change.)

(c) DVRS keeps statistics based on the Federal fiscal year. This begins October 1, and ends on September 30. Therefore, reports are due as follows:

First Quarter	Oct. 1—Dec. 31	Due Jan. 21
Second Quarter	Jan. 1—March 31	Due April 21
Third Quarter	April 1—June 30	Due July 21
Fourth Quarter	July 1—Sept. 30	Due Oct. 21

(d) (No change.)

SUBCHAPTER 11. PHYSICAL FACILITIES

12:51-11.1 Considerations

(a) The rehabilitation facility will be designed, located, constructed, and equipped so as to promote effective conduct of its program and to protect the safety of its clientele, staff, and equipment.

1. The facility will be located in a community convenient to main thoroughfares and public transportation and where there are adequate parking and food service for clients and staff.

2. (No change.)

3. Private offices, easily accessible, shall be available for client counselling.

4. Space will be provided for lavatory facilities of adequate number, design, and construction to accommodate individuals with disabilities and will be kept in a clean, orderly and sanitary manner.

5. Architectural barriers must be eliminated. A plan for removal of all barriers will be developed and submitted to DRVS, in accordance with the Uniform Construction Code, N.J.A.C. 5:23-7, Barrier Free Subcode.

6. The facility will conform to all local, State and Federal codes, regulations, and standards with respect to health and safety. It shall have regular fire drills and an evacuation plan and require an annual inspection by the local fire control agency.

7. (No change.)

8. New construction and remodeling will be in keeping with present day industrial design and meet all building codes. An automatic fire alarm system shall be required.

9.-12. (No change.)

(b) (No change.)

SUBCHAPTER 12. COMMUNITY RELATIONS

12:51-12.1 Program requirements

(a) The workshop will cooperate on a continuing basis with all other community agencies, the State Rehabilitation Facility Association, the New Jersey Psychiatric Rehabilitation Association, and the appropriate State agencies in defining the needs of individuals with disabilities, providing services to meet those needs, and solving problems they have in common.

(b) (No change.)

(c) Fund-raising practices will comply with the State and local laws, ordinances and regulations.

(d) Every effort should be made to maintain liaison with the local labor unions.

(e) The facility will work closely with the local DVRS office and other referral agencies to establish and maintain a coordinated system of service delivery for all of its community's disabled.

(f) The facility will be responsive to the needs of the community.

(g) In the event of a lay-off of employees, either professional or extended, DVRS must be notified immediately.

SUBCHAPTER 13. PROFESSIONAL ADVISORY COMMITTEE

12:51-13.1 Composition and purpose

(a) The permanent Professional Advisory Committee will consist of the Chief of Rehabilitation Service, the facilities staffs of the Division of Vocational Rehabilitation Services and the New Jersey Commission for the Blind and Visually Impaired, the President of the New Jersey Association of Rehabilitation Facilities, and representatives of the Association.

(b) *[A Professional Advisory Committee is permanently established to periodically review these standards, to make any suggestions, and to provide any other assistance that may be helpful in carrying out these standards.]* ***A Professional Advisory Committee is permanently established to meet at least twice a year to review the standards. Written minutes of these meetings will be distributed. A formal report recommending any changes in the regulations will be promulgated no later than six months prior to nay readoption.***

(c) Other duties of this Professional Advisory Committee will consist of assistance in handling differences of opinion, grievances and/or problems which may arise between directors of rehabilitation facilities and any private or public agencies, including the New Jersey Division of Vocational Rehabilitation Services. Those involved in whatever dispute is being mediated will in all cases be invited to attend the Professional Advisory Committee meeting.

(d) (No change.)

SUBCHAPTER 14. GRANTS

12:51-14.1 Availability

(a) The availability of grant monies is often difficult to determine. When specific grant monies are available DVRS will publish this information and inform facilities of the specific details for application.

(b) (No change.)

12:51-14.2 Procedure

(a) The facility specialist will acknowledge receipt of the proposal and forward it to the DVRS Chief of Rehabilitation Services for Facilities who will maintain a file of proposals.

(b) The Chief of Rehabilitation Services for Facilities will, when appropriate, act as facilitator for those grant requests which show particular merit.

SUBCHAPTER 15. STATE PLAN

12:51-15.1 Procedure

(a) The New Jersey Division of Vocational Rehabilitation Services will maintain a State Rehabilitation Facilities Plan containing an inventory of rehabilitation facilities available within the State and a description of the utilization pattern of the facilities and their utilization potential. The inventory of rehabilitation facilities will include a determination of needs for new, expanded, or otherwise modified rehabilitation facilities or rehabilitation facility services, and a prioritized list of facility projects necessary to achieve short range State goals. This plan will be developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services and will be available to the public for review and inspection.

(b) (No change.)

(c) If these efforts fail, consideration will be given to the establishment of a new facility. An excess of facilities is not a desired goal inasmuch as this approach would be costly and wasteful.

SUBCHAPTER 16. COOPERATIVE RELATIONSHIPS

12:51-16.1 Responsibilities

(a) It is expected that each facility will have an on-going relationship with the local DVRS office. The local office manager will function as the focal point of that relationship and will be responsible for reporting to the appropriate facility specialist.

(b) (No change.)

(c) It shall be the facility director's responsibility to inform the DVRS facility specialist of any problems that cannot be corrected at the local level.

(d) All requests for modification of standards, policy and procedure, or grant assistance should be directed to the facility specialist after discussion with the local office manager. Discussion with the local DVRS manager is advisable as his or her input will significantly impact the outcome of any such request.

(e) (No change.)

(f) The role of all concerned is to provide timely, appropriate, and effective service to individuals with disabilities.

SUBCHAPTER 17. PAYMENT AND ATTENDANCE POLICY

12:51-17.1 Procedure

(a) All authorization forms issued for services in rehabilitation facilities will be authorized in terms of number of days of services. A starting date will be stated.

(b) *[The facility will provide the number of days of service authorized for the client allowing up to 10 percent absenteeism. Exceptions must be agreed to, in writing and signed by the DVRS manager, or the facility will be responsible for the exception.]* ***The facility should notify the local office and be paid for only the days the client physically attends the facility plus any official commemorative holidays occurring during the authorized period of service up to a maximum of 13 days in a calendar year.***

(c) DVRS reserves the right to terminate any authorization by submitting in writing, such a notification to the facility, giving it five-days' notice.

(d) (No change.)

(e) DVRS is interested in the evaluation of its clients from a competitive employment point of view. There are not, within the DVRS context, excused absences. Clients whose attendance does not compare favorably with the industrial norms should not be represented as having good attendance.

SUBCHAPTER 18. COMMISSION ON ACCREDITATION OF REHABILITATION FACILITIES (CARF) ACCREDITATION

12:51-18.1 New Jersey Division of Vocational Rehabilitation Services

(a) The New Jersey Division of Vocational Rehabilitation Services (DVRS) has developed, maintained, and applied standards for approving vocationally oriented rehabilitation facilities to vend services to DVRS. These standards constitute the basis for this chapter.

(b) The New Jersey standards document has proven to be an effective tool in measuring the quality and effectiveness of vocational rehabilitation services being provided to DVRS clients.

(c) The DVRS maintains a firm commitment to ensure that quality, meaningful rehabilitation services will continue to be provided to individuals with disabilities. This commitment mandates DVRS to:

1.-3. (No change.)

(d) In order to achieve the above, rehabilitation facilities which are providing services to clients of DVRS will apply for accreditation and arrange an on-site survey by the Commission on Accreditation of Rehabilitation Facilities no later than the third year of operation from date of approval by DVRS.

SUBCHAPTER 19. ELIGIBILITY FOR DVRS SERVICES

12:51-19.1 Client eligiblity

(a) To be eligible for services from DVRS, an individual must have a physical or mental disability which constitutes or results in a substantial handicap to employment for the individual and regarding which there is a reasonable expectation that vocational rehabilitation services may enhance the individual's employability.

(b) (No change.)

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE

Wage Payments

Adopted Repeal and New Rules: N.J.A.C. 12:55

Proposed: October 7, 1991 at 23 N.J.R. 2939(a).

Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: November 22, 1991, as R.1991 d.605, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:11-4.1 and 24 as amended by P.L. 1991, c.205, and 34:11-4.4.

Effective Date: December 16, 1991.

Expiration Date: December 16, 1996.

Summary of Public Comments and Agency Responses:

The official comment period ended on November 6, 1991. A summary of the comments received follows:

COMMENT: Jersey Central Power and Light Company requested that the Department amend N.J.A.C. 12:55-2.1(a)2 with two subsections reflecting the recent amendments to N.J.S.A. 34:11-4.4 which authorize payroll deductions for contributions to political action committees.

RESPONSE: The Department of Labor is currently reviewing this issue.

COMMENT: Robert Briant, Sr., of Utility and Transportation Contractors Association of New Jersey (UTCA) suggested that the 15 day period in which an employer may request a formal hearing be changed to 15 "working" days.

RESPONSE: The Department agrees with the commenter and N.J.A.C. 12:55-1.6(b) and 12:55-1.7(b) have been changed to allow the employer 15 working days after receipt of the notice to request a hearing.

Summary of Agency-Initiated Changes:

Upon further review of N.J.A.C. 12:55-1.6 and 1.7 the Department of Labor has decided to change the language in order to better clarify the intent of N.J.S.A. 34:11-4.4. Therefore, the hearing provisions have been simplified and more clearly set forth in the rules. Also, the time period in which to request a formal hearing has been changed from 15 days to 15 "working" days following receipt of the notice of violation. In addition, the Department discovered a technical error in N.J.A.C 12:55-1.6(b)4. The specific fund to direct payment of all fees and penalties is the "Commissioner of Labor, Wage Payment Trust Fund," not the Commissioner of Labor, Trust Account for Wage Payment."

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*.

CHAPTER 55
WAGE PAYMENTS

SUBCHAPTER 1. GENERAL PROVISIONS; VIOLATIONS; FEES AND PENALTIES; HEARINGS

12:55-1.1 Purpose and scope

(a) The purpose of this chapter is to establish rules to effectuate N.J.S.A. 34:11-41 et seq., an act regarding the payment of wages.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act;
2. Wages paid to an employee for services rendered; and
3. Time and mode of payment.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:55-1.2 Definitions

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

"Act" means N.J.S.A. 34:11-4.1 et seq., an act regarding the payment of wages.

"Commissioner" means the Commissioner of Labor or his or her designee.

"Employee" means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

"Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of the Act and this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

"Mass transportation" means railroads operated by steam, electricity or other power, rapid transit lines and buses, or ferries.

"Wages" means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

12:55-1.3 Powers of the Commissioner

(a) The Commissioner shall enforce and administer the provisions of the Act and the Commissioner or his or her authorized representatives are empowered to investigate charges of violations of the Act.

(b) The Commissioner or his or her authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of the Act or this chapter or which may aid in the enforcement of the provisions of the Act or this chapter.

(c) The Commissioner or his or her authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the Commissioner.

(d) If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the Commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(e) The Commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employees, and paid on order of the Commissioner directly to the employee or employees affected. The employer shall also pay the Commissioner an administrative fee equal to not less than 10 percent or more than 25 percent of any payment made to the Commissioner pursuant to this section. The amount of the administrative fee is specified in N.J.A.C. 12:55-1.5. The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

12:55-1.4 Violation; punishment

Any employer who knowingly and willfully violates any provision of P.L. 1965, c.173 (N.J.S.A. 34:11-4.1 et seq.) shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than $100.00 nor more than $1,000. Each day during which any violation of the Act continues shall constitute a separate and distinct offense.

12:55-1.5 Administrative fee

(a) The employer shall pay the Commissioner an administrative fee on all payments of gross amounts due employees pursuant to N.J.S.A. 34:11-4.1 et seq.

(b) A schedule of fees is as follows:

1. First violation—10 percent of the amount due the employee;
2. Second violation—18 percent of the amount due the employee;
3. Third and subsequent violations—25 percent of the amount due the employee.

(c) All payments shall be made payable to the Commissioner of Labor, *[Trust Account for Wage Payment]* ***Wage Payment Trust Fund*** by certified check or money order, or in the form suitable to the *[Director, Division of Workplace Standards]* ***Commissioner of Labor***.

12:55-1.6 Administrative penalty

(a) As an alternative or in addition to any other sanctions provided for in N.J.S.A. 34:11-4.1 et seq. when the Commissioner finds that an employer has violated the Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

1. First violation—not more than $250.00;
2. Second and subsequent violations—not less than $25.00 nor more than $500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]*

1. The notice shall become ***the*** Final Order upon the expiration of the 15 ***working*** day period following receipt of the notice if a hearing is not requested.
2. If a hearing is requested the Commissioner shall issue a Final Order upon such hearing and a finding that the violation has occurred.
3. All fees and penalties shall be paid within 30 days of the Final Order. Failure to pay such fees and/or penalty shall result in a Judgment being obtained in a court of competent jurisdiction.
4. All payments shall be payable to the Commissioner of Labor, *[Trust Account for Wage Payment]* ***Wage Payment Trust Fund*** in the form of a certified check or money order, or such other form suitable to the *[Director, Division of Workplace Standards]* ***Commissioner of Labor***.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. The seriousness of the violations;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer's business; and
5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:55-1.7 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:55-1.6, the employer shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]* ***All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.***

(c) *[If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.]* ***The Commissioner shall make the final decision of the Department.***

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

*[(d)]****(e)*** Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.*

*[(e)]****(h)*** Payment of the penalty is due when a final agency determination is issued.

*[(f)]****(i)*** Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

SUBCHAPTER 2. PAYROLL DEDUCTIONS

12:55-2.1 Payroll deductions; general

(a) No employer may withhold or divert any portion of an employee's wages unless:

1. The employer is required or empowered to do so by New Jersey or United States law; or
2. The amounts withheld or diverted are for:

i. Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408(b) of the Federal Internal Revenue Code of 1954 as amended (26 U.S.C. 408(b)), or individual retirement accounts at any State or Federally chartered bank, savings bank, or savings and loan association, as defined by section 408(a) of the Federal Internal Revenue Code of 1954, as amended (26 U.S.C. 408(a)), for the employee, his or her spouse or both.

ii. Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.

iii. Payments authorized by employees for payment into employee personal savings accounts, such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.

iv. Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; and payments to correct payroll errors; provided all such deductions are approved by the employer.

v. Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.

vi. Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided the deductions for such payments are approved by the employer.

vii. Labor organization dues and initiation fees, and such other labor organization charges permitted by law.

viii. Such other contributions, deductions and payment as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of the Act, if such deductions are approved by the employer.

12:55-2.2 Payroll deductions for mass transportation commuter tickets

(a) Each employer may use a payroll deduction as a means of providing mass transportation commuter tickets only if the payroll deduction has been authorized by the employee in writing or in a collective bargaining agreement.

(b) Each employer that uses a payroll deduction as set forth in (a) above shall make this method of payment for mass transportation commuter tickets available to all of its employees.

12:55-2.3 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey

(a) Each employer may institute a system whereunder a portion of an employee's salary is withheld as an installment payment against any financial obligation by that employee to the State of New Jersey.

(b) Any employer who institutes such a repayment plan pursuant to (a) above shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing.

(c) Any employer who withholds any sum from an employee's salary for repayment of a financial obligation by the employee to the State shall forthwith pay the amount of such withheld salary to the appropriate State officer or agent to whom such obligation is made payable.

(d) Nothing in this section shall be construed as mandating participation by an employer or employee in such an installment repayment program.

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE

Wage and Hour

Violations, Administrative Fees and Penalties; Discrimination Against Employees

Adopted Repeals and New Rules: N.J.A.C. 12:56-1.2 and 1.3

Adopted New Rules: N.J.A.C. 12:56-1.4, 1.5, and 1.6

Proposed: October 7, 1991 at 23 N.J.R. 2942(a).
Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: November 22, 1991, as R.1991 d.606, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 2A:150-1 and 34:11-56a22, 23 and 24, as amended by P.L. 1991, c.205.
Effective Date: December 16, 1991.
Expiration Date: September 26, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

For clarification purposes, the Department of Labor has changed the language found in the proposal of N.J.A.C. 12:56-1.3(b). Therefore, the hearing provisions have been simplified and more clearly set forth in the rules. In addition, the Department discovered a technical error in the N.J.A.C. 12:56-1.2(a)7i and 1.3(b)4. The word "processing" in N.J.A.C 12:56-1.2(a)7i was an inadvertent error. The intended appropriate word "procuring" has been inserted. The account to which payment of all fees and penalties should be directed is the "Commissioner of Labor, Wage and Hour Trust Fund," not the "Commissioner of Labor, Trust Account for Wage Payment." Also, the time period in which to request a formal hearing has been changed from 15 days to 15 "working" days following receipt of the notice of violation.

Full text of the adoptions follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

12:56-1.2 Violations

(a) A violation of the Act shall occur when an employer:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter;

2. Fails to make, keep and preserve any records as required under the provisions of this chapter;

3. Falsifies any such record;

4. Refuses to make any such record accessible to the Commissioner upon demand;

5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand;

6. Pays or agrees to pay wages at a rate less than the rate applicable under this chapter or any wage order issued pursuant thereto;

7. Requests, demands, or receives, either for himself or any other person, either before or after a worker is engaged in public or private work at a specified rate of wages, the following:

i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her wages, salary or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from *[processing]* ***procuring*** or retaining employment; or

8. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of N.J.S.A. 34:11-56a et seq shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than $100.00 nor more than $1,000, or by imprisonment for not less than 10 nor more than 90 days, or by both the fine and imprisonment.

(c) The employer shall, upon conviction for a second or subsequent violation, be punished by a fine of not less than $500.00 nor more than $1,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

(d) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

(e) The wage rate applicable to the employee shall conform to the overtime provisions of N.J.A.C. 12:56-6.

12:56-1.3 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:56-1.2 under N.J.S.A. 34:11-56 et seq. when the Commissioner of Labor finds that an employer has violated that Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

1. First violation—not more than $250.00;

2. Second and subsequent violation—not less than $25.00 nor more than $500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]*

1. If a hearing is not requested, the notice shall become *[a]* ***the*** Final Order upon the expiration of the 15 ***working*** day period following receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a Final Order upon such hearing and a finding that a violation has occurred.

3. All wages due, fees and penalties shall be paid within 30 days of the date of Final Order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the Commissioner of Labor, *[Wage and Hour Trust Account]* ***Wage and Hour Trust Fund*** in the form of a certified check or money order, or such other form suitable to the *[Director]* ***Commissioner of Labor***.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. The seriousness of the violation;

2. The past history of previous violations by the employer;

3. The good faith of the employer;

4. The size of the employer's business; and

5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:56-1.4 Administrative fees

(a) The Commissioner is authorized to supervise the payment of amounts due to employees under this chapter, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employee, and paid on order of the Commissioner to the employee or employees affected.

(b) The employer shall also pay the Commissioner an administrative fee on all payments of gross amounts due to employees pursuant to Articles 1 and 2 of Chapter II of Title 34 of the revised statutes.

(c) A schedule of the administrative fees is set forth in Table 1.4(c) below.

Table 1.4(c)
Schedule of Administrative Fees

1. First Violation—10 percent of amount of any payment made to the Commissioner pursuant to this chapter.
2. Second Violation—18 percent of amount of any payment made to the Commissioner pursuant to this chapter.
3. Third and Subsequent Violations—25 percent of amount of any payment made to the Commissioner pursuant to this chapter.

12:56-1.5 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:56-1.3, the employer shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]* ***All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.***

(c) *[Upon such hearing and a finding that a violation has occurred such hearing officer report shall constitute a final agency determination.]* ***The Commissioner shall make the final decision of the Department.***

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

*[(d)]****(e)*** Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

***(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.**

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.*

*[(e)]****(h)*** Payment of the penalty is due when a final agency determination is issued.

*[(f)]****(i)*** Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

12:56-1.6 Discharge or discrimination against employee making complaint

(a) An employer is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, and shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than $100.00 nor more than $1,000. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:56-1.3.

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE
Child Labor
Violations and Administrative Penalties
Adopted New Rules: N.J.A.C. 12:58-5.

Proposed: October 7, 1991 at 23 N.J.R. 2944(a).
Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: November 22, 1991, as R.1991 d.612, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:2-21.1 et seq., specifically 34:2-21.19, as amended by P.L. 1991, c.205.

Effective Date: December 16, 1991.
Expiration Date: September 26, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
For clarification purposes, the Department of Labor changed the language found in the proposal of N.J.A.C. 12:58-5.3 and 5.4. Accordingly, the hearing provisions have been simplified and more clearly set forth in the rules. Also, the time period in which to request a formal hearing has been changed from 15 days to 15 "working days" following receipt of the notice of violation. In addition, the Department discovered a technical error in N.J.A.C. 12:58-5.3(b)4. The account to direct all fees and penalties should be the "Commission of Labor, Child Labor Accounts, "not Child Labor Trust Account."

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 5. VIOLATIONS AND ADMINISTRATIVE PENALTIES

12:58-5.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:2-21.1 et seq., the New Jersey Child Labor Act (Act), specifically, amended N.J.S.A. 34:2-21.19 which provides sanctions for non-compliance.

(b) The chapter is applicable to the employment of minors subject to the Child Labor Law, N.J.S.A. 34:2-21.1 et seq.

12:58-5.2 Violations of the Act

(a) Violations of the Act shall occur when:

1. An employer obstructs the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter; or
2. An employer permits or suffers any minor to be employed or to work in violation of the Act; or
3. Any person who, having under his control or custody any minor, permits or suffers him or her to be employed or to work in violation of the Act.

(b) If a defendant acts knowingly, an offense under this section shall be a crime of the fourth degree.

(c) A defendant who violates any provision of this chapter shall be guilty of a disorderly persons offense and, shall, upon conviction therefor, be fined not less than $100.00 nor more than $1,000.

1. Each day during which any violation of the act continues shall constitute a separate and distinct offense.
2. The employment of any minor in violation of the Act shall, with respect to each minor so employed, constitute a separate offense.

12:58-5.3 Administrative penalties

(a) As an alternative to, or in addition to, any other sanctions provided for in N.J.A.C. 12:58-5.2, pursuant to N.J.S.A. 34:2-21.1 et seq., when the Commissioner finds that an employer has violated that Act, the Commissioner is authorized to assess and collect administrative penalties in the amounts that follow:

1. First violation—not more than $250.00;

2. Second and subsequent violations—not less than $25.00 nor more than $500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]*

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-***working*** day period following receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.

3. All wages due, fees and penalties shall be paid within 30 days of the date of final order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the Commissioner of Labor, *[Child Labor Trust Account]* ***Child Labor Account***. All payments shall be made by certified check or money order, or payable in a form suitable to the *[Assistant Commissioner, Division of Workplace Standards]* ***Commissioner of Labor***.

(c) When the Commissioner assesses an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. The seriousness of the violation;

2. The past history of previous violations by the employer;

3. The good faith of the employer;

4. The size of the employer's business; and

5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:58-5.4 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:58-5.3, the employer shall have the right to a hearing pursuant to (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty by *[certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]* ***All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.***

(c) *[Upon such hearing and a finding that a violation has occurred, such hearing officer shall constitute a final agency determination.]* ***The Commissioner shall make the final decision of the Department.***

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

*[(d)]****(e)*** Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.

*[(e)]****(h)*** Payment of the penalty is due when a final agency determination is issued.

*[(f)]****(i)*** Upon final order the penalty imposed may be recovered with cost in summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(a)

DIVISION OF WORKPLACE STANDARDS

Prevailing Wage for Public Works Violations, Penalties and Fees

Adopted New Rules: N.J.A.C. 12:60-9

Proposed: October 7, 1991 at 23 N.J.R. 2945(b).

Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: November 22, 1991, as R.1991 d.611, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 2A:150-1 and 34:11-56.25 et seq., specifically 34:11-56.35, 56.36 and 56.39, as amended by P.L. 1991, c.205.

Effective Date: December 16, 1991.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

The official comment period ended on November 6, 1991. During that time four comments were received.

COMMENT: Robert A. Briant, Sr., Executive Director of Utility Transportation Contractors Association of New Jersey (UTCA), states that N.J.A.C. 12:60-9.2(b)2 and 3 is too punitive because it makes it mandatory that an employer be imprisoned for not less than 10 days nor more than 90 days. He further states that this option should be used at the discretion of a judge.

RESPONSE: The proposed regulation reflects the legislative mandate and, accordingly, the Department does not have the power to change the terms of the statute by regulation. In addition, only upon a conviction in a court of law before a judge may an employer who knowingly and willfully violates any provision of this chapter be subject to imprisonment.

COMMENT: UTCA believes that the imposition of an administrative fee, in addition to civil and administrative penalties, is too excessive. Moreover, UTCA suggests the schedule of administrative fees should be identified as per year.

RESPONSE: The penalties and fees are mandated under the statute and the statute further requires that administrative fees be paid on all payments due each individual employee rather than on a per year basis.

COMMENT: UTCA suggests that the Department include in the rules language which protects employers from employees filing charges of prevailing wage violations for harassment purposes.

RESPONSE: Whenever a claim of alleged prevailing wage violations is levied against an employer, the Commissioner is authorized by law to investigate such charge. This investigation conducted by the Department determines whether the alleged violation actually occurred before the Department sends notification of the violation to the employer. This procedure guards against the possibility of frivolous charges.

COMMENT: The New Jersey State AFL-CIO commented that N.J.A.C. 12:60-9.3(b) be amended to provide that any penalty appealed to the Office of Administrative Law should be limited to factual matters, such as jobs worked, hours worked, sufficiency of records, etc., and not to those craft definitions or applicable wage rates set by the Commissioner.

RESPONSE: The Office of Administrative Law renders an Initial Decision which constitutes a recommendation to the Commissioner of Labor. The Commission, however, issues the Final Decision in each case. Accordingly, it is unnecessary to amend N.J.A.C. 12:50-9.3(b).

Summary of Agency-Initiated Changes:

Upon further review of N.J.A.C. 12:60-9.3 and 9.5, the Department of Labor has decided to change the language in order to better clarify the intent of N.J.S.A. 34:11 et seq. Accordingly, the hearing provisions have been simplified and more clearly set forth in the rules. Also, the time period in which to request a formal hearing has been changed from 15 days to 15 "working days" following receipt of the notice of violation. In addition, the Department discovered a technical error in N.J.A.C. 12:60-9.3(b)4. The specific fund to direct payment of all fees and penalties is the Commissioner of Labor, Prevailing Trust Fund, not the Commissioner of Labor, Prevailing Trust Account.

Full text of the adoptions follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 9. VIOLATIONS, PENALTIES, AND FEES

12:60-9.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-56.25 et seq., the New Jersey Prevailing Wage Act (Act), provide sanctions for non-compliance, and to protect established wage rates.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act; and
2. Wages paid to an employee for services rendered.

12:60-9.2 Violations of the Act

(a) Violations of the Act shall occur when an employer:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter;
2. Fails to make, keep and preserve any records as required under the provisions of this chapter;
3. Falsifies any such record;
4. Refuses to make any such record accessible to the Commissioner upon demand;
5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand;
6. Pays or agrees to pay wages at a rate less than the prevailing rate applicable under this chapter;
7. Requests, demands, or receives, either for himself or any other person, either before or after a worker is engaged in public work at a specified rate of wages, the following:

i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her wages, salary or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment; or

8. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of this chapter shall be guilty of a disorderly persons offense and shall, upon conviction therefor:

1. Be fined not less than $100.00 nor more than $1,000;
2. Be imprisoned for not less than 10 nor more than 90 days; or
3. Be subject to both the fine and imprisonment.

(c) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

12:60-9.3 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:60-9.2, pursuant to N.J.S.A. 34:11-56.25 et seq. when the Commissioner finds that an employer has violated that Act, the Commissioner is authorized to assess and collect administrative penalties in the amounts that follow:

1. First violation—not more than $250.00.
2. Second and subsequent violations—not less than $25.00 nor more than $500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]*

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15-***working*** day period following receipt of the notice.
2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.
3. All wages due, fees and penalties shall be paid within 30 days of the date of the final order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.
4. All payments shall be made payable to the "Commissioner of Labor, Prevailing Wage Trust *[Account]* ***Fund***". All payments shall be made by certified check or money order, or payable in ***a*** form suitable to the *[Assistant Commissioner, Labor Standards]* ***Commissioner of Labor***.

(c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations.

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer's business; and
5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:60-9.4 Administrative fees

(a) The Commissioner is authorized to supervise the payment of amounts due to employees under this chapter, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employee, and paid on order of the Commissioner directly to the employee or employees affected.

*[2.]****(b)*** The employer shall also pay the Commissioner an administrative fee on all payments due to employees pursuant to Articles 1 and 2 of Chapter 11 of Title 34 of the revised statutes.

(c) A schedule of the administrative fees is set forth in Table 9.4(c) below:

Table 9.4(c)
Schedule of Administrative Fees

1. First violation—10 percent of amount of any payment made to the Commissioner pursuant to this chapter;
2. Second violation—18 percent of amount of any payment made to the Commissioner pursuant to this chpater;
3. Third and subsequent violations—25 percent of amount of any payment made to the Commissioner pursuant to this chapter;

12:60-9.5 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:60-9.3, the employer shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion, the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing]*. ***All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 42:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.***

(c) *[Upon such hearing and a finding that a violation has occurred, such hearing officer report shall constitute a final agency determination.]* ***The Commissioner shall make the final decision of the Department.***

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

*[(d)]****(e)*** Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.

*[(e)]****(h)*** Payment of the penalty is due when a final agency determination is issued.

*[(f)]****(i)*** Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

12:60-9.6 Discharge or discrimination against employee making complaint

(a) An employer is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the public body, or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than $100.00 nor more than $1,000.00.

(b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a.24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:60-9.3.

(a)

OFFICE OF WAGE AND HOUR COMPLIANCE

Wage Collection

Adopted New Rules: N.J.A.C. 12:61

Proposed: October 7, 1991 at 23 N.J.R. 2947(a).

Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: November 22, 1991, at R.1991 d.608, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:11-57 et seq., as amended by P.L. 1991, c.205.

Effective Date: December 16, 1991.

Expiration Date: December 16, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Changes:

For clarification purposes, the Department of Labor changed the language found in the proposal of N.J.A.C. 12:61-1.3. Accordingly, the hearing provisions have been simplified and more clearly set forth in the rules. Also, the time period in which to request a formal hearing has been changed from 15 days to 15 "working days" following receipt of the notice of violation. In addition, the Department discovered a technical error in N.J.A.C 12:61-1.3(e) and 1.4(c). The account to direct all fees and penalties should be the "Commission of Labor, Wage Collection Trust Funds," not "Trust Account for Wage Collection."

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 61
WAGE COLLECTION

SUBCHAPTER 1. GENERAL PROVISIONS

12:61-1.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-57 et seq., the New Jersey State Wage Collection Law, to empower the Commissioner of Labor means of collecting wages due.

(b) The chapter is applicable to:

1. Wages and hours subject to the New Jersey State Wage Collection Law;
2. Wages paid to an employee for services rendered; and
3. Time and mode of payment.

(c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:61-1.2 Definitions

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

"Commissioner" means the Commissioner of Labor or any person or persons in the Department designated in writing by him or her for the purposes of this article.

"Employee" means any natural person who works for another for hire.

"Employer" means any person, partnership, firm or corporation employing another for hire.

"Wages" means any moneys due an employee from the employer whether payable by the hour, day, week, semimonthly, monthly or yearly and shall include commissions, bonus, piecework compensation and any other benefits arising out of an employment contract.

12:61-1.3 Powers of the Commissioner

(a) The Commissioner of Labor or his or her representative is authorized and empowered to investigate any claim for wages due an employee. In conducting such investigation, the Commissioner or his or her representative may do the following:

1. Summon the defendant;
2. Subpoena witnesses;
3. Administer oaths; and
4. Take testimony.

(b) If the Commissioner determines that a matter concerning a wage collection constitutes a contested case, *[then, within the Commissioner's discretion, either the Commissioner will conduct a hearing himself or herself or transmit the matter as a contested case to the Office of Administrative Law.]* ***all hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 42:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1.***

(c) The Commissioner shall make the final decision of the Department.

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

*[(c)]****(e)*** The Commissioner of Labor or his or her duly authorized representative shall upon such proceeding make a decision or award when the sum*[,]* in controversy, exclusive of costs ***,*** does not exceed $10,000.

*[(d)]****(f)*** Such decision or award as mentioned in *[(c)]* ***(e)*** above shall be a judgment when a certified copy thereof is filed with the Superior Court.

*[(e)]****(g)*** The Commissioner of Labor is authorized to supervise payments of amounts due to employees.

12:61-1.4 Administrative fees

(a) The employer shall pay the Commissioner an administrative fee on all payment of gross amounts due employees pursuant to N.J.S.A. 34:11-58.

(b) A schedule of fees are as follows:
1. First violation—10 percent of the amount due an employee;
2. Second violation—18 percent of the amount due an employee;
3. Third and subsequent violations—25 percent of the amount due an employee.

(c) All payments shall be made payable to the Commissioner of Labor, *[Trust Account for Wage Collection]* ***Wage Collection Trust Fund*** by certified check or money order in a form suitable to the *[Director of Workplace Standards]* ***Commissioner of Labor***.

(d) All fees shall become part of the judgment as mentioned in 12:61-1.3(d).

(a)

DIVISION OF WORKPLACE STANDARDS

Boilers, Pressure Vessels and Refrigeration Fees

Adopted Amendments: N.J.A.C. 12:90-4.12, 4.13, 5.9, 5.14 and 7.2

Proposed: October 7, 1991 at 23 N.J.R. 2948(a).
Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: November 22, 1991 as R.1991 d.609, **without change.**
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:7-1 et seq., specifically 34:7-3, 15, 16, 25, as amended by P.L. 1991, c.205.
Effective Date: December 16, 1991.
Expiration Date: December 15, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 4. BOILERS

12:90-4.12 Fee for shop inspection
(a) A fee of $18.00 shall be charged for each boiler inspected in the shop of the manufacturer of the boiler.
(b) The minimum fee shall be $120.00 for any shop inspection that is four hours or less.
(c) The minimum fee shall be $225.00 for any shop inspection exceeding four hours.
(d) (No change.)

12:90-4.13 Fee for field inspection
(a) An insurance company making an annual field inspection shall pay a fee of $10.00 to the State, payable by and collected from the user by the inspector at the time of inspection for each boiler.
(b)-(e) (No change.)

SUBCHAPTER 5. UNFIRED PRESSURE VESSELS

12:90-5.9 Class III unfired pressure vessels, New Jersey Approved.
(a) (No change.)
(b) The application for a New Jersey Approved unfired pressure vessel shall meet the following requirements:
1.-3. (No change.)
4. All letters of application shall be accompanied by payment of $1,000 for each non-code design. Additional fees shall be required for designs submitted for a single project and shall be repetitive for each user application of design;
5.-6. (No change.)
(c)-(m) (No change.)

12:90-5.14 Fee for shop inspection
(a) A fee of $18.00 shall be charged for each unfired pressure vessel inspected in the shop of the manufacturer of the unfired pressure vessel.
(b) The minimum fee shall be $120.00 for any shop inspection that is four hours or less.
(c) The minimum fee shall be $225.00 for any shop inspection exceeding four hours.
(d) (No change.)

SUBCHAPTER 7. LICENSING OF OPERATING ENGINEERS AND FIREMEN

12:90-7.2 Application for licenses
(a)-(n) (No change.)
(o) The fee for application for a license shall be a check or money order made payable to the order of the Commissioner of Labor, Office of Boilers and Pressure Vessels trust account.
(p) (No change.)

(b)

DIVISION OF WORKPLACE STANDARDS

Explosives Fees

Adopted Amendment: N.J.A.C. 12:190-3.14

Proposed: October 7, 1991 at 23 N.J.R. 2949(a).
Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: November 22, 1991 as R.1991 d.613, **without change.**
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 21:1A-128 et seq., specifically 21:1A-134, as amended by P.L. 1991, c.205.
Effective Date: December 16, 1991.
Expiration Date: January 4, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:190-3.14 Annual fees for permits
(a)-(e) (No change.)
(f) An annual fee shall be paid for a permit to manufacture explosives shall be in accordance with Table 3.14(f).

Table 3.14(f)
Fee for "Permit to Manufacture" Explosives

Explosives Pounds over	Pounds not over	Annual Fee dollars
0	500	200
500	5,000	400
5,000	10,000	600
10,000 and over		1,000

(g) An annual fee shall be paid for a "permit to sell" explosives in accordance with Table 3.14(g).

Table 3.14(g)
Fee for "Permit to Sell" Explosives

Type of Sale	Annual Fee dollars
High explosives retail	150
Low explosives retail	35
High explosives wholesale	300
Low explosives wholesale	150

(h) An annual fee shall be paid for a "permit to store" commercial explosives other than detonators in accordance with Table 3.14(h).

Table 3.14(h)
Fee for "Permit to Store" Commercial Explosives Other than Detonators

Explosives Pounds over	Pounds not over	Annual Fee dollars
0	100	25
100	500	50
500	2,000	75
2,000	10,000	100
10,000	20,000	125
20,000	30,000	150
30,000	40,000	200
40,000	50,000	250
50,000	100,000	350
100,000	200,000	450
200,000	250,000	500
250,000 and over		750

(i) An annual fee shall be paid for a "permit to store" detonators in accordance with Table 3.14(i).

Table 3.14(i)
Fee for "Permit to Store" Detonators

Detonators number over	number not over	Annual Fee dollars
0	500	25
500	1,000	50
1,000	5,000	75
5,000	10,000	100
10,000	100,000	125
100,000	300,000	150
300,000	400,000	200
400,000	500,000	250
500,000	600,000	300
600,000	700,000	350
700,000	1,000,000	500
1,000,000 and over		750

(j) An annual fee shall be paid for a "permit to use" explosives in accordance with Table 3.14(j).

Table 3.14(j)
Fee for "Permit to Use" Explosives

Grade of Permit	Annual Fee* dollars	Grade of Permit	Annual Fee* dollars
A	200	Q-3	55
S-1	125	Q-4	50
S-2	90	Q-5	25
S-3	80	Q-6	15
S-4	70	U	50
S-5	50	D	200
S-6	20	G	25
Q-1	80	H	50
Q-2	65	J	200

Note to Table
*A person holding more than one grade of permit is only required to pay the fee for the highest grade.

(k)-(l) (No change.)

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival-Amusement Rides Inspection Fees and Permit

Adopted Amendment: N.J.A.C. 12:195-1.9

Proposed: October 7, 1991 at 23 N.J.R. 2950(a).
Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: November 22, 1991 as R.1991 d.610, **without change.**
Authority: N.J.S.A. 5:3-31 et seq., specifically N.J.S.A. 5:3-39, as amended by P.L. 1991, c.205.
Effective Date: December 16, 1991.
Expiration Date: June 24, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:195-1.9 Inspection fee and permit
(a)-(c) (No change.)
(d) Upon application for a permit, the appropriate officials of the Division of Workplace Standards shall inspect the amusement ride for which an annual fee shall be charged at the rate of $100.00 for each major ride and $50.00 for each kiddie ride.
(e)-(i) (No change.)

(b)

OFFICE OF WAGE AND HOUR COMPLIANCE

Apparel Industry Registration

Adopted Repeal and New Rules: N.J.A.C. 12:210

Proposed: October 7, 1991 at 23 N.J.R. 2951(a).
Adopted: November 20, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: November 22, 1991, as R.1991 d.607, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).
Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and specifically, 34:6-144 and 157 as amended by P.L. 1991, c.189.
Effective Date: December 16, 1991.
Expiration Date: December 16, 1996.

Summary of Public Comments and Agency Responses:
No comments were received.

Summary of Agency-Initiated Changes:
Upon further review of N.J.A.C. 12:210-1.5 and 1.8, the Department of Labor has decided to change the language in order to better clarify the intent of P.L. 1991, c.189. Accordingly, the hearing provisions have been simplified and more clearly set forth in the rules. Also, the time period in which to request a formal hearing has been changed from 15 days to 15 "working days" following receipt of the notice of violation. In addition, the Department discovered a technical error in N.J.A.C. 12:210-1.3. The specific fund to direct payment of all fees and penalties is the "Commissioner of Labor, Apparel Registration," not the "Division of Workplace Standards Apparel Registration Trust Account."

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 210
APPAREL INDUSTRY REGISTRATION

SUBCHAPTER 1. GENERAL PROVISION

12:210-1.1 Purpose and scope
(a) The purpose of this subchapter is to establish a registration system which requires apparel industry manufacturers and contrac-

tors to register with the Department as a condition of doing business in the State.

(b) This subchapter is applicable to all apparel industry manufacturers and contractors who conduct business within the State of New Jersey.

12:210-1.2 Definitions

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

"Apparel industry" means the making, cutting, sewing, finishing, assembling, pressing or otherwise producing of apparel, designed or intended to be worn by any individual and sold or offered for sale for that purpose, but does not include cleaning, pressing or tailoring services performed upon apparel sold or offered for sale at retail.

"Commissioner" means the Commissioner of Labor.

"Contractor" means any person who contracts to perform in this State the cutting, sewing, finishing, assembling, pressing or otherwise producing of any apparel, or a section of component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose. "Contractor" shall include, but not be limited to, a subcontractor, jobber or wholesaler, but shall not include a production employee employed for wages who does not employ others.

"Department" means the State Department of Labor.

"Manufacturer" means any person who contracts with a contractor to perform in this State the cutting, sewing, finishing, assembling, pressing or producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose, or who cuts, sews, finishes, assembles, presses or otherwise produces in this State any apparel, or a section or component of apparel, designed or intended to be work by any individual and sold or offered for sale, except at retail, for that purpose. "Manufacturer" shall not include a production employee employed for wages who does not employ others.

"Production employee" means any person who is employed by a contractor or manufacturer directly to perform the cutting, sewing, finishing, assembling, pressing or otherwise producing of any apparel, or a section or component of apparel, designed or intended to be worn by any individual and sold or offered for sale, except at retail, for that purpose.

12:210-1.3 Registration

(a) Prior to engaging in the apparel industry business in this State, a manufacturer or contractor shall register with the Department by completing a form prescribed by the Commissioner.

(b) The registration form shall contain, but not be limited to, the following information for all manufacturers and contractors.

1. The structure of the business, that is, sole proprietorship, partnership or corporation;

2. The manufacturer's or contractor's name and principal business address in the State; and the name and address of each person with a financial interest in the manufacturer's or contractor's business and the amount of that interest, except that if the manufacturer or contractor is a publicly traded corporation, only the names and addresses of the corporate officers shall be required;

3. The tax identification number;

4. If the registrant is a contractor the registrant must list all manufacturers to whom the registrant will be subcontracting this work. The list shall contain the name, address and tax identification (I.D.) numbers of the manufacturers and/or subcontractors; and

5. A certified list of all violations of any of New Jersey's labor laws or regulations for the period of three years prior to this current application must accompany the registration form.

(c) Divisions, subsidiary corporations or related companies may be named and included under one omnibus registration.

(d) The Commissioner shall issue a certificate of registration upon receipt of the following:

1. A manufacturer's or contractor's completed registration form;

2. Documentation which is suitable to the Commissioner or his or her authorized representative that the manufacturer or contractor has paid any surety bond required pursuant to N.J.S.A. 34:6-150;

3. Documentation that the registrant has workers' compensation coverage for his or her production employees working in the State; and

4. Payment of the $300.00 registration fee made payable to the *[Division of Workplace Standards Apparel Registration Trust Account]* ***Commissioner of Labor, Apparel Registration***.

(e) New manufacturers or contractors shall file the initial registration upon the commencement of business in the apparel industry in this State. The registration shall be valid until January 15 of the following year.

(f) The certificate of registration shall be renewed by January 15 of each year.

12:210-1.4 Apparel Industry Unit

(a) There is established an Apparel Industry unit, comprised of Departmental personnel, to enforce all State labor laws which affect the apparel industry.

(b) The Apparel Industry Unit has the power to:

1. Inspect manufacturers and contractors, with respect to their production employees, for compliance with:

i. The registration requirements of N.J.A.C. 12:210-1.3;

ii. State wage and hour, unemployment compensation, temporary disability, workers' compensation, child labor and industrial homework laws; and

iii. All orders and assessments of civil penalties by the Commissioner;

2. Investigate and conduct inspections of a manufacturers' or contractors' locations, books, records and premises to ensure compliance with this subchapter; and

3. Take any action necessary to implement the provisions of this subchapter.

(c) The Apparel Industry Unit members shall receive special training with regard to the State labor laws to enable them to enforce the provisions of this subchapter.

12:210-1.5 Violations; penalties

(a) The following acts constitute violations of this subchapter:

1. Failure to comply with the registration requirements pursuant to N.J.A.C. 12:210-1.3;

2. Performing services or representing oneself as being registered to perform apparel industry services without holding a valid registration;

3. Contracting for the performance of an apparel industry service with a manufacturer or contractor who is known to have failed to register, renew its registration, or whose registration has been revoked; and

4. Failure to comply, for the second time in three years, with an order of the Commissioner concerning registration compliance.

(b) The following civil penalties may be imposed by the Commissioner for committing the violations in (a)1 through 4 above:

1. A fine of up to $1,000 for an initial violation;

2. A fine of up to $2,000 for each subsequent violation.

(c) Penalties shall be payable to the *[Division of Workplace Standards]* ***Commissioner of Labor, Apparel Registration***.

(d) An intentional failure to comply with the registration requirements shall be a crime of the fourth degree.

(e) If a manufacturer or contractor fails to comply with an order by the Commissioner to register or renew registration, the Commissioner may obtain an injunction prohibiting the manufacturer or contractor from conducting business.

(f) If a manufacturer or contractor is found guilty, after a hearing held pursuant to the Administrative Procedure Act, N.J.S.A. 51:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, of two violations of the same provision of this subchapter in three years, the Commissioner may suspend the registration of any such manufacturer or contractor for a period ranging from 30 days to one year.

(g) Any manufacturer or contractor who contracts, for the second time in three years, with a manufacturer or contractor who is known to have failed to comply with the registration requirements in N.J.A.C. 12:210-1.3, shall be liable to pay any civil penalty assessed against the known violator, if such violator has not paid the penalty.

(h) As an alternative or in addition to any other sanctions provided for in N.J.S.A. 34:6-149(e) when the Commissioner of Labor finds that an employer has violated the Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

i. First violation—not more than $250.00;

ii. Second and subsequent violations—not less than $25.00 nor more than $500.00.

(i) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion; the hearing will be held before him or her or transmitted as a contested case to the office of Administrative Law for a hearing.]*

1. The notice shall become ***the*** Final Order upon the expiration of the 15-***working*** day period following receipt of the notice if a hearing is not requested.

12:210-1.6 Records

(a) Each manufacturer and contractor shall keep accurate records regarding all of its production employees during the preceding three years and make those records available to the apparel industry unit upon request. The records shall include:

1. The name and address of each production employee and the age of each production employee who is a minor;

2. The number of hours of work and the time of day that work begins and ends for each production employee;

3. The wages, wage rates, and piece rates paid during each payroll period;

4. The number of pieces per hour when piece rate is paid; and

5. Contract worksheets indicating the price per unit agreed between manufacturer and contractor.

12:210-1.7 Surety bond

(a) The Commissioner or his or her duly authorized designee may, after a hearing thereon, and after due consideration of the size and past experience of the manufacturer or contractor and the seriousness of the violation, require as a condition of continued registration the payment of a surety bond or may revoke, by order, the registration of any manufacturer or contractor for any period ranging from 30 days to one year upon being found guilty of:

1. A second violation of the same provision of the Apparel Registration Act within any three-year period; or

2. A second violation within any three-year period of the same provision of any other labor law applicable to employment of production employees.

(b) Each week in which a violation occurs constitutes a separate violation.

(c) The surety shall be made payable to the State and shall be for the benefit of production employees damaged by any failure to the manufacturer or contractor to pay wages or benefits or otherwise comply with the provisions of law. The surety bond shall be in the sum and form that the Commissioner deems necessary for the protection of the production employees, but shall not exceed $2,500 per production employee.

(d) Surety may be held for a period of two years from the date the employer's operation ceases.

12:210-1.8 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:210-1.5 the employer shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification ***by certified mail*** of the violation and the amount of the penalty *[by certified mail]* and an opportunity to request a formal hearing. A request for ***a*** formal hearing must be received within 15 ***working*** days following the receipt of the notice. *[Within the Commissioner's discretion; the hearing will be held before him or her or transmitted as a contested case to the Office of Administrative Law for a hearing.]* ***All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.***

(c) *[Upon such hearing and a finding that a violation has occurred, such hearing officer report shall constitute a final agency determination.]* ***The Commissioner shall make the final decision of the Department.***

(d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

*[(d)]****(e)*** Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.

*[(e)]****(h)*** Payment of the penalty is due when a final agency determination is issued.

*[(f)]****(i)*** Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(a)

DIVISION OF WORKERS' COMPENSATION

1992 Maximum Workers' Compensation Benefit Rates

Adopted New Rule: N.J.A.C. 12:235-1.6

Proposed: September 3, 1991 at 23 N.J.R. 2612(a).
Adopted: October 23, 1991 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: October 24, 1991, as R.1991 d.574, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e) and 34:15-12(a).

Effective Date: December 16, 1991.

Expiration Date: May 3, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

The Department has reconsidered its reasons for repealing N.J.A.C. 12:235-1.6 (see 23 N.J.R. 1759(a)), and now believes it to be in the public interest to have the yearly maximum workers' compensation benefit rates set forth as a dollar amount in the Administrative Code. While N.J.S.A. 34:15-12(a) provides the formula on which the rates are based, setting forth the actual dollar rates in the rule provides the public with the clearest expression of the rates. Therefore, the Department has decided, through this adoption, to resurrect N.J.A.C. 12:235-1.6 as a new rule, reflecting the 1992 rates as proposed.

Full text of the adopted new rule follows.

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being $409.00 per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1992.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Notice of Administrative Correction

Accounting and Internal Controls

Jackpot Payouts in the Form of an Annuity

Adopted Amendments: N.J.A.C. 19:45-1.40B

Take notice that the Office of Administrative Law has discovered errors in the text of N.J.A.C. 19:45-1.40B as published in the December 2, 1991 New Jersey Register at 23 N.J.R. 3655(b). The published text of N.J.A.C. 19:45-1.40B(c), (d) and (f) did not contain current rule text which was added upon the earlier adoption of some of the proposed amendments (see 23 N.J.R. 1025(b)). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the adopted rule, as it should have appeared in the December 2, 1991 issue of the New Jersey Register, follows:

19:45-1.40B Jackpot payouts in the form of an annuity

(a) For purposes of this section, the phrase "annuity jackpot" refers to any slot machine jackpot offered by a casino licensee or group of casino licensees pursuant to which a patron wins the right to receive cash payments at specified intervals in the future. No annuity jackpot shall be permitted unless it provides for the payment of fixed amounts at fixed intervals. In addition, no annuity jackpot shall be permitted unless it expressly prohibits the winner from encumbering, assigning, or otherwise transferring in any way his or her right to receive the future cash payments, except as permitted by (j)2i below, and except for a transfer to the estate of the winner upon his or her death. A casino licensee or group of casino licensees may, with the prior approval of the Commission, terminate all future payments to a winner who attempts to encumber, assign or otherwise transfer the right to receive future payments in violation of this prohibition.

(b) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall establish a trust fund which shall be used to make future cash payments. The trust fund shall be administered in accordance with a written trust agreement which shall be reviewed and approved by the Commission prior to the offering of the jackpot. The trust agreement shall, at a minimum, require that:

1. (No change.)

2. The monies in the trust fund be used to purchase annuity contracts or United States Treasury Bonds in accordance with (c) or (d) below to assure that the trust will have sufficient monies available in each year to make all annuity jackpot payments which are required under the terms of the annuity jackpots which are won;

3. A reserve be established and maintained within the trust fund which is sufficient to purchase the annuity contracts or treasury bonds required under (b)2 above as annuity jackpots are won;

4. The trust continue to be maintained until all payments owed to winners of the annuity jackpots have been made; and

5. The trustees obtain and file with the Commission and the Division within 30 days of receipt an annual audit by an independent certified public accountant licensed to practice in the State of New Jersey attesting to:

i.-ii. (No change.)

(c) If the trustee or trustees purchase annuity contracts in satisfaction of (b)2 above, a separate annuity contract shall be purchased for each annuity jackpot won. The annuity contract shall name the trust fund as beneficiary, shall provide for annuity payments which are equal to or greater than the payments required under the annuity jackpot, and shall provide for each annuity contract payment to be made to the trust fund prior to the date the payment is required to be made under the annuity jackpot. The annuity contract shall be purchased within 180 days after the annuity jackpot is won, unless it is purchased pursuant to (d) below, and a copy of the contract shall be provided to the Commission and Division within 30 days of its purchase. The annuity contract shall be issued by an insurance company which:

1. Has fidelity and fiduciary insurance or bonding coverage for 100 percent of the value of the annuity contract;

2. Has a combined capital and surplus of at least 100 million dollars, assets of at least one billion dollars, and an A.M. Best Company rating of A plus (superior); and

3. Is authorized to issue annuities in New Jersey by the State's Commissioner of Insurance and is either licensed to sell annuities in this State, or represented by an entity so licensed.

(d) If the trustee or trustees purchase United States Treasury Bonds in satisfaction of (b)2 above, a separate treasury bond shall be purchased for each payment which is required to be made under the terms of the annuity jackpot. Each treasury bond shall have a surrender value at maturity, excluding any interest which is paid before the maturity date, which is equal to or greater than the value of the corresponding annuity jackpot payment, and shall have a maturity date which is prior to the date the annuity jackpot payment is required to be made. All treasury bonds shall be purchased within 180 days after the annuity jackpot is won, and a copy of the bonds will be provided to the Commission and Division within 30 days of the final purchase of the bonds. No treasury bond purchased pursuant to this section shall be sold prior to its maturity date unless the proceeds are used to purchase another treasury bond or an annuity contract in compliance with the requirements of this section to assure that the remaining deferred payments are made as promised, which purchase must be completed within 30 days of the sale of the bonds.

(e) Any casino licensee or group of casino licensees which offers an annuity jackpot shall be strictly and immediately liable for any payment which is owed to the winner of such a jackpot in the event that the payment is not made by the trustees when due. Where the annuity jackpot is offered as part of a multi-casino progressive slot system, each casino licensee participating in the system when the jackpot is won shall be jointly and severally liable for each jackpot payment received to be made under this subsection.

(f) All checks received by the trustees under the annuity contracts and all checks received upon the sale or surrender of the treasury bonds shall be restrictively endorsed "for deposit only" to the bank account of the trust or, with the approval of the Commission, to an account with a non-bank broker dealer which is registered with the Securities and Exchange Commission and is a member of the Securities Investor Protection Corporation, deposited into such an account, and immediately recorded on an Annuity Deposit Log. The Annuity Deposit Log shall contain, at a minimum, the following:

1.-2. (No change.)

3. The source of the payment, including, if applicable, the name of the insurance company issuing the payment; and

4. (No change.)

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

(j) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall first be required to establish to the satisfaction of the Commission either that:

1. A winning patron will not be liable for income tax on the deferred portion of the annuity jackpot in the tax year in which the jackpot is won; or

2. Reasonable accommodations have been made to enable a winning patron to satisfy any income tax liability attributable to the deferred portion of the annuity jackpot which is incurred in the tax year in which the jackpot is won.

i. If the casino licensee or group of casino licensees comply with this section by lending funds to a winning patron to pay the income tax liability, the casino licensee or group of casino licensees may require a winning patron to encumber, assign or transfer to it or them the right to receive a portion of the future payments sufficient to repay such a loan.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Jackpot Payouts in the Form of an Annuity
Adopted Amendment: N.J.A.C. 19:45-1.40B

Proposed: October 7, 1991 at 23 N.J.R. 2920(b).
Adopted: November 20, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: September 22, 1991 as R.1991 d.614, **without change.**
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), (l) and (m).
Effective Date: December 16, 1991.
Expiration Date: March 24, 1993.

Summary of Public Comment and Agency Response:

COMMENT: The Sands Hotel, Casino and Country Club, TropWorld Casino and Entertainment Resort, Harrah's Casino Hotel, the Casino Association of New Jersey and International Game Technology, a slot machine manufacturer, indicated that they supported the proposed amendment. The Division of Gaming Enforcement indicated that it also supported the proposed amendment, because it would provide regulatory flexibility in the funding of annuity jackpot payouts.

RESPONSE: Accepted.

COMMENT: Bally's Park Place, Inc. and GNOC Corp. indicated that they supported the proposed amendment, but suggested that it be broadened further to include "such other instruments as the Commission shall approve."

RESPONSE: At this time, the Commission does not wish to expand the types of acceptable instruments beyond those expressly delineated in the proposed amendment. Thus, the suggestion was rejected.

Full text of the adoption follows.

19:45-1.40B Jackpot payouts in the form of an annuity

(a) (No change.)

(b) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall establish a trust fund which shall be used to make the future cash payments. The trust fund shall be administered in accordance with a written trust agreement which shall be reviewed and approved by the Commission prior to the offering of the jackpot. The trust agreement shall, at a minimum, require that:

1. (No change.)

2. The monies in the trust fund be used to purchase annuity contracts or United States treasury bonds, treasury notes, or treasury bills, in accordance with (c) or (d) below to assure that the trust will have sufficient monies available in each year to make all annuity jackpot payments which are required under the terms of the annuity jackpots which are won;

3. A reserve be established and maintained within the trust fund which is sufficient to purchase the annuity contracts, treasury bonds, treasury notes or treasury bills required under (b)2 above as annuity jackpots are won;

4.-5. (No change.)

(c) (No change.)

(d) If the trustee or trustees purchase United States treasury bonds, treasury notes or treasury bills in satisfaction of (b)2 above, a separate treasury bond, note or bill shall be purchased for each payment which is required to be made under the terms of the annuity jackpot. Each treasury bond, note or bill shall have a surrender value at maturity, excluding any interest which is paid before the maturity date, which is equal to or greater than the value of the corresponding annuity jackpot payment, and shall have a maturity date which is prior to the date the annuity jackpot payment is required to be made. All treasury bonds, notes or bills shall be purchased within 180 days after the annuity jackpot is won, and a copy of the bonds, notes or bills will be provided to the Commission and the Division within 30 days of their purchase. No treasury bond, note or bill purchased pursuant to this section shall be sold prior to its maturity date unless the proceeds are used to purchase another treasury bond, note or bill or an annuity contract in compliance with the requirements of this section to assure that the remaining deferred payments are made as promised, which purchase must be completed within 30 days of the sale of the bonds, notes or bills.

(e) (No change.)

(f) All checks received by the trustees under the annuity contracts and all checks received upon the sale or surrender of the treasury bonds, notes or bills shall be restrictively endorsed "for deposit only" to the bank account of the trust and immediately recorded on an Annuity Deposit Log. The Annuity Deposit Log shall contain, at a minimum, the following:

1.-4. (No change.)

(g)-(j) (No change.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Rules of the Games
Casino Licensee's Organization
Personnel Assigned to the Operation and Conduct of Gaming and Slot Machines
Sic Bo Table; Sic Bo Shaker; Physical Characteristics
Dice; Physical Characteristics
Dice; Receipt, Storage, Inspections and Removal From Use
Sic Bo Shaker; Security Procedures
Approval of Gaming Equipment; Retention by Commission and Division; Evidence of Tampering
Sic Bo
Minimum and Maximum Wagers
Adopted New Rules: N.J.A.C. 19:46-1.13A and 1.16A and 19:47-9.1 through 9.6
Adopted Amendments: N.J.A.C. 19:45-1.11, 1.12, 19:46-1.15, 1.16 and 1.20 and 19:47-8.2

Proposed: October 7, 1991 at 23 N.J.R. 2922(a).
Adopted: November 20, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: November 22, 1991 as R.1991 d.615, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 5:12-5, 69(a), 70(f), (j) and 100(e).
Effective Date: December 16, 1991.
Expiration Date: N.J.A.C. 19:45, March 24, 1993, N.J.A.C. 19:46 and 47, April 28, 1993.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement supports the proposed adoption.

RESPONSE: Accepted.

Summary of Agency-Initiated Changes:

Minor substantive changes were made to N.J.A.C. 19:46-1.16(e) to permit the use of a different type of sic bo shaker, so long as the shaker is filled at the table or the pit stand and then immediately secured to the gaming table. This change is consistent with the requirements of N.J.A.C. 19:46-1.13A(d)2 and with the first sentence of the amended paragraphs, each of which provide that a sic bo shaker shall have the capability of being sealed or locked. The sentence eliminated upon adoption would have required **all** sic bo shakers to be sealed. This change therefore eliminates any such conflict.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department shall be responsible for the operation and conduct of the following games:

i. Craps;

ii. Blackjack;

iii. Baccarat;

iv. Roulette;

v. Big six;

vi. Minibaccarat; *[and]*

vii. Red dog*[.]****; and****

*[vii.]****viii.*** Sic bo.

5.-9. (No change.)

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, and big six table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be:

i. (No change.)

ii. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than a total of four blackjack, roulette, red dog, sic bo, or big six tables or a combination thereof;

iii. (No change.)

iv. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than two minibaccarat tables or a combination of one minibaccarat table and a blackjack, roulette, red dog, sic bo or big six table.

6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at no more than eight craps tables. Nothing in this subsection shall preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, big six, red dog, sic bo or baccarat, provided however, the number of supervised tables complies with the following limitations:

Craps Games	All Other Table Games
1	9
2	8
3	6
4	4
5	3
6	2
7	1

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 blackjack, roulette, minibaccarat, big six, red dog, sic bo or baccarat tables or a combination thereof.

7.-9. (No change.)

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

19:46-1.13A Sic bo table; sic bo shaker; physical characteristics

(a) Each sic bo table shall have the name of the casino licensee imprinted on the cloth covering it and shall have a drop box and tip box attached to it with the location of said boxes on the same side of the gaming table but on opposite sides of the dealer, as approved by the Commission.

(b) Each sic bo table shall have an electrical device which, when the numeric value of each die has been entered, shall cause the winning combinations to be illuminated. The sic bo table shall have an area, as approved by the Commission, which depicts all permissible wagers pursuant to N.J.A.C. 19:47-9.2. Each combination shall have the capability to be illuminated, if it is a winning combination, after the numeric value of each die has been entered into the electrical device by the dealer.

(c) The sic bo layout shall have inscribed thereon the payout odds currently being offered in accordance with N.J.A.C. 19:47-9.4.

(d) Sic bo shall be played with a sealed container, to be known as a "sic bo shaker," which shall be used to shake the dice in order to arrive at the winning combinations. The sic bo shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:

1. The sic bo shaker shall have a compartment to secure the three dice required by N.J.A.C. 19:47-9.1 and a separate cover which conceals the dice while the dealer is shaking the sic bo shaker. The compartment to secure the three dice shall be transparent and the cover which conceals the dice shall be opaque;

2. The sic bo shaker shall have the capability of being sealed or locked in order to ensure the integrity of the dice contained therein;

3. The sic bo shaker shall have the name of the casino or identifying logo imprinted or impressed thereon; and

4. The sic bo shaker shall be secured to the sic bo table when the table is open for gaming activity.

19:46-1.15 Dice; physical characteristics

(a) Each die used in gaming at craps or sic bo shall:

1.-10. (No change.)

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

19:46-1.16 Dice; receipt, storage, inspections and removal from use

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

(e) Unless otherwise approved by the Commission or its authorized designee, all dice shall be inspected and distributed to the gaming tables in accordance with one of the following alternatives:

1. Alternative No. 1: Distribution to and inspection at tables:

i. The assistant shift manager or person above him and the security officer who removed the dice from the cabinet or primary storage area shall distribute sufficient sets directly to a craps supervisor in each craps pit and to a pit boss in each sic bo pit or place them in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or those persons above him in the organizational hierarchy;

ii. At the time of receipt, a box person at each craps table and the floorperson at each sic bo table shall, in the presence of the dealer, inspect the dice given to him with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept in a compartment at each craps table or pit stand, to assure that the dice conform to the Commission standards and are otherwise in a condition to assure fair play;

iii. Following this inspection:

(1) For craps, the box person shall in the presence of the dealer place the dice in a cup on the table for use in gaming, and while the dice are at the table, they shall never be left unattended; and

(2) For sic bo, the floorperson shall in the presence of the dealer place three dice into the shaker and seal or lock the sic bo shaker. *[The floorperson shall then place some form of seal over the area that allows access to open the sic bo shaker and the floorperson and dealer shall sign and date the seal.]* The floorperson shall then secure the sic bo shaker to the table ***in the presence of the dealer who observed the inspection***. No sic bo shaker that has been secured to a table shall remain there for more than 24 hours; and

iv. (No change.)

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i. The assistant shift manager or person above him and the security officer who removed the dice from the cabinet or primary storage area shall distribute sufficient sets directly to the craps supervisor who will perform the inspection in each craps pit and to the pit boss who will perform the inspection in each sic bo pit.

ii. Inspection procedures are as follows:

(1) For craps, a craps supervisor shall, in the presence of another craps supervisor, neither of whom shall be a pit boss or person above the pit boss in the organizational hierarchy, inspect the dice at the pit stand. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play.

(2) For sic bo, a pit boss shall, in the presence of a security officer, inspect the dice at the pit stand. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play.

iii. (No change.)

iv. Following this inspection:

(1) For craps, the craps supervisor who inspected the dice shall distribute such dice to the boxperson at each craps table. The boxperson shall, in the presence of the dealer, place the dice in a cup on the table for use in gaming and while the dice are at the table they shall never be left unattended; and

(2) For sic bo, the pit boss shall in the presence of the security officer place three dice into the shaker and seal or lock the sic bo shaker. *[The pit boss shall then place some form of seal over the area that allows access to open the sic bo shaker and the pit boss and security officer shall sign and date the seal.]* The pit boss shall then secure the sic bo shaker to the table ***in the presence of the security officer who observed the inspection***. No sic bo shaker that has been secured to a table shall remain there for more than 24 hours.

v. (No change.)

3. Alternative No. 3: Inspection in storage area and distribution to tables:

i. For craps, a craps supervisor, in the presence of an assistant shift manager or person above him, and a security officer, shall inspect sets of dice in an approved storage area. For sic bo, the assistant shift manager or above, in the presence of a security officer, shall inspect the dice to be placed in the sic bo shakers.

(1)-(2) (No change.)

ii. For craps, after each set of at least five dice are inspected and found to conform to Commission standards, they shall be placed in a sealed envelope or container; provided, however, that reserve dice may be placed in individual sealed envelopes or containers. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection together with the security officer present at the time shall be attached to each envelope or container;

iii. For sic bo, following inspection, the assistant shift manager or above shall place three dice into the shaker and seal or lock the sic bo shaker. The assistant shift manager or above shall then place some form of seal over the area that allows access to open the sic bo shaker and sign and date the seal attesting to the completion of the inspection. The security officer who witnessed the inspection of the dice shall also sign the seal.

iv. At the beginning of each shift or day and at such other times as may be necessary, an assistant shift manager or person above him and a security officer shall distribute the sic bo shaker to the pit boss supervising the game of sic bo and the envelopes or containers of dice to a craps supervisor in each craps pit or place the dice in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or those persons above him in the organizational hierarchy;

v. For craps, a boxperson, at each craps table, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in a cup on the table for use in gaming. For sic bo—a pit boss shall then secure the sic bo shaker to the table. No sic bo shaker shall remain on a table for more than 24 hours.

(1) (No change.)

(2) When the envelope or container or the seal is damaged, broken or tampered with, the dice for craps shall be reinspected by the boxperson, in the presence of a dealer, and the dice for sic bo shall be reinspected by the pit boss in the presence of the dealer, prior to being used for gaming activity;

vi. (No change.)

vii. A micrometer or any other approved instrument which peforms the same function, balancing caliper, steel set square and magnet shall also be maintained in a locked compartment in each craps and sic bo pit stand; and

viii. (No change.)

(f) (No change.)

(g) At the end of each shift or day, for craps, a craps supervisor other than the one who originally inspected the dice, and for sic bo a sic bo pit boss other than the one who originally inspected the dice, shall reinspect each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to an agent of the Commission and the Division by completion and delivery of an approved three-part Dice Discrepancy Report.

1. Such dice shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the boxperson and floorperson or pit boss for craps dice and the pit boss for sic bo dice.

ii.-iii. (No change.)

2. All other dice at this time shall be put into envelopes or containers.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the boxperson and floorperson or pit boss for craps dice and the pit boss for sic bo dice.

ii. (No change.)

(h)-(k) (No change.)

19:46-1.16A Sic bo shaker; security procedures

(a) Sic bo shakers which have been filled with dice in accordance with N.J.A.C. 19:46-1.16(e)3iii may only be stored in a locked compartment in the primary storage area. Sic bo shakers which have not been filled with dice may be stored in a locked compartment in the pit stand.

(b) At the end of each gaming day a pit boss shall inspect all sic bo shakers that have been placed in use for gaming for evidence of tampering. Such evidence discovered at this time shall be immediately reported to the Commission and the Division. At a minimum, such reports shall include:

1. The date and time when the tampering was discovered;

2. The table number where the sic bo shaker was used; and

3. The name and license number of the individual discovering the tampering.

19:46-1.20 Approval of gaming equipment; retention by Commission and Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming equipment and other devices used in a casino as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, locking devices and data processing equipment.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice and cards may be found at N.J.A.C. 19:46-1.16(g) and N.J.A.C. 19:46-1.18(1), respectively.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-7. (No change.)

*[7.]**8.* Sic bo:

i. If the minimum wager at the table is $5.00 or less, the maximum wager shall be at least $100.00. Nothing in this chapter shall preclude a casino licensee from establishing different maximum wagers for each wager at the game of sic bo, provided however, that such limitations are posted at the table.

SUBCHAPTER 9. SIC BO

19:47-9.1 Dice; number of dice; sic bo shaker

Sic bo shall be played with three dice, which shall be sealed inside a sic bo shaker pursuant to N.J.A.C. 19:46-1.16. The sic bo shaker while at the table shall be the responsibility of the dealer at all times.

19:47-9.2 Permissible wagers

(a) The following shall constitute the definitions of permissible wagers at the game of sic bo:

1. "Three of a kind" shall mean a wager which shall win if the same number is showing on all three dice and the player selected that number to appear on all three dice.

2. "Two of a kind" shall mean a wager which shall win if the same number is showing on two of the three dice and the player selected that number to appear on two out of the three dice.

3. "Any three of a kind" shall mean a wager which shall win if the numeric value on all three dice is the same and the player wagered that any of the numbers 1 through 6 would appear on all of the three dice.

4. "Total Value Bet" shall mean a wager which shall win if the numeric total of all three dice equals the total of the number wagered.

5. "Two Dice Combination" shall mean a wager which shall win when the player wagered that a combination of two specific but different numeric values would appear on at least two of the dice and the two numeric values chosen are showing.

6. "Small Bet" shall mean a wager which shall win if the numeric total of all three dice equals any one of the following totals: 4, 5, 6, 7, 8, 9, or 10 and shall lose if any other numeric total is shown or if three of a kind appears.

7. "Big Bet" shall mean a wager which shall win if the numeric total of all three dice equals any one of the following totals: 11, 12, 13, 14, 15, 16 or 17 and shall lose if any other numeric total is shown or if three of a kind appears.

8. "One of a kind" shall mean a wager which shall win if one or more of the three dice shows a numeric value equal to the number wagered.

19:47-9.3 Wagers

(a) All wagers at sic bo shall be made by placing gaming chips or plaques on the appropriate areas of the sic bo layout. No verbal wagers accompanied by cash may be accepted at the game of sic bo.

(b) Each player shall be responsible for the correct positioning of his or her wagers on the sic bo layout regardless of whether the player is assisted by the dealer. Each player must ensure that any instructions given to the dealer regarding the placement of wagers are correctly carried out.

(c) Each wager shall be settled strictly in accordance with its position on the layout when the dice come to rest and the numeric value showing on each die has been entered into the electrical device and illuminated at the table.

(d) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each sic bo table.

(e) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each sic bo table.

19:47-9.4 Payout odds

(a) Payout odds on any layout or in any brochure or other publication distributed by a casino licensee shall be stated through the use of the word "to" or "win" and no odds shall be stated through the use of the word "for."

(b) Each casino licensee shall pay off winning wagers at the game of sic bo at no less than the odds listed below:

Wager	Payout Odds
Three of a kind	150 to 1
Two of a kind	8 to 1
Any three of a kind	24 to 1
Total value of 4	50 to 1
Total value of 5	18 to 1
Total value of 6	14 to 1
Total value of 7	12 to 1
Total value of 8	8 to 1
Total value of 9	6 to 1
Total value of 10	6 to 1
Total value of 11	6 to 1
Total value of 12	6 to 1
Total value of 13	8 to 1
Total value of 14	12 to 1
Total value of 15	14 to 1
Total value of 16	18 to 1
Total value of 17	50 to 1
Any two dice combination	5 to 1
Small Bet	1 to 1
Big Bet	1 to 1
One of a kind	1 to 1

(c) "One of a kind" shall be paid at 2 to 1, if two of the dice show the same numeric value, and at 3 to 1, if all three dice show the same numeric value.

19:47-9.5 Procedures for opening and dealing the game

(a) Prior to opening the sic bo table for gaming activity, the floorperson assigned to the sic bo table shall inspect the electrical device in order to ensure that the table is in proper working order. At a minimum, the inspection shall be completed by entering three numeric values into the electrical device and verifying that all winning combinations are properly illuminated.

(b) Prior to shaking the sic bo shaker, the dealer shall announce "No more bets."

(c) Once "No more bets" has been announced, the dealer shall place the cover on the sic bo shaker, and shake the sic bo shaker at least three times so as to cause a random mixture of the dice.

(d) The dealer shall then remove the cover from the sic bo shaker, announce the numeric value of each die and enter the numeric value of each die into the electrical device on the table. The electrical device shall then cause the winning combinations to be illuminated on the sic bo layout.

(e) After the winning combinations have been illuminated, the dealer shall first collect all losing wagers and then pay off all winning wagers at the odds currently being offered in accordance with N.J.A.C. 19:47-9.4. The sic bo shaker shall remain uncovered until all winning wagers have been paid.

(f) After all losing wagers have been collected and all winning wagers paid, the dealer shall clear the previously illuminated winning combinations from the table.

19:47-9.6 Irregularities

(a) If the dealer uncovers the sic bo shaker and all three dice do not land flat on the bottom of the shaker, the dealer shall call a "No Roll."

(b) If the electrical device malfunctions and the sic bo shaker has been uncovered, the dealer shall, in the presence of the casino supervisor, collect all losing wagers and pay all winning wagers. Once the wagers on the layout have been settled, all gaming at sic bo shall cease until the electrical device has been fixed.

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Vigorish Options for Baccarat, Minibaccarat and Baccarat-Chemin De Fer

Adopted Amendments: N.J.A.C. 19:47-3.3, 4.10 and 7.3

Proposed: October 7, 1991 at 23 N.J.R. 2926(a).

Adopted: November 20, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: November 22, 1991 as R.1991 d.616, **without change.**

Authority: N.J.S.A. 5:12-69(a) and 70(f).

Effective Date: December 16, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comment and Agency Response:

COMMENT: One public comment was received from the Division of Gaming Enforcement, which supported the proposal.

RESPONSE: The Commission accepted the comment.

Full text of the adoption follows.

19:47-3.3 Payout odds; vigorish

(a) (No change.)

(b) A winning tie bet shall be paid off by a casino licensee at odds of at least 8 to 1.

(c) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the amount of a five percent vigorish to 25 cents or the next highest multiple of 25 cents, and the amount of a four percent vigorish to 20 cents or the next highest multiple of 20 cents. A casino licensee may collect the vigorish from a player at the time the winning payout is made or may defer it to a later time; provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a coin or a marker button containing the amount of the vigorish owed in a rectangular space in front of the dealer on the layout imprinted with the number of the player owing such vigorish.

(d) Each casino licensee shall provide notice of any increase in the percentage of vigorish being charged at each baccarat table, in accordance with N.J.A.C. 19:47-8.3. The percentage of vigorish charged at a baccarat table shall apply to all players at that table.

19:47-4.10 Announcement of result of round; payment and collection of wagers; payout odds; vigorish

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

(c) As its fee in housing the game, the casino licensee shall extract a commission known as "vigorish" from the amount won by the Banker on each round of play, in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the amount of a five percent vigorish to 25 cents or the next highest multiple of 25 cents, and the amount of a four percent vigorish to 20 cents or the next highest multiple of 20 cents. Such vigorish shall be collected immediately after each round won by the Banker.

(d) Each casino licensee shall provide notice of any increase in the percentage of vigorish being charged at each Baccarat-Chemin De Fer table, in accordance with N.J.A.C. 19:47-8.3. The percentage of vigorish charged at a Baccarat-Chemin De Fer table shall apply to all players at that table.

19:47-7.3 Payout odds; vigorish

(a) (No change.)

(b) A winning tie bet shall be paid off by a casino licensee at odds of at least 8 to 1.

(c) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to five cents or the next highest multiple of five cents. A casino licensee may collect the vigorish from a player at the time the winning payout is made or may defer it to a later time provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a coin or marker button containing the amount of the vigorish owed in a rectangular space in front of the dealer on the layout imprinted with the number of the player owing such vigorish.

(d) Each casino licensee shall provide notice of any increase in the percentage of vigorish being charged at each minibaccarat table, in accordance with N.J.A.C. 19:47-8.3. The percentage of vigorish charged at a minibaccarat table shall apply to all players at that table.

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session

January 15, 1992

Take notice that the following agenda items are scheduled for Notice of Proposal in the January 21, 1992, New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, January 15, 1992 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak, call the State Board Office at (609) 292-0739 by 12:00 noon Friday, January 10, 1992.

Rule Proposal: N.J.A.C. 6:79, Bureau of Child Nutrition Programs, Code amendments and recodification.

Please note: Publications of the above items are subject to change depending upon the actions taken by the State Board of Education at the December 6, 1991 monthly public meeting.

(b)

THE COMMISSIONER

Special Education

Notice of Conditional Approval of Program Plan for Fiscal Years 1992-1994 under the Individuals with Disabilities Education Act

Take notice that the New Jersey Department of Education has received conditional approval of its Program Plan for Fiscal Years 1992-1994 under the Individuals with Disabilities Education Act by the United States Office of Special Education and Rehabilitative Services. Approval of the Plan entitles New Jersey to receive an IDEA-B grant award of $69.8 million for Fiscal Year 1991-92. Applicable agencies receive notice of the grant application procedure through the Department of Education.

Copies of the approved Plan are available to interested parties through the Division of Special Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

For further information contact Erin Leff at (609) 984-1286.

ENVIRONMENTAL PROTECTION AND ENERGY

(c)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

BUREAU OF UNDERGROUND STORAGE TANKS

Notice of Action on Petition for Rulemaking

Definition of "Tank Capacity" in Underground Storage Tank Rules

N.J.A.C. 7:14B-1.6

Petitioner: Fuel Merchants Association of New Jersey.

Authority: N.J.S.A. 58:10A-1 et seq., particularly 58:10A-21 et seq.

Take notice that on August 30, 1991, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking by the Fuel Merchants Association of New Jersey, concerning the amendment of the regulations related to underground storage tanks. A notice of receipt of the petition was published in the New Jersey Register on November 18, 1991, at 23 N.J.R. 3534(b).

The petitioner requests that the Department repeal the following definition of "tank capacity" appearing at N.J.A.C. 7:14B-1.6:

"Tank capacity" means the manufacturer's nominal tank size, when referring to a single tank. When referring to multiple tanks, storing the same hazardous substance at the same site, the aggregate of the nominal tank sizes will be used to determine capacity.

Specifically, petitioner objects to the aggregation of nominal tank sizes to determine capacity.

After due consideration of the petition pursuant to law, the Department has denied the petition for the reasons set forth below.

Petitioner asserts that the adoption of the definition was not in substantial compliance with the Administrative Procedure Act, and is therefore invalid. Petitioner points out that the definition was not included in the proposal of the Department's underground storage tank rules (published in the New Jersey Register on August 7, 1989 at 21 N.J.R. 2242(a)), but appeared for the first time in the publication of the adopted rule (see 22 N.J.R. 2758(a), September 4, 1990). As a result, petitioner asserts that the public was denied an opportunity to comment on the definition, and that the Legislature's oversight function under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., was thwarted.

The Department disagrees with the petitioner's assertion. Based upon public comment received in response to the proposal, the Department determined that a definition of the term "tank capacity" was necessary for the purpose of clarifying the proposal. The proposal and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (the "Act") define "underground storage tank" to include "any one or combination of tanks"; the definition, and the concept of aggregation which it sets forth, is easily inferable from the inclusion of "combination of tanks" in the definition of "underground storage tank." In addition, the Department notes that the definition codifies the Department's longstanding interpretation of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (the "Act").

Petitioner also asserts that the adoption of the definition exceeds the Department's statutory authority because the definition contravenes and conflicts with the Act. Specifically, petitioner asserts that the Act regulates tanks based upon the capacity of the individual tank and the capacity of any tanks with which it may be interconnected, and does not authorize regulation based upon the capacity of unconnected tanks at the same site. The Department disagrees with this interpretation of the Act. As noted above, the Department's longstanding interpretation is that all tanks at the same site are included within a "combination of tanks," regardless of whether they are interconnected.

Finally, petitioner asserts that the definition is unnecessary to achieve the Department's regulatory objective. The Department disagrees. The definition is necessary to avoid the possibility of installation of several small tanks on a site for the purpose of obtaining an exemption from the requirements of the Act and the Department's rules. Though petitioner states that as a practical matter, smaller tanks can be installed only as an interconnected unit, the Department's experience implementing the Act has shown otherwise.

For these reasons, the Department has denied the petition.

(d)

PINELANDS COMMISSION

Notice of Withdrawal of Petition for Rulemaking

Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a)24

Petitioners: P. West, Jr., J. Weiss, 270 Development Group, Burnt Pine Investors, Long Road Investors and First National Bank of Toms River.

Authority: N.J.S.A. 13:18A-65.

Take notice that on November 1, 1991, P. West, Jr., et al. withdrew their pending petition for rulemaking.

The petition for rulemaking was originally filed with the Pinelands Commission on May 15, 1991. A notice of the petition was published on July 1, 1991 at 23 N.J.R. 2062(d). The Pinelands Commission was originally scheduled to receive a report on the petition from the Commission's Executive Director and decide whether the petition warranted a formal rulemaking proposal at its meeting on September 6, 1991. Upon a request from the petitioners, the Pinelands Commission had previously agreed not to take action until December 6, 1991.

According to the petitioners' November 1, 1991 request, withdrawal of the petition is predicated upon Manchester Township's current efforts to re-examine its master plan and land development ordinances which may have an effect on the land use amendments sought by the petitioners.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on October 31, 1991, pursuant to the provisions of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department of Environmental Protection and Energy (DEPE). This amendment was submitted by the Sussex County Board of Chosen Freeholders. The amendment adopts a Wastewater Management Plan (WMP) for Fredon Township. That document allows for an on-site groundwater disposal system to serve the proposed Bear Brook Golf Village in Fredon Township and delineates a sewer service area for that facility. The projected wastewater flow from this residential/commercial development is 35,100 gallons per day (gpd). The WMP also delineates the non-surface discharge service areas for facilities with design capacities of less than 20,000 gpd with wastewater flows not to exceed 340 gallons per acre per day. The rest of the Township is delineated as a non-surface discharge service area for facilities with design capacities of less than 2,000 gpd.

This amendment proposal was noticed in the New Jersey Register on May 5, 1991 at 23 N.J.R. 1466(a). Comments were received during the comment period and are summarized below with the Department's and the Sussex County Board of Chosen Freeholders' response. The Sussex County Board of Chosen Freeholders considered the comments in their final action and approved the Fredon WMP in a resolution date August 1, 1991.

COMMENTS: One commenter from the Green Township Planning Board asked that the Sussex County Board of Chosen Freeholders delay approval of the Fredon WMP in order to give Green Township an opportunity to review the Bear Brook Golf Village project further. A second commenter from Fredon Township questioned the impact to groundwater from the proposed Bear Brook Golf Village. Also, the Green Township Committee requested that the Sussex County Board of Chosen Freeholders grant a 30 day time extension to the public comment period to further explore the potential impact to groundwater.

RESPONSE: Subsequent to the public meeting and comments, the Bear Brook Project submitted additional data to Sussex County regarding impact to groundwater. Two field investigations, on July 28 and 29, 1991, were made at the Bear Brook site by one of the commenters and representatives from Sussex County and Fredon Township. As a result of the submission of additional data and the field investigations, as well as additional meetings and dialogue between Green Township, Fredon Township and Sussex County, it was felt that comments and concerns were satisfactorily addressed. The extension to the comment period was not granted since comments were satisfactorily responded to within a short time frame.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on an amendment to the Monmouth County Water Quality Management (WQM) Plan. This amendment would adopt a Wastewater Management Plan (WMP) for the Township of Neptune Sewerage Authority (TONSA). This WMP was submitted by TONSA as the Wastewater Management Planning Agency. The WMP addresses the Township of Neptune as the Authority's district and the Boroughs of Bradley Beach, Avon, and Neptune City and portions of Wall Township and Tinton Falls Borough as part of the sewer service area.

The WMP delineates all of the Township of Neptune and the Boroughs of Bradley Beach, Avon and Neptune City and the portions of Wall Township and Tinton Falls as a future sewer service area and projects a wastewater flow for the sewer service area for the year 2010 of 9.669 million gallons per day. All existing and future flows are to be treated at the Township of Neptune Sewerage Authority facility (NJPDES #0024872). The Wall Township WMP adopted December 5, 1989 is incorporated by reference. Wall Township and the Borough of Tinton Falls retain wastewater management plan responsibility for their respective municipalities.

This notice is being given to inform the publlic that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7026.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. William T. Birdsall, P.E., Consulting Engineering, 1700 F Street, South Belmar, New Jersey 07719. All comments must be submitted within 30 days of the date of this notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on November 6, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq. and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management (WQM) Plan was adopted by the Department. The amendment was proposed by the Elk Township Municipal Utilities Authority (ETMUA). This amendment adopts a Wastewater Management Plan (WMP) for Elk Township, Gloucester County. The WMP identifies an expansion of sewer service area of the Gloucester County Utilities Authority's (GCUA) regional sewage treatment plant (STP) in West Deptford Township to serve the Planned Unit Development Overlay (Block 36-40, 44-269, 276, and 277) in Elk Township. Wastewater flow from Elk Township would be accepted by the GCUA regional STP on a first come, first served basis. The existing Aura School wastewater treatment system would be abandoned once connection to the GCUA regional STP sewer system became available. Areas of Elk Township zoned as Commercial Neighborhood and Recreational Residential, not in the proposed GCUA regional STP sewer service area, would be designated as areas to be served by subsurface sewage disposal systems less than 20,000 gallons per day (GPD). The remainder of Elk Township would be designated as areas to be served by subsurface sewage disposal systems less than 2,000 GPD.

This amendment was noticed in the New Jersey Register on July 1, 1991 at 23 N.J.R. 3062(c). Comments on this amendment were received during the public comment period and are summarized below with the Department's responses.

COMMENT: Sufficient capacity may not be available in the Mantua Interceptor to convey the wastewater to the West Deptford Treatment Facility.

RESPONSE: The issue of interceptor capacity is not a wastewater management planning responsibility according to the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15). A WMP is only intended to be a 20 year planning document. Adoption of this WMP should not be construed to mean that the municipal infrastructure needed to carry out the plan already exists. The issue of capacity will have to be addressed by the ETMUA and GCUA prior to application for permits for all new infrastructure.

COMMENT: An Elk Township resident was concerned about the financial and environmental impact of the Elk Township WMP on both Elk Township and West Deptford Township.

RESPONSE: This comment does not request or require a change to the WMP. However, the ETMUA invites all concerned township residents to call or visit their office or attend an MUA meeting. The ETMUA will endeavor to answer any questions or concerns residents may have about the Elk Township WMP.

INSURANCE

(a)

DIVISION OF LIFE AND HEALTH

Denial of Petition for Rulemaking

Declaration of Authority to Regulate Group Health Insurance Contracts

N.J.A.C. 11:4

Petitioner: New Jersey Optometric Association.

Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 11:1-15.

Take notice that on December 18, 1990, the Department of Insurance (Department) received a petition for rulemaking from the New Jersey Optometric Association through its counsel, Albert, Schragger, Lavine, Levy and Segal, P.C. The petition requests the Department to promulgate a rule to extend the provisions of N.J.S.A. 17B:26-2c and/or N.J.S.A. 17B:27-51 to group health contracts issued or delivered out-of-State which cover New Jersey residents. N.J.S.A. 17B:26-2c and 17B:27-51 provide that policies of individual or group health insurance delivered or issued for delivery in this State which provide for the reimbursement of optometric services shall entitle the insured to reimbursement regardless of whether the service is performed by a physician or duly licensed optometrist. Notice of receipt of the petition was published in the August 19, 1991 New Jersey Register at 23 N.J.R. 2546(c).

Specifically, petitioner requests that the Department promulgate a rule that includes the following provisions:

1. Declaring that under the authority granted to it under N.J.S.A. 17B:17-1a the Commissioner of Insurance shall be permitted to regulate group health insurance policies or contracts that are issued out-of-State for delivery to New Jersey residents.

2. Declaring that group health contracts issued out-of-State for delivery to New Jersey residents are subject to the non-discriminatory provisions of N.J.S.A. 17B:26-2c and/or N.J.S.A. 17B:27-51;

3. Declaring that group health contracts that are issued out-of-State for delivery to New Jersey residents which discriminate between licensed practitioners of optometry and other ocular practitioners or interfere with the rights of a subscriber, enrollee or insured to make a free choice of ocular practitioner are illegal and, therefore, void as against public policy; and

4. Declaring that all out-of-State insurance companies which deliver or issue for delivery group health insurance contracts for coverage of New Jersey residents cease and desist from entering into contracts for the provision of eye care services which fail to reimburse optometrists for covered vision or ocular services or which violate N.J.S.A. 17B:26-2c and/or N.J.S.A. 17B:27-51.

In accordance with N.J.A.C. 11:15-1, the Commissioner certified that the petition was duly considered pursuant to law, and referred the matter to the Department for further deliberations until November 15, 1991. As a result of those deliberations, the Department is denying petitioner's request for the following reasons:

Petitioner requests that the Department extend the provisions of N.J.S.A. 17B:26-2c to all out-of-State insurers issuing or delivering group health insurance contracts for coverage of New Jersey residents. However, N.J.S.A. 17B:26-1 et seq. regulates individual health insurance only, while petitioner's request concerns out-of-State group health insurers.

Petitioner's request to require out-of-State group health insurers to comply with the non-discriminatory eye care services reimbursement provisions of N.J.S.A 17B:27-51 cannot be considered exclusive of certain other non-discriminatory reimbursement provisions within N.J.S.A. 17B:27-1 et seq. (for example, N.J.S.A 17B:27-50 relating to physicians and practicing psychologists services, N.J.S.A. 17B:27-51.1 relating to chiropractic services, N.J.S.A. 17B:27-51.4 relating to home health care services, and N.J.S.A. 17B:27-51.8 relating to dental services). All of these provisions are part of a broad statutory scheme which grants the Department the authority to regulate group health insurers. Many, if not all, of the provisions of N.J.S.A. 17B:27-1 et seq. must necessarily be applied simultaneously in order to create a comprehensive regulatory scheme. To promulgate the regulations in accordance with petitioner's request would trigger the application of these additional statutory provisions which, in turn, would require a significant commitment of Department resources that are unavailable.

Further, the Department is unaware of any widespread dissatisfaction on the part of either group health insurers, groups or group beneficiaries in the Department's current regulatory scheme concerning group health insurance. Rather, it appears that petitioner is an interest group whose request is motivated solely by the promotion of its own aims.

N.J.S.A. 17B:17-1 et seq. and 17B:27-1 et seq. grant the Department broad statutory authority to regulate out-of-State group health insurers. However, in the absence of any clear legislative direction to establish a comprehensive regulatory scheme concerning out-of-State group health insurers, the Department declines to do so at this time and hereby denies petitioner's request.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 4, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT OCTOBER 21, 1991

NEXT UPDATE: SUPPLEMENT NOVEMBER 18, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 3667 and 3896	December 17, 1990	23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 1 and 144	January 7, 1991	23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 145 and 248	January 22, 1991	23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 1227 and 1482	May 6, 1991	23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 1483 and 1722	May 20, 1991	23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 1723 and 1854	June 3, 1991	23 N.J.R. 3679 and 3840	December 16, 1991
23 N.J.R. 1855 and 1980	June 17, 1991		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-18.1	Initial decision in contested cases	23 N.J.R. 3406(a)		
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 2208(a)		
1:14	Board of Public Utility hearings: administrative change	________	________	23 N.J.R. 3647(a)
1:31-3	Discipline of administrative law judges	23 N.J.R. 2901(a)		
1:31-3	Discipline of administrative law judges: extension of comment period	23 N.J.R. 3179(a)		
	Most recent update to Title 1: TRANSMITTAL 1991-5 (supplement October 21, 1991)			
AGRICULTURE—TITLE 2				
	Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)			
BANKING—TITLE 3				
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-19	Consumer checking accounts: preproposed new rules	23 N.J.R. 2617(a)		
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)		
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)		
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)		
3:21-1	Low-income credit unions: correction to comment period deadline	23 N.J.R. 3196(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)		
3:38-1.2, 1.4, 1.9, 2.1	Mortgage banker and broker net worth standards	23 N.J.R. 2450(a)	R.1991 d.588	23 N.J.R. 3743(a)
	Most recent update to Title 3: TRANSMITTAL 1991-8 (supplement October 21, 1991)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
PERSONNEL—TITLE 4A				
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)		
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		
4A:6-1.6	Sick Leave Injury (SLI): withdrawal of proposal	23 N.J.R. 3093(a)		
	Most recent update to Title 4A: TRANSMITTAL 1991-3 (supplement October 21, 1991)			
COMMUNITY AFFAIRS—TITLE 5				
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.1, 1.5, 2.4A, 2.6, 2.9, 4.1, 4.7, 4.11, 4.17	Uniform Fire Code: compliance and enforcement	23 N.J.R. 3552(a)		
5:18-1.4	Uniform Fire Code: applicability of requirements	23 N.J.R. 2813(a)	R.1991 d.570	23 N.J.R. 3444(a)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-2.8	Uniform Fire Code: registration and permit fees	23 N.J.R. 2999(a)	R.1991 d.530	23 N.J.R. 3325(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:18-2.8, 2.20, 3.2, 4.3, 4.19	Uniform Fire Code: smoke detector compliance in one and two-family dwellings	23 N.J.R. 3064(a)		
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)		
5:18-3	State Fire Prevention Code	23 N.J.R. 3554(a)		
5:18A-2.6	Fire Code Enforcement: collection of fees	23 N.J.R. 3552(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:23-3.8A, 3.15	Uniform Construction Code: sale of nonconforming toilets	23 N.J.R. 3602(a)		
5:23-3.15, 3.21	Uniform Construction Code: plumbing; one and two family dwelling subcodes	23 N.J.R. 2619(a)	R.1991 d.571	23 N.J.R. 3444(b)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5, 4.19	Uniform Construction Code: electronic reporting by municipal enforcing agencies	23 N.J.R. 3440(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-5.25	Uniform Construction Code: revocation of licenses and alternative sanctions; review committees	23 N.J.R. 3441(a)		
5:23-7.6A	Barrier-Free Subcode enforcement	23 N.J.R. 2620(a)	R.1991 d.561	23 N.J.R. 3445(a)
5:23-10, App. 10-A	Radon Hazard Subcode: tier I municipalities	________	________	23 N.J.R. 3745(a)
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)		
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:91-15	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92-1.6	Council on Affordable Housing: interim substantive certification	23 N.J.R. 3253(a)		

Most recent update to Title 5: TRANSMITTAL 1991-10 (supplement October 21, 1991)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:3-1, 2	Military service medals: reopening of comment period	23 N.J.R. 3409(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery: reopening of comment period	23 N.J.R. 3254(a)		

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)		
6:8-1.1, 6.1, 6.2, 6.3	Preventive and remedial programs in reading, writing and mathematics	23 N.J.R. 2085(a)		
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.13, 2A.11, 3.1, 3.3, 3.4, 5.8	Free balance and restricted appropriations; tuition rates for regular public and county schools; excess surplus calculation	23 N.J.R. 2818(a)	R.1991 d.590	23 N.J.R. 3746(a)

Most recent update to Title 6: TRANSMITTAL 1991-8 (supplement September 16, 1991)

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7:1 et al.	Centralized filing of requests for adjudicatory hearings: administrative changes	________	________	23 N.J.R. 3325(b)
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)	R.1991 d.582	23 N.J.R. 3647(b)
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 7.1, 9.8, 9.10	Shellfish growing water classification	23 N.J.R. 2993(a)	R.1991 d.592	23 N.J.R. 3751(a)
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)	R.1991 d.567	23 N.J.R. 3445(b)
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)	R.1991 d.568	23 N.J.R. 3446(a)
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)	R.1991 d.569	23 N.J.R. 3446(b)
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.4	Water Pollution Control Act penalties: administrative correction	———	———	23 N.J.R. 3754(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)		
7:22	Financial assistance programs for wastewater treatment facilities	23 N.J.R. 3282(a)		
7:25-6	1992-93 Fish Code	23 N.J.R. 2115(a)	R.1991 d.572	23 N.J.R. 3446(c)
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)	R.1991 d.562	23 N.J.R. 3450(a)
7:26A	Solid waste recycling	22 N.J.R. 3088(a)	R.1991 d.529	23 N.J.R. 3452(a)
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		

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7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic comounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:50-2.11, 4.61–4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:60-1	Low-level radioactive waste disposal facility: assessment of generators for cost of siting and developing	23 N.J.R. 3410(b)		

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8:18-1.2, 1.4, 1.5, 1.7, 1.10, 1.11, 1.13–1.17	Catastrophic Illness in Children Relief Fund Program	23 N.J.R. 2564(a)	R.1991 d.595	23 N.J.R. 3754(b)
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)	R.1991 d.580	23 N.J.R. 3648(a)
8:31B	Hospital rate setting	23 N.J.R. 3097(a)		
8:31B-3.65, 3.71	Hospital reimbursement: Schedule of Rates adjustments and reconciliation	23 N.J.R. 3042(a)	R.1991 d.589	23 N.J.R. 3755(a)
8:31B-3.73	Hospital rate setting: correction to proposed amendment and extension of comment period	23 N.J.R. 3442(a)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups	23 N.J.R. 3114(a)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)		
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)	R.1991 d.579	23 N.J.R. 3650(a)
8:33-5.1	Certificate of Need moratorium	23 N.J.R. 2881(a)	R.1991 d.566	23 N.J.R. 3512(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:39-4.1, 9.1, 9.5, 11.2, 13.4, 35.2	Long-term care facilities: patient advance directives	23 N.J.R. 3611(a)		
8:39-9.2	Long-term care facilities: mandatory administration policies and procedures	23 N.J.R. 3613(a)		
8:40	Licensure of invalid coach and ambulance services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 2245(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:42-1.1, 6.1, 6.2, 11.2	Home health agency standards: patient advance directives	23 N.J.R. 3254(b)		
8:43-4.7, 4.15, 4.16, 7.2	Residential health care facilities: patient advance directives	23 N.J.R. 3616(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: liaison participation and discharge planning	23 N.J.R. 3128(a)		
8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4–18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18,	Hospital licensing standards	23 N.J.R. 2590(a)		

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8:43G-5.1, 5.2, 5.9, 15.2	Hospital licensing standards: patient advance directives	23 N.J.R. 3256(a)		
8:43H-3.4, 5.3, 5.4, 17.2, 19.3, 19.5	Rehabilitation hospitals: patient advance directives	23 N.J.R. 3614(a)		
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)		
8:61	AIDS prevention and control	23 N.J.R. 2245(b)	R.1991 d.538	23 N.J.R. 3332(a)
8:61	AIDS prevention and control: extension of comment period	23 N.J.R. 2882(e)		
8:61-2.1, 2.2, 2.3, 2.6	Participation in AIDS Drug Distribution Program	23 N.J.R. 2247(a)	R.1991 d.539	23 N.J.R. 3334(a)
8:61-2	Participation in AIDS Drug Distribution Program: extension of comment period	23 N.J.R. 2883(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a), 2136(a), 2783(a))	23 N.J.R. 178(a)	R.1991 d.560	23 N.J.R. 3337(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)	R.1991 d.559	23 N.J.R. 3336(a)
8:71	Interchangeable drug products	23 N.J.R. 2610(a)	R.1991 d.558	23 N.J.R. 3334(b)
8:71	Interchangeable drug products	23 N.J.R. 3258(a)		

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9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)		
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9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)	R.1991 d.599	23 N.J.R. 3756(a)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

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10:2	State and County Human Services Advisory Councils	23 N.J.R. 3259(a)		
10:3-3	Contract administration: Request for Proposal (RFP) process	23 N.J.R. 957(a)	R.1991 d.554	23 N.J.R. 3356(a)
10:7	Role of county adjuster	23 N.J.R. 2953(a)		
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)		
10:15, 15A, 15B, 15C	Child Care Services: provision, eligibility for programs, co-payments and procedures	23 N.J.R. 2960(a)	R.1991 d.600	23 N.J.R. 3771(a)
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:50	Transportation Services Manual	23 N.J.R. 3619(a)		
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-5.6	PAAD: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:60-4.3	Home Care Expansion Program: cost sharing by beneficiaries	23 N.J.R. 2826(a)	R.1991 d.578	23 N.J.R. 3651(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 1.7, 3.2	Ambulatory surgical center reimbursement	23 N.J.R. 3265(a)		
10:69-5.1	HAAAD: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)
10:69A-1.2, 5.3, 5.6, 6.2, 6.10	PAAD: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)
10:69B-4.2	Lifeline Credit Program: income eligibility limits	23 N.J.R. 2623(a)	R.1991 d.563	23 N.J.R. 3514(a)

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10:69B-4.8	Lifeline Programs: submission date for utility assistance eligibility applications	23 N.J.R. 3267(a)		
10:72-6.1–6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)		
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)		
10:81-14.12, 14.18	Public Assistance Manual: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2214(a)	R.1991 d.555	23 N.J.R. 3365(a)
10:81-14.18, 14.18A, 14.18B	REACH child care co-payment	23 N.J.R. 2981(a)	R.1991 d.601	23 N.J.R. 3791(a)
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-2.8, 4.4, 5.3	Assistance Standards Handbook: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2217(a)	R.1991 d.556	23 N.J.R. 3366(a)
10:82-3.1	Assistance Standards Handbook: bank account resources	23 N.J.R. 2625(a)	R.1991 d.603	23 N.J.R. 3796(a)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 3420(a)		
10:82-5.3	REACH child care voucher rates	23 N.J.R. 2989(a)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:132	Youth and Family Services: court actions and procedures	23 N.J.R. 2099(a)	R.1991 d.576	23 N.J.R. 3651(b)

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10A:6-1.3, 2.5	Inmate access to courts: legal material and documents	23 N.J.R. 3268(a)		
10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)	R.1991 d.586	23 N.J.R. 3756(b)
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
10A:17	Inmate social services	23 N.J.R. 3065(a)		
10A:17-7	Inmate marriage	23 N.J.R. 3422(a)		
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)		
10A:20-4	Residential Community Release Agreement Programs for adult inmates	23 N.J.R. 3624(a)		
10A:22-2.6	Availability of medical information to inmates	23 N.J.R. 3424(a)		

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11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)		
11:3-16.5, 16.8, 16.10, 16.11, App.	Private passenger automobile insurance: rate filing requirements	23 N.J.R. 3199(a)		
11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(a)		
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11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC Health Care Coverage	23 N.J.R. 3066(a)		
11:4-16, 23 App.	Medicare supplement coverage: administrative corrections	———	———	23 N.J.R. 3515(a)
11:5-1.13	Real Estate Commission: preservation of brokers' files	23 N.J.R. 3428(a)		
11:5-1.38–1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)		
11:16-4	Automobile insurance: fraud and theft prevention/detection plans	23 N.J.R. 3236(a)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)		

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12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1992 rates	23 N.J.R. 2611(a)	R.1991 d.573	23 N.J.R. 3519(a)
12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:51	Vocational Rehabilitation Services	23 N.J.R. 2927(a)	R.1991 d.604	23 N.J.R. 3797(a)
12:55	Wage payments	23 N.J.R. 2939(a)	R.1991 d.605	23 N.J.R. 3807(a)
12:56-1.2–1.6	Wage and hour violations, administrative penalties and fees, hearings, and employer offenses	23 N.J.R. 2942(a)	R.1991 d.606	23 N.J.R. 3810(a)
12:58-5	Child labor violations and administrative penalties	23 N.J.R. 2944(a)	R.1991 d.612	23 N.J.R. 3811(a)
12:60-2.1, 6.1	Public works employers: inspection of payroll records	23 N.J.R. 2945(a)		
12:60-9	Prevailing wages for public works: violations, penalties, and fees	23 N.J.R. 2945(b)	R.1991 d.611	23 N.J.R. 3812(a)
12:61-1	Wage collection	23 N.J.R. 2947(a)	R.1991 d.608	23 N.J.R. 3814(a)
12:90-4.12, 4.13, 5.9, 5.14, 7.2	Boilers, pressure vessels, and refrigeration units: inspection and license fees	23 N.J.R. 2948(a)	R.1991 d.609	23 N.J.R. 3815(a)
12:190-3.14	Explosives: annual fees for permits to manufacture, sell, store or use	23 N.J.R. 2949(a)	R.1991 d.613	23 N.J.R. 3815(b)
12:195-1.9	Carnival-amusement rides: annual inspection fees	23 N.J.R. 2950(a)	R.1991 d.610	23 N.J.R. 3816(a)
12:210-1	Apparel industry registration	23 N.J.R. 2951(a)	R.1991 d.607	23 N.J.R. 3816(b)
12:235-1.6	Workers' Compensation: 1992 maximum rates	23 N.J.R. 2612(a)	R.1991 d.574	23 N.J.R. 3818(a)

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12A:31-1, 3	Direct Loan Program for small, minority, and women's businesses	23 N.J.R. 2626(a)		
12A:31-2.3, 2.7	Loan Guarantee Program for small, minority, and women's businesses: financial statements	23 N.J.R. 2627(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)	R.1991 d.591	23 N.J.R. 3761(a)
12A:121-1.2, 2	Urban Enterprise Zone program: public hearing and reopening of comment period regarding extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 2885(a)		

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13:18-11.3, 11.4, 11.5	Access to Division of Motor Vehicles records	23 N.J.R. 2857(a)	R.1991 d.575	23 N.J.R. 3520(a)
13:20-41	Persian Gulf War commemorative license plates	23 N.J.R. 2916(a)		
13:27-6.2–6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)
13:30-8.4	Announcement of practice in special area of dentistry	23 N.J.R. 3429(a)		
13:31-1	Board of Examiners of Electrical Contractors: administration and procedure	23 N.J.R. 2917(a)	R.1991 d.596	23 N.J.R. 3762(a)
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:33-1.20, 1.21, 1.22, 1.23, 1.41	Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians: fees	23 N.J.R. 3631(a)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)		
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)	R.1991 d.565	23 N.J.R. 3520(b)
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.7	Practice of medicine: prescribing of amphetamines and sympathomimetic amine drugs	23 N.J.R. 2248(a)	R.1991 d.597	23 N.J.R. 3763(a)
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)		
13:40-7.2–7.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)
13:40A	Board of Real Estate Appraisers rules	23 N.J.R. 2628(a)	R.1991 d.598	23 N.J.R. 3763(b)
13:41-4.2–4.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)	R.1991 d.550	23 N.J.R. 3337(b)

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13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late license renewal fee	23 N.J.R. 3638(a)		
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:45A-25.2, 25.4	Sellers of health club services: registration fees	23 N.J.R. 3637(a)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47	Legalized games of chance	23 N.J.R. 3638(b)		
13:47K-5.2	Commodities in package form: request for public input regarding Magnitude of Allowable Variations (MAVs)	23 N.J.R. 3645(a)		
13:54	Regulation of firearms	23 N.J.R. 2250(a)	R.1991 d.564	23 N.J.R. 3521(a)
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16:28A-1.7, 1.20	Restricted stopping and standing along U.S. 9 in Port Republic and Route 29 in Hopewell Township	23 N.J.R. 3269(a)		
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16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
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16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
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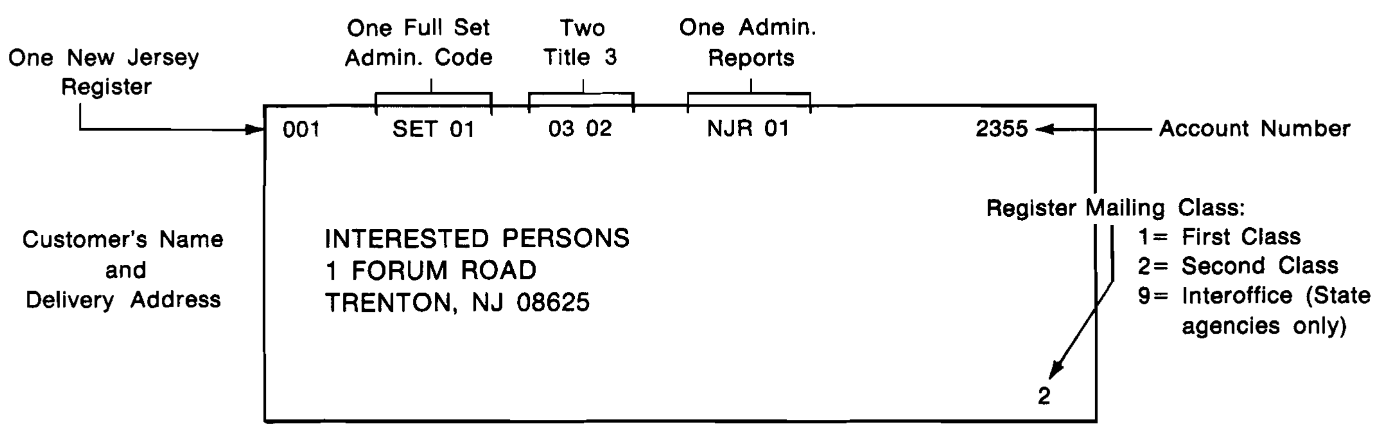

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