NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 22 NUMBER 16

August 20, 1990 Indexed 22 N.J.R. 2387-2622

(Includes adopted rules filed through July 30, 1990)

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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JULY 16, 1990

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **September 19, 1990.** 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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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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The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $90 ($180 by First Class Mail); back issues when available, $10 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 45-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to six volumes depending on the Department coverage desired.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Economic Assistance Hearings; Transmission of Cases

Proposed New Rule: N.J.A.C. 1:10-8.1

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1990-422.

Submit comments by September 19, 1990 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule requires the Division of Economic Assistance (DEA) to provide the OAL with a copy of the local agency adverse action letter whenever the DEA transmits a case to the OAL for hearing. If the DEA does not have the letter, it must direct the local agency to provide the letter to the OAL immediately, not later than two days before the hearing date. The local agency adverse action letter must be included in the case file for the administrative law judge to enable the judge to properly prepare for the hearing.

Social Impact

Cases are frequently transmitted without the agency's adverse action letter and this absence hinders effective preparation for the hearing and in some cases has caused delay and confusion at the hearing, which can be a hardship to parties involved in DEA cases. By insuring that this letter is provided to the OAL when a case is transmitted for hearing, the proposed new rule should eliminate the delay and confusion which are sometimes caused by not having the adverse action letter in the case file.

Economic Impact

The proposed new rule will have no adverse economic impact. In order to make the deadline of not later than two days before the hearing date, a welfare agency may elect to send a copy of its adverse action letter by facsimile transmission. Thus, in some cases, the proposed new rule may cause some local welfare agencies to incur additional facsimile transmission charges.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule requires the Division of Economic Assistance or local welfare agencies to provide certain information when cases are transmitted to the OAL for hearing and 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.

Full text of the proposal follows:

SUBCHAPTER 8. TRANSMISSION OF CASES TO THE OFFICE OF ADMINISTRATIVE LAW

1:10-8.1 Local agency adverse letters

Whenever a case is transmitted to the Office of Administrative Law for hearing, the Division of Economic Assistance shall provide to the OAL a copy of the local agency's adverse action letter if there is such a letter related to the case. If the DEA does not have the letter, it shall contact the local agency and direct the local agency to immediately supply the OAL with a copy of the adverse action letter, not later than two days before the hearing date.

COMMUNITY AFFAIRS

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Rent Increases

Proposed Amendments: N.J.A.C. 5:80-9

Authorized By: New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Authority: N.J.S.A. 55:14K-5g.
Proposal Number: PRN 1990-443.

Submit comments by September 19, 1990 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 (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe 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.

As a condition of receiving Agency financing, housing sponsors must apply to and obtain approval from the Agency to implement a rent increase. N.J.A.C. 5:80-9, Rent Increases, governs the procedure and sets criteria for implementing rent increases at Agency financed projects.

The Agency is now proposing to amend N.J.A.C. 5:80-9. The majority of the amendments are reorganizational and technical changes designed to clarify the rules. For administrative ease, the Agency is also proposing several changes in order to streamline the review and processing of rent increases. A summary of the changes follows:

N.J.A.C. 5:80-9.2, Applicability—This section was added to permit the Agency to use the rent increase rules of HUD or other instrumentality of the United States which is assisting the project.

N.J.A.C. 5:80-9.4, Rent increase application—The documentation required in support of a rent increase has been modified to streamline the procedure for processing rent increases. Several documents which are not needed for the Agency to determine the necessity for a rent increase are being proposed for deletion. Subsection (b) of this section is merely a recodification, which was formerly set forth at N.J.A.C. 5:80-9.8.

N.J.A.C. 5:80-9.6(b), Notice to Tenants—This subsection was added to require sponsors to certify to the Agency that they have complied with the notice provisions of this section.

N.J.A.C. 5:80-9.7, Agency review—A new provision was added which provides tenants with 15 days to inspect any omitted or corrected documents of a material nature.

N.J.A.C. 5:80-9.10, Increases subject to hearing—This section was reorganized to clarify the circumstances under which a hearing may be granted. As is the case in the current version of the rent increase rules, a hearing is permitted only when the amount of the increase will exceed the amount permitted under N.J.A.C. 5:80-9.9(a). A new provision was also added requiring sponsors to give tenants notice of rent increases subject to a hearing.

Social Impact

The majority of the amendments simply reorganize and clarify the rules for effectuating a rent increase. The only substantive impact is upon housing sponsors, as two new requirements are being proposed at N.J.A.C. 5:80-9.6(b), and 9.10(a). However the overall impact on sponsors has been a reduction in the amount of paperwork required, as several of the documents currently required of them in support of a rent increase are being proposed for deletion. As stated above, these documents are being deleted as the information contained therein is either provided in the other documents submitted by the sponsor or not needed for the Agency to determine the need for a rent increase.

No impact on tenants is anticipated as there are no substantive amendments to the rules which affect tenants. Tenants are still provided with the same notice of and the same opportunity to review and comment upon a proposed rent increase. The permissible amount of a rent increase and the effective date for implementing a rent increase have not been affected. The tenants opportunity for requesting a hearing has not been affected.

Economic Impact

The only economic impact anticipated would be the overall time and expense saved by housing sponsors from the elimination of several documents presently required but not necessary in support of a rent increase. For the reasons stated above, no impact on tenants is anticipated.

Regulatory Flexibility Analysis

The proposed amendment eliminates several documents required of housing sponsors, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Two additional reporting and record keeping requirements will be imposed by the proposed amendment. As to compliance requirements, the amendments reduce the requirements for implementing a rent increase. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed amendments. Because housing sponsors are predominantly small businesses and due to the minimal nature of the reporting and compliance requirement and the benefits to housing sponsors which may arise from the amendments, no differentiation in the compliance requirement based upon business size is proposed.

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

SUBCHAPTER 9. [RENT INCREASES] **RENTS**

5:80-9.1 Purpose

It is the express purpose of the following regulations to promote the statutory functions and obligations of the [New Jersey Finance] Agency by ensuring that the rents and/or carrying charges applied in [the various Agency developments] **housing projects** are sufficient to pay normal operating, maintenance and utility costs; provide an adequate rate of return to individuals or corporations that provide capital to assist in the development of [the] housing **projects**; provide debt service payments adequate to protect the financial interest of the Agency and its bondholders; **provide reserves for repair and replacement;** and [provide] **ensure** adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve.

5:80-9.2 Applicability

The rules within this subchapter shall apply to all housing projects. In the event the housing project is assisted, directly or indirectly, by the Department of Housing and Urban Development (HUD) or is financed by a loan from the Agency which is insured or guaranteed by the United States, or any agency thereof, the Agency may utilize the rent regulations, requirements or criteria for such project which is prescribed, utilized or required by HUD or such guarantor or insurer.

5:80-[9.2]**9.3** Rent determination

(a) [No later than three months prior to the commencing of a development's fiscal year] **At least once each year,** each **housing** sponsor shall make a determination of the rents and/or carrying charges [(hereinafter the term rent shall be construed to include carrying charges)] to be applied in the [development for the next fiscal year] **housing project. Hereinafter, the term "rent" shall be construed to include carrying charges and the term "housing sponsor" shall be construed to include a properly authorized representative of the housing sponsor. An annual rent determination shall be made regardless of whether or not a rent increase is being requested.**

(b) [This] **The rent** determination shall be [submitted to the Director of Management of the New Jersey Housing Finance Agency] in the form of a resolution **or letter from** [by the governing body of] the sponsor. [The Resolution shall include a complete rent schedule for each type of unit in the development as well as a general statement as to the reasons for arriving at the given schedule.]

5:80-[9.3]**9.4** [Supporting documentation] **Rent increase application**

(a) [Submission of the rent determination shall be accompanied by the following information and/or exhibits.] **Housing sponsors desiring to implement a rent increase shall submit a rent increase application to the Agency's Director of Management. The application shall consist of the rent determination and the following supporting documents:**

[1. Information:]

[i.]**1.** Name of [housing corporation] **sponsor,** location of [development] **housing project,** [date of organization,] number of apartments of each type;

[ii.]**2.** Date of [completion and] **initial** occupancy;

[iii. Tax status;]

3. For Section 236 developments, a status report on the housing project's implementation of its current energy conservation plan;

[iv. Present and proposed rent and carrying charge schedules;]

4. A narrative statement of the reasons for the rent increase;

[v. Present and projected non-residential income;

vi. Authorized and actual capitalization; and

viii. Amount due and status of return on equity

2. Schedules and exhibits:]

[i.]**5.** Most recent certified audit report prepared in accordance with Agency regulations;

[ii.]**6.** [Monthly operating reports for the preceeding three months;] **Summary of income and expenses for the preceding 12 month period prepared on an accrual basis for non-federally subsidized housing projects. For all projects with Federal subsidy, monthly operating reports will be required for the preceding three months.**

[iii.]**7.** [Currently approved annual] **Annual** budget **on which the requested rent increase is based;**

[iv. Proposed annual budget for next fiscal year;]

[v.]**8.** Copy of notice to tenants in accordance with [section 4 of this subchapter] **5:80-9.6;**

[vi. A copy of the most recent maintenance and inspection report performed by the Agency;

vii. A statement from all fuel suppliers listing annual amount of fuel used for each of the most recent three years, including the type and grade of fuel and current price;

viii. A statement from each utility, showing the monthly usage, per unit cost per month, for each of the previous 12 months, as well as the total usage and cost for the preceding 12 months;

ix. A copy of the most recent tax bill or payment in lieu of calculations and a statement from the appropriate municipal official setting forth the date through which taxes or in lieu of payments have been made;

x. A statement from the insurance agent listing all coverages, the term, premium, and date through which coverage has been paid.]

(b) In housing projects where there is a valid Housing Assistance Payments contract, in accordance with which rents are or may be automatically adjusted, the sponsor is not required to submit a rent increase application. This shall not, however, relieve the sponsor of the obligation to make the rent determination as required by N.J.A.C. 5:80-9.3. Upon submission of the rent determination, rents will be adjusted in accordance with the contract without resort to any of the approvals or procedures set forth in N.J.A.C. 5:80-9.6 through 5:80-9.12, provided the rent determination conforms to the schedule of rents which result from the automatic annual adjustment. If the automatic annual adjustment factor covering the period of the next fiscal year is unavailable at the time the sponsor makes its annual determination of rents, the sponsor may request that the Agency provide an estimated factor to be used in making the required calculations. Housing sponsors desiring to implement a rent increase greater than the amount which would result from the automatic annual adjustment must submit a request to the Agency specifying the additional amount required and the reasons for the request.

5:80-9.5 Additional rent increases in given fiscal year

The submission of a rent increase application for any given fiscal year shall not preclude any sponsor from making additional or revised rent increase applications in the same fiscal year, provided that they are submitted in accordance with all the procedures set forth in this subchapter.

5:80-[9.4]**9.6** Notice to tenants and cooperators

(a) Prior to **or simultaneous with** the submission of the [rent determination] **rent increase application** to the [New Jersey Housing

Finance] Agency, each housing sponsor shall provide, in writing, to each tenant and cooperator and conspicuously post at the [development] **housing project**, a notice, **in a form prescribed by the Agency,** setting forth [the determination of rents for the next fiscal year, a statement that the rent determination is subject to the review of the New Jersey Housing Finance Agency and, if applicable, subject to approval by the United States Department of Housing and Urban Development ("HUD").] **the following:**

1. The rent determination;

2. A statement that the rent determination is subject to the review and approval of the Agency and, if applicable, subject to the review and approval of HUD;

3. Reasons for the increase;

4. A statement that tenants and cooperators will have 30 days to inspect the rent increase application submitted by the housing sponsor pursuant to N.J.A.C. 5:80-9.4(a); and

5. A statement that written comments on the proposed rents may be submitted to the housing sponsor, managing agent or the Agency's Director of Management, at their current address within 30 days of the rent increase application being available for review.

(b) Upon expiration of the comment period, the housing sponsor shall submit a certification to the Agency, in the form prescribed by the Agency, that it has complied with the requirements of N.J.A.C. 5:80-9.6(a).

[Each notice shall also state that tenants and cooperators will have a reasonable opportunity to inspect the materials to be submitted to the Agency in support of the Sponsor's rent determination and that comments on the proposed rents may be submitted to the Director of Management, New Jersey Housing Finance Agency, at its then current address.]

[5:80-9.5 Additional rent increases in given fiscal year

The determination and submission of a rent schedule for any given fiscal year shall not preclude any sponsor from making additional or revised determinations in the same fiscal year, provided that the determination and submission are in accordance with all the procedures set forth herein.

5:80-9.6 Rent schedules approvable by Department of Housing and Urban Development

In all developments receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent determinations are subject to approval by the Department of Housing and Urban Development.]

5:80-9.7 Agency review

(a) [Prior to submission to HUD, the] **The** Agency will review the [determination and submission for completeness, accuracy and validity.] **rent increase application to verify the need for the rent increase requested. If the application contains errors or omissions of a material nature, the Director of Management shall require the housing sponsor to submit the corrected or omitted material and provide tenants and cooperators with notice that they will have 15 days to inspect and comment upon the corrected or omitted material.** [Upon verification by the Agency of the completeness, accuracy and validity of this submission, it will be forwarded to HUD for final action.]

(b) [As part of its review, the Agency may require that the sponsor submit additional revised information or make a new determination of rent. Within 30 days of the Agency's instructions for resubmission or determination, the sponsor must provide the requested items in accordance with the Agency's instructions or submit written reasons why it refuses to do so. If the submission or written refusal is not completed within 30 days, the Agency may forward to HUD the sponsor's rent determination and supporting documents along with the Agency's comments thereon, which may include a recommended rent structure which differs from the rent determination submitted by the sponsor.] **After review of the rent increase application and any comments thereto, the Agency shall:**

1. For housing projects receiving subsidies under HUD, submit the rent increase application to HUD for approval pursuant to N.J.A.C. 5:80-9.8;

2. For all other projects, process the application in accordance with N.J.A.C. 5:80-9.9 and, if applicable, 5:80-9.10.

(c) Prior to submission of any rent [determination] **increase application** to HUD, the Agency may [reduce or eliminate] **attach its comments and recommend a rent increase different from that requested by the housing sponsor. If the Agency reduces or eliminates** that portion of the requested increase that would provide return on owner's equity, [provided that] written notice of [each] **such** reduction or elimination [is] **will be** provided to the [owner] **housing sponsor** by the Executive Director of the Agency.

[5:80-9.8 Automatic annual adjustments

In developments where there is a valid Housing Assistance Payments Contract in accordance with which rents are automatically adjusted annually, no approval is required by the Agency or HUD, provided that the rent determination conforms to the schedule which would result from the automatic annual adjustments. This shall not, however, relieve the sponsor of the obligation to make the annual determination and complete submission as set forth in section 2 of this subchapter. If the automatic annual adjustment factors covering the period of the next fiscal year are unavailable at the time the sponsor makes its annual determination of rents, the sponsor may request that the Agency provide an estimated factor to be used in making the required calculations.]

5:80-9.8 Rent increases approvable by the Department of Housing and Urban Development

(a) In all housing projects receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent increase applications shall be submitted to and are subject to approval by HUD, unless the rent increase is automatically authorized pursuant to N.J.A.C. 5:80-9.4(b).

(b) Upon verification of the completeness, accuracy and validity of the rent increase application pursuant to its review under N.J.A.C. 5:80-9.7, the Agency will forward the rent increase application to HUD for final action. The Agency will notify the housing sponsor of HUD's final decision.

5:80-9.9 Increases approved by Agency

(a) If the [development does not receive subsidies under the Section 236 Interest Reduction Program or Section 8 Housing Assistance Payment Program] **rents are not subject to review and approval by HUD nor subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract,** then the Executive Director may make or approve a rent [determination] **increase** without a hearing as long as the resulting rents do not exceed the rents in effect for [comparable] **the same** units in the [development] **housing project** at any time in the previous 12 months by more than the combined percentage of paragraphs 1 and 2 below:

1. The percentage increase in the Consumer Price Index for rent and utilities for the most recently preceding 12 month period for which information has been published by the United States Department of Labor; plus

2. Either of:

i. The percentage, **up to a maximum of 12 percent annually,** needed to fund operating deficits, debt service [delinquencies] **arrears** or reserves for repair and replacement incurred at the [development] **housing project** during the preceding 12 months [up to a maximum of 12 percent annually], provided that no [payments were made to provide] **part of the rent increase includes an amount allocated toward providing** a return on equity **to the sponsor**; or

ii. The percentage, **up to a maximum of six percent annually,** needed to [compensate for] **offset an inability to provide a return on equity and to offset** operating deficits, debt service [delinquencies] **arrears or** [failure to fund] reserves for repair and replacement [or inability to provide a return on equity] **delinquencies incurred** during the preceding 12 months, [up to six percent annually] **if all or a portion of the requested increase is intended to pay return on equity.**

(b) The Agency shall provide the housing sponsor with a copy of its calculations done pursuant to (a) above.

5:80-9.10 Increase subject to hearing

(a) [If the requested increase in a non-federally, subsidized development is in excess of the amounts specified in N.J.A.C. 5:80-1.9] **In projects not subject to HUD approval nor subject to automatic**

annual adjustments, if the Executive Director of the Agency approves a rent increase which exceeds the amounts specified in N.J.A.C. 5:80-9.9(a), in order to cover any purpose including but not limited to operating deficits, debt service arrears, reserves for repair and replacement delinquencies incurred during the preceding 12 months, inability to pay return on equity, increases in permitted return on equity and accelerated amortization of any supplemental financing, then any person, association or corporation aggrieved by [said proposed increase] **such determination** may file for a hearing [on such increase] **by submitting a written request to the Executive Director. Housing sponsors shall give written notice to all tenants and cooperators affected by such rent increase approved by the Executive Director and of their opportunity to request a hearing.** [This filing must occur] **Persons, associations or corporations aggrieved by the increase must file their request for a hearing** within 21 days of [the date of notice of rent determination and in the manner specified in] said notice.

(b) Upon receipt of a request for a hearing or upon his **or her** own initiative, the Executive Director [of the Agency] shall request that the Office of Administrative Law conduct same. All hearings shall be conducted according to the procedures established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. [Upon a review of the record submitted by the administrative law judge, the Executive Director shall adopt, reject or modify the recommended report and issue a final written order.] **When the date of the hearing has been established, housing sponsors shall provide notices, in a manner approved by the Agency, of the date, time, place and nature of said hearing to all tenants, cooperators and other persons requesting notice of said hearing.** The scope of the hearing shall be limited to consideration of the amount in excess of the increases approvable by the Executive Director under N.J.A.C. [5:80-1.9] **5:80-9.9(a)** [and the request for or conduct of a hearing shall in no way affect or delay the authority of the Executive Director to approve increases up to the amounts specified pursuant to N.J.A.C. 5:80-1.9]. **Upon review of the record submitted by the administrative law judge, the Agency Members shall adopt, reject or modify the recommended decision and issue a final written order.**

(c) The request for a hearing, or the hearing itself, shall in no way affect or delay the authority of the Executive Director to approve increases up to the amounts specified pursuant to N.J.A.C. 5:80-9.9(a). If the Executive Director approves an amount equal to or less than the amount calculated in accordance with N.J.A.C. 5:80-9.9(a), then no hearing is required.

[5:80-9.11 Notice of hearing

When the date of the hearing has been established, notices of the date, time, place and nature of said hearing shall be provided in a manner approved by the Agency to all tenants/cooperators and other persons requesting said hearing.]

5:80-[9.12]**9.11** Notice of final approval

(a) Upon final action by HUD or the Agency, the Agency will provide written notice to the housing sponsor of the finally approved rent [schedule] **increase**. Such notice will set forth in writing the reasons for the Agency's decision with regard to the finally approved rent [schedule] **increase**.

(b) The **housing** sponsor shall provide written notice of the finally determined rent increase and the reasons for the Agency's decision with regard thereto **and, if applicable, the Agency's calculations pursuant to N.J.A.C. 5:80-9.9(a)** to all tenants and cooperators, as well as all other interested parties. [Such written] **Written** notice shall be provided to each tenant **by mail or by hand delivery to the tenant/cooperator's apartment or by personal service** and **shall** be posted in conspicuous places throughout the [development] **housing project**. Other interested parties may receive a copy of the final notice if they provide a written request for same to the sponsor.

5:80-[9.13]**9.12** Effective date of increase

The [newly determined rent schedule] **new rents** shall be effective on the first day of the [second full] month following **one calendar month's** written notice to the tenants, **cooperators** and other interested parties **which submitted a written request for the notice**.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF ENVIRONMENTAL SERVICES

Matching Grants Program for Local Environmental Agencies

Proposed New Rules: N.J.A.C. 7:5

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1H-1 et seq. and 13:1B-3.

DEP Docket Number: 024-90-07.

Proposal Number: PRN 1990-419.

Submit comments by October 4, 1990 to:

James M. Murphy, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed new rules set forth the criteria under which matching grants will be awarded by the Office of Environmental Services (OES) in the Department of Environmental Protection (Department) to local environmental agencies in accordance with the Environmental Aid Act (Act), N.J.S.A. 13:1H-1 et seq. The proposed rules also set forth the procedures by which local environmental agencies may apply to the Department to obtain such grants.

The Act authorizes the Department to award grants to local environmental agencies for any purpose which those agencies are authorized by law to perform and also for the preparation of an environmental index by such an agency. The Act defines a local environmental agency as being either a municipal environmental commission, joint municipal environmental commission established by two or more municipalities, county environmental commission or soil conservation district. The Department is limited to funding 50 percent of the cost of a project which qualifies for assistance under the Act, up to $2,500 per year in State aid to any local environmental agency or up to $2,500 per participating municipality in the case of joint municipal environmental commissions.

These proposed rules establish two categories into which grant applications will be grouped—municipal (which includes municipal and joint municipal environmental commissions) and non-municipal (which includes county environmental commissions and soil conservation districts). In order to encourage municipal level projects, 90 percent of the Program's annual grant awards has been reserved for the municipal level category. Despite the likelihood that the scope of municipal level projects will be smaller than that of non-municipal level projects, it is anticipated that municipal level environmental agencies will have access to fewer non-OES funding sources than non-municipal level agencies. OES estimates that there are currently fewer than 20 active non-municipal environmental agencies and over 200 active municipal environmental agencies.

Social Impact

Local environmental agencies study and provide information concerning natural resources and other environmental issues. These agencies also provide recommendations to municipal and county governments regarding proper management of the environment. The grants made available through this program will assist these agencies in assembling data and in preparing environmental management recommendations. These recommendations will hopefully lead to informed and thoughtful action on the part of municipalities and counties which will result in an improved environment and, thus, a higher quality of life for New Jersey residents.

Economic Impact

The proposed new rules will facilitate the distribution of State funds to local environmental agencies to enhance documentation and management of environmental resources. It is anticipated that better documentation and management recommendations concerning environmental resources will result in more cost effective application of public and private funds for environmental protection. The possibility exists that the protection of environmental resources may in some cases limit the development of areas which would otherwise have been left open to such development, thereby somewhat limiting economic opportunity for development interests.

Environmental Impact

The proposed new rules will result in a positive environmental effect because they will help local environmental agencies in developing more accurate data concerning environmental resources and in preparing more effective strategies for protecting those resources.

Regulatory Flexibility Analysis

Local environmental agencies may subcontract portions of their grant projects to entities which meet the definition of small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses must comply with the conditions imposed by the Department on the local agency grant recipients. The administrative costs of compliance are anticipated to be minor, due to the small dollar amount of the grant awards and overall project costs. The rules will have no impact on any small business which does not subcontract with a local environmental agency on a project which is partially funded by an OES grant.

Full text of the proposal follows:

CHAPTER 5
OFFICE OF ENVIRONMENTAL SERVICES MATCHING GRANTS PROGRAM FOR LOCAL ENVIRONMENTAL AGENCIES

SUBCHAPTER 1. GENERAL INFORMATION

7:5-1.1 Scope and authority

This chapter constitutes the rules of the Office of Environmental Services (OES) in the Department of Environmental Protection for the OES Matching Grants Program for Local Environmental Agencies, providing for the award of grants to such agencies in accordance with the Environmental Aid Act (Act), N.J.S.A. 13:1H-1 et seq.

7:5-1.2 Construction

This chapter shall be liberally construed to allow the Department to fully effectuate the purposes of the Act.

7:5-1.3 Definitions

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

"Act" means the Environmental Aid Act, P.L. 1972, c.49 as amended by P.L. 1975, c.334, N.J.S.A. 13:1H-1 et seq.

"Applicant" means the local environmental agency that submits an application for a matching grant in accordance with these rules.

"Department" means the Department of Environmental Protection.

"Local environmental agency" means either a municipal environmental commission, joint environmental commission established by two or more municipalities, county environmental commission or soil conservation district.

"OES" means Office of Environmental Services in the Department.

"OES Matching Grants" means grants awarded by the OES to local environmental agencies in accordance with the Act.

"Personal property" means capital-type goods, capable of being reused in the future, such as furniture, equipment, and machinery. It does not include such items as office supplies, gasoline and other consumable goods.

"Program" means the OES Matching Grants Program.

7:5-1.4 Severability

If any subchapter, section, subsection, clause or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter section, subsection, provision, clause portion or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

SUBCHAPTER 2. ELIGIBILITY FOR OES MATCHING GRANTS

7:5-2.1 Eligible applicants

Local environmental agencies are eligible to submit applications for OES Matching Grants.

7:5-2.2 Eligible projects and costs

(a) The following projects qualify for OES Matching Grants through the Program:

1. Natural and environmental resources inventories or portions thereof including, but not limited to, identification of stream corridors, wetlands, floodplains, forestry resources, steep slopes, important open spaces, scenic areas, wildlife habitat, cultural features and potential public recreation and conservation lands;

2. New and updated planning studies and reports describing strategies to protect natural and environmental resources including, but not limited to, plans for the creation, protection or preservation of greenways; open spaces; stream corridors; forestry or scenic resources; urban, suburban and rural trails or bikeways;

3. Preparation of draft ordinances or master plan amendments to protect natural and environmental resources, for referral to a municipal or county governing body; and

4. Projects designed to disseminate information to the public concerning environmental resources including, but not limited to, actions which individuals, public institutions and business entities can take to protect the environment.

(b) The following items are eligible for funding by the Program, when incurred in implementing qualifying projects listed in (a) above:

1. Costs of materials, supplies and reproduction for reports, policy recommendations, draft ordinances, publications, maps, diagrams and other similar documents;

2. Fees and direct expenses for consultants, including, but not limited to, those for architects, attorneys, cartographers, computer data base managers, engineers, environmental resource consultants, historic preservationists, landscape architects and planners; and

3. Up to $500.00 total for the purchase of personal property which is determined by OES to be required for the execution of a project which is approved by OES.

(c) None of the following items and costs are eligible for funding by the Program, nor will they be considered matching funding on the part of a local environmental agency:

1. Charges for time spent by volunteers or paid municipal employees;

2. Any sums spent in excess of a total of $500.00 for the purchase of personal property; or sums not approved by OES which are under $500.00 and spent for the purchase of personal property;

3. Costs of acquisition of real property, although costs for planning studies on which eventual land acquisition may be based are eligible for funding;

4. Real estate appraisals;

5. Metes and bounds property surveys;

6. Construction or real estate improvement activities of any kind;

7. Bonus payments of any kind;

8. Charges for contingency reserves;

9. Charges for deficits or overdrafts;

10. Interest expenses;

11. Costs of services, materials or equipment obtained under any other State program;

12. Costs of discounts not taken;

13. Contract cost overruns, not approved by OES, that exceed the allowable amount as per the contract specifications;

14. Costs of fund raising;

15. Costs of lobbying;

16. Costs of all work which is performed outside the approved work period or which is not included in the scope of work set forth in the project agreement, unless later approved by OES as such; or

17. Work performed on behalf of a county or municipal government which has not been awarded in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

SUBCHAPTER 3. ALLOCATION OF OES MATCHING GRANT FUNDING

7:5-3.1 Funding availability

The availability of OES Matching Grants funds is subject to legislative appropriation and is not guaranteed to any applicant for any year until that applicant receives from OES a Notice of Award of Grant.

7:5-3.2 Funding categories

(a) OES Matching Grants funds available in any one year shall be allocated by OES within the following two categories:

1. Municipal Category: This category shall include municipal and joint municipal environmental commissions.

2. Non-municipal Category: This category shall include county environmental commissions and soil conservation districts.

(b) Ninety per cent of total OES funds annually appropriated to the Program shall be initially allotted to the municipal category. The remaining 10 percent shall be initially allotted to the non-municipal category. The actual amount awarded in each category may vary from these percentages in accordance with (c) below. OES may vary these percentages of initial funding allotted to each category for any one year by notifying the public of such through notice published in the New Jersey Register at the time funding availability and application dates are announced annually.

(c) If within any one year the total award of Matching Grants to eligible grant applicants in either one of the two funding categories above does not utilize all of the funding originally allotted to that category by OES, then the amount of unutilized funds from that category shall be transferred for award to eligible applicants within the other category for that year.

7:5-3.3 Ranking of grant applications

(a) Each year, available OES Matching Grant funds shall be allocated within each of the funding categories set forth in N.J.A.C. 7:5-3.2 in accordance with a ranking of applications received by OES, based upon the criteria listed in (b) below.

(b) Within each funding category, all applications for OES Matching Grants in a given year shall, for the purpose of determining priority for funding, be ranked on the basis of the degree to which the proposed project:

1. Has the broad support of other local or county agencies, civic groups, etc. Letters of endorsement may be submitted to OES as evidence of such support;

2. Is responsive to regional as well as local needs. Projects undertaken jointly by adjacent local environmental agencies are encouraged;

3. Helps to incorporate planning and regulatory responsibilities of the Department into the local and regional planning processes;

4. Will document and protect environmental resources that are of particular importance in implementing the State Development and Redevelopment Plan;

5. Is designed to produce a definitive strategy to protect a resource area, particularly projects which integrate regulation of environmentally sensitive areas with local, regional and Statewide open space and recreation planning;

6. Will address urban environmental needs, particularly planning which integrates such things as open space and recreation with historic resources protection and urban forest management;

7. Will raise awareness of the public's responsibility to actively participate in protecting the environment;

8. Demonstrates a strong likelihood of tangible results; and

9. Has the demonstrated support of the local governing body in charge of allocating matching funding. Resolutions or letters of intent to provide matching funding shall be considered as evidence of such support.

7:5-3.4 Grant amount

The minimum Matching Grant shall be $1,000; the maximum grant shall be $2,500 to any local environmental agency, except that in the case of joint environmental commissions the maximum shall be $2,500 per participating municipality. The contribution by the Department shall not exceed 50 percent of a cost of the project which qualifies for assistance under the Act and this chapter.

7:5-3.5 Grant payment

The entire grant amount shall be paid to the grant recipient in one sum, following receipt and acceptance by OES of all agreed upon work product of a project, and upon compliance with all terms of the project agreement required under N.J.A.C. 7:5-4.2(c).

7:5-3.6 Matching funds

A local environmental agency's share of project funding shall be in the form of funding dedicated to the agency for the project.

SUBCHAPTER 4. APPLICATION PROCEDURES

7:5-4.1 Announcement of funding availability

Announcement of funding availability and the opening and closing dates for submission of OES Matching Grants applications shall be published by the OES in the New Jersey Register as required by and in accordance with N.J.S.A. 52:14-34.4.

7:5-4.2 Application and review sequence

(a) Local environmental agencies shall submit the following items to the OES:

1. A completed application form provided by OES;

2. A certified true copy of an ordinance creating the local environmental agency, which ordinance shall indicate that such agency has the power to conduct projects such as the proposed project and to accept grants such as the OES Matching Grant; and

(b) A notice of receipt of the application will be sent by the OES to each applicant.

(c) OES shall notify each applicant of its determination to approve, conditionally approve or deny the application.

1. No final approval shall be granted unless and until the applicant submits a copy of a resolution of the governing body of the county or municipality which created the local environmental agency recommending that the application for funding under the OES Matching Grants Program be approved. Such a resolution should follow the form of the model resolution approved by OES for this purpose. Copies of this model resolution are available from OES upon request. The model resolution is published as a non-regulatory appendix at N.J.A.C. 7:5, Appendix A.

2. Final approval shall be contingent upon such other conditions as OES shall include in a notification of conditional approval to the applicant.

(d) If the application is approved, funds shall be distributed as specified at N.J.A.C. 7:5-3.4 and in accordance with a project agreement between the OES and the applicant which specifies, among other things, the following:

1. Amount of grant;
2. Project scope;
3. Work period, not to exceed one year;
4. Itemized budget; and
5. Work product to be submitted to the OES.

(e) Application materials become the property of the Department and will not be returned to the applicant.

APPENDIX A
MODEL RESOLUTION RECOMMENDING APPROVAL OF APPLICATION FOR FUNDING UNDER THE OES MATCHING GRANT PROGRAM

WHEREAS, on (date), the (city/township/borough/county) of (name of municipality/county) established the (local environmental agency) pursuant to the authority of (citation); and

WHEREAS, the (local environmental agency) has applied for a matching grant from the New Jersey Department of Environmental Protection (Department), Office of Environmental Services (OES) Matching Grants Program established pursuant to N.J.S.A. 13:1H-1 et seq. for funding in connection with (description of project), total cost of the project being $ _____; and

WHEREAS, the Department has reviewed the application submitted by the (local environmental agency) and has found it to be in conformance with the scope and intent of the OES Matching Grants Program and has approved the (local environmental agency's) request for funding in the amount of $ _____ ; and

WHEREAS, in order to obtain such a grant, it is necessary that the (local environmental agency) enter into an agreement with the Department and use such grant funds in accordance with applicable rules and statutes; and

WHEREAS, in order to obtain such a grant, it is necessary that the (city/township/borough/county) of (name of municipality or county)

certify that matching funds in the amount of $ _____ will be provided by the (city/township/borough/county).

NOW, THEREFORE, BE IT RESOLVED by the (mayor/executive officer) and the Council of the (city/township/borough/county) of (name of municipality or county), county of _____ , and the State of New Jersey, as follows:

1. That (title of officers) is hereby authorized to execute a grant agreement and any amendments to the grant agreement for the (local environmental agency) on behalf of the (local environmental agency) and the (city/township/borough/county) of (name of municipality or county) with the New Jersey Department of Environmental Protection, Office of Environmental Services under Project Number _____ providing a grant in the amount of $ _____ to the (local environmental agency) of the (city/township/borough/county) of (name of municipality or county) for the (description of project).

2. That upon execution of the above grant agreement the (city/township/borough/county) of (name of municipality or county) will provide the (local environmental agency) with matching funds, not to exceed $ _____ , consisting of $ _____ cash and $ _____ in-kind contributions.

3. That the (local environmental agency) and the (city/township/borough/county) of (name of municipality or county) agree to comply with the provisions contained within the OES Matching Grants Program Rules and all other applicable rules and statutes.

4. That this Resolution shall take effect immediately.

Introduced and passed _____ , 19 ____ .

_____ Aye

_____ Nay

_____ Abstentions

Approved as to form: _____ Municipal/County Attorney

Approved: _____ Mayor/Executive Officer

CERTIFICATION

I, (name of clerk), Clerk of the (city/township/borough/county) of (name of municipality or county), County of _____ , State of New Jersey, do hereby certify that the foregoing is a true copy of a Resolution adopted by the (mayor/executive officer) of the (city/township/borough/county) of (name of municipality or county) at a meeting held on the _____ day of _____ , 19 ____ .

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the (city/township/borough/county) of (name of municipality or county) this day of _____ , 19 ____ .

_____ (Name and Title of Clerk)

Please disregard second references to "County of _____" if this is a county project.

Please disregard references within the fifth "WHEREAS" paragraph and Resolution Number 2 to matching funds requirements if matching funds are to be provided by a nonprofit organization. If matching funds are to be provided by a nonprofit organization, attach a corporate resolution from the nonprofit sponsor certifying that matching funds have been committed to this project.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Notice of Public Hearings
Family Leave Act Rules
Proposed New Rules: N.J.A.C. 13:14

Take notice that, pursuant to N.J.S.A. 52:14B-4, the Division on Civil Rights will conduct two **public hearings** in order to receive public comments on its proposed rules interpreting provisions of the Family Leave Act, N.J.S.A. 34:11B-1 et seq. The hearings will be held on:

Wednesday, September 12, 1990
9:00 A.M.-4:30 P.M.
Office of Administrative Law
185 Washington Street (corner of Raymond Boulevard)
Newark, New Jersey

Wednesday, September 26, 1990
9:00 A.M.-4:30 P.M.
Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Mercerville, New Jersey

The proposed rules were published in the New Jersey Register on July 16, 1990 at 22 N.J.R. 2129(a). The written comment period for the proposed rules expired on August 15, 1990.

Persons wishing to make oral presentations at either of the hearings shall submit a synopsis of the proposed statement to Director C. Gregory Stewart no later than September 4, 1990, so that the Division may determine the sequence and identity of speakers who will provide it with relevant, non-cumulative comments and data. Submissions should also indicate which hearing location is preferable, and should be sent to:

C. Gregory Stewart, Director
Division on Civil Rights
1100 Raymond Boulevard
Room 400
Newark, New Jersey 07102

(b)

BOARD OF PHARMACY
Application for Written Examination
Proposed Amendments: N.J.A.C. 13:39-2.2 and 2.8

Authorized By: State Board of Pharmacy, H. Lee Gladstein, Executive Director.
Authority: N.J.S.A. 45:14-26.2; 45:14-36.1.
Proposal Number: PRN 1990-444.

Submit comments by September 19, 1990 to:
H. Lee Gladstein, Executive Director
Board of Pharmacy, Room 325
1100 Raymond Boulevard
Newark, New Jersey 07102

Summary

N.J.A.C. 13:39-2.2 requires applicants for the National Association of Boards of Pharmacy (NABPLEX) examination to file their applications with the Board of Pharmacy at least 60 days prior to the examination date, except in extenuating circumstances. N.J.A.C. 13:39-2.8 contains a similar 60-day deadline with regard to submission of a photograph and certain identification information. The Board has found that 30 days is sufficient time to process examination applications. Therefore, for the benefit of the applicant, the Board is proposing to amend N.J.A.C. 13:39-2.2 and 2.8 to reduce to 30 days the 60-day deadlines for filing applications and submitting proof of identity.

Social Impact

The proposed amendments will be beneficial to applicants for the NABPLEX examination, who will have an additional 30 days prior to the examination to complete the application and obtain and submit the required proof of identity. The proposed amendments will have no impact on the general public.

Economic Impact

There will be no discernible economic impact as a result of the amendments to N.J.A.C. 13:39-2.2 and 2.8, which merely provide to applicants for the NABPLEX examination an additional 30 days within which to file with the Board their applications and proof of identity.

Regulatory Flexibility Statement

The proposed amendments to N.J.A.C. 13:39-2.2 and 2.8 will affect only individual applicants for the NABPLEX examination; no regulatory flexibility analysis pursuant to N.J.S.A. 52:14B-16 is, therefore, necessary.

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

13:39-2.2 Application to be filed

An applicant for the written examination must file an application for such examination at least *[60]* **30** days prior to the date of the examination unless this requirement is waived by the Board because of extenuating circumstances. The required fees as prescribed in N.J.A.C. 13:39-1.3 must also be submitted.

13:39-2.8 Proof of identity of applicant

An applicant for the written examination must submit to the Board *[60]* **30** days in advance of the date of the written examination a bust photograph mounted on a document to be supplied by the Board requesting certain identification information.

(a)

DIVISION OF CONSUMER AFFAIRS

Administrative Rules of the Division of Consumer Affairs

Proposed Readoption with Amendments: N.J.A.C. 13:45A

Proposed Repeal: N.J.A.C. 13:45A-17

Authorized By: Patricia A. Royer, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4 and 45:17A-15 (applicable to N.J.A.C. 13:45A-17 only)

Proposal Number: PRN 1990-427.

Submit comments by September 19, 1990 to:
Patricia A. Royer, Director
Division of Consumer Affairs, Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Division of Consumer Affairs is proposing to readopt its administrative rules set forth at N.J.A.C. 13:45A. The current text of this chapter is scheduled to expire on December 16, 1990, pursuant to Executive Order No. 66(1978), commonly known as the "Sunset"Executive Order. These rules enforce the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and enable the Division to have in place procedures which serve and protect the public's best interests. The Division has reviewed the existing rules and found them to be vital to the protection of the State's consumers, the purpose for which they were originally promulgated. The readoption is proposed with the following amendment:

Subchapter 17, entitled sale of advertising in journals relating or purporting to relate to police, firefighting or charitable organizations, has been deleted in its entirety. This subchapter existed primarily because police organizations were not permitted to solicit for contributions or to engage professional fund raisers or solicitors for charitable or non-charitable fund raising. The only means of fund raising in which police organizations were permitted to engage was the sale, through ancillary groups such as the Fraternal Order of Police, of advertising in trade publications. These activities of police and auxiliary or fraternal organizations were regulated by N.J.S.A. 2A:170-20 and 20.1 specifically. The legislative history of the enactment of N.J.S.A. 2A:170-20 et seq. indicates that in regulating fund raising the Legislature saw a specific need to separate police from other groups that might engage in solicitation, and to enact a law prohibiting police solicitation and requiring more stringent disclosures than the Charitable Fund Raising Act or regulations demanded. Therefore, subchapter 17 was promulgated jointly under the Consumer Fraud Act, N.J.S.A. 56:8-4, and the Charitable Fund Raising Act, N.J.S.A. 45:17A-1 et seq., in order to protect the consumer from unethical conduct by paid solicitors. This is especially important in connection with the sale of advertising in journals relating or purporting to relate to police or firefighting organizations where the potential exists for abuse or the appearance of coercion.

However, as a result of the recent opinion by the Honorable Dickinson R. Debevoise of Federal Distric Court, Newark, in *Telco Communications Inc., v. James J. Barry, Jr., et al.,* Dkt. No. 89-3393 (D.N.J. filed March 5, 1990), police organizations in the State of New Jersey may now solicit for contributions and engage professional fund raisers and solicitors for both charitable and non-charitable fund raising. According to the *Telco* decision, when police organizations are engaged in such fund raising they will now be subject to the Charitable Fund Raising Act. The *Telco* decision also found the more stringent disclosure requirements contained in subchapter 17 to be unconstitutional per *Riley v. National Federation of the Blind of North Carolina,* 487 *U.S.* ___, ___, *108 S. Ct.* 2667, 2673, 101 *L. Ed. 2d* 669 (1988). Accordingly, the remaining regulations in subchapter 17 are now redundant since protective mechanisms will be provided by the Charitable Fund Raising Act and regulations. Also, the consumer continues to be generally protected against fraud and misrepresentation under the Consumer Fraud Act.

Two technical amendments have been made to subchapters 21 and 22, the rules concerning the sale of kosher products and inspections of dealers in kosher products. N.J.A.C. 13:45A-21.3, Display and handling requirements, has been amended to reflect that these requirements apply to entities which sell exclusively kosher food or food products as well as to those that sell both kosher and non-kosher products. The definition of "properly identified kosher poultry," inadvertently omitted from the list of definitions, has been inserted in N.J.A.C. 13:45A-22.1.

This chapter contains 24 subchapters which cover the following topics: deceptive mail order practices, motor vehicle advertising practices, sale of meat at retail, banned hazardous products, delivery of hosuehold furniture and furnishings, deceptive automotive sales practices, deceptive practices concerning automotive repairs and advertising, tire distributors and dealers, merchandise advertising, servicing and repairing of home appliances, sale of animals, powers to be exercised by county and municipal officers of consumer affairs, unit pricing of consumer commodities in retail establishments, disclosure of refund policy in retail establishments, home improvement practices, sale of advertising in journals relating to police, fire fighting or charitable organizations, plain language review, petitions for rulemaking, resale of tickets of admission to places of entertainment, representations concerning and requirements for the sale of kosher products, inspections of kosher meat and poultry dealers and dealers of kosher food and food products, records required to be maintained by kosher meat and poultry dealers, deceptive practices concerning watercraft repair, sellers of health club services, and automotive dispute resolution.

Two additional subchapters are reserved for future use.

Social Impact

The readoption of N.J.A.C. 13:45A will have a substantial and beneficial social impact upon consumers, inasmuch as all of these rules protect the consumer against unfair business practices. The rules proposed for readoption will enable the Division's Office of Consumer Protection to continue to respond to consumer complaints and to continue its task force operations to ensure compliance with the Consumer Fraud Act. In addition, these rules provide guidelines to and place reasonable responsibilities on all the businesses and services described above in connection with the sale and advertisement of their goods and services. The social conditions which existed at the time of the adoption of these rules still exist and, in fact, the Division expects to be facing a number of new issues which will require implementation of the rules. These include new businesses that solicit solely to senior citizens to sell goods and services and new methods of marketing such as electronic solicitation. Failure to readopt the current rules would jeopardize effective operation of the Office of the Consumer Protection and would place the consumer at risk in his or her transactions with the business community. A detailed analysis of the social impact of each of the subchapters of N.J.A.C. 13:45A follows.

Subchapter 1 protects mail order and catalog customers by setting a time limit for the receipt of either the merchandise as ordered, a refund, or substituted merchandise. If a merchandise substitution is necessary, substituted goods must be of equivalent or superior quality and the merchant must offer to accept return of the goods within a specified period if the consumer is dissatisfied. These requirements are of obvious benefit to consumers, because prompt delivery and satisfaction with mail-order merchandise should be ensured thereby. Also, the provision regarding full address and name disclosure by mail order businesses benefits the public by requiring an actual address to supplement a post office box number that might appear in advertising or promotional materials. Not only is the consumer thus provided with an avenue of recourse to a specific business address, but also the Division's enforcement efforts are facilitated by having the legal name and permanent business address of the offeror involved in a mail order transaction.

The rules in subchapter 2, which set forth information that must be provided in auto advertising as well as prohibited practices, have a clearly positive social impact in that their purpose is to curtail deception and promote fair dealing. Because of these rules, prospective purchasers or

lessees of motor vehicles must be provided with specific details of models offered at an advertised price, so that more informed comparison shopping is possible; advertisement of "phantom" vehicles at an attractive price, and other deceptive practices, are also avoided.

Readoption of subchapter 3, Sale of Meat at Retail, will have a positive impact on consumers. This subchapter clearly and precisely defines every cut of meat and sets forth labeling requirements, advertising restrictions and restrictions on fat and breading content of certain meat food products. The labeling requirements ensure that the consumer is clearly informed concerning the quality and content of the meat or meat food product, and the restrictions on fat and breading content protect the public health. The meat charts contained in these rules aid butchers and meat retailers in identifying all cuts of meat.

Subchapter 4, which prohibits the manufacture, distribution or sale of any consumer product contrary to any order of the Consumer Product Safety Commission, implements on the State level the provisions of 15 U.S.C. §2051. Readoption of this subchapter will continue to protect the public health, safety and welfare because it helps ensure that banned hazardous products do not reach the marketplace.

Delay or non-delivery of household furniture that has been ordered is one of the most frequent complaints reported to the Division. The rules in subchapter 5, while not entirely curative, have since 1974 provided some degree of protection to consumers who incur a financial obligation or pay in advance for furniture, then wait indefinitely to receive it. The rules mandate that a delivery date be inserted in the purchase contract and that the seller fulfill certain delivery obligations, such as written advisories, to the wailting customer. They at least insure that the customer will be kept advised of delays and will have the option of cancellation or refund if a delivery date cannot be met.

Subchapter 6 was implemented in response to observed abuses in automotive sales practices in which consumers were frequently induced to expend additional monies for services that were not in fact being performed, were misrepresented as mandatory, or were subject to dealer reimbursement by other entities. Subchapter 6 has protected the consumer by requiring that, before the consumer becomes obligated to pay for any services, auto dealers itemize on the sales document all pre-delivery and documentary services to be performed and conspicuously place on the front of the sales document disclosure notices with regard to the consumer's right to itemized prices for such services. As a further protection for the consumer, this subchapter lists as unlawful practices charging for pre-delivery services for which the auto dealer is reimbursed by the manufacturer and representing to the consumer that a governmental entity requires the dealer to perform any documentary services. Readoption of this subchapter will enable consumers to continue to enjoy these protections.

By clarifying rights and responsibilities with regard to automotive repairs, subchapter 7 facilitates mutual consumer and automotive repair dealer understanding of equitable repair procedures. Reasonable and legitimate steps are specified, with the result that both the dealer and the consumer are assured that the repair transaction is conducted fairly and by mutual agreement as to terms.

Subchapter 8 was initially promulgated to implement on the State level certain provisions of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1402 (1970). These rules require tire distributors and dealers to provide the tire purchaser with a copy of certain information about the tire which the dealer is required by Federal regulation to forward to the manufacturer, that is, name and address of the tire seller and purchaser and tire identification number. The consumer thus is provided with essential follow-up information in the event the tire is defective or further information is required.

Subchapter 9, initially promulgated in March of 1974 and periodically readopted and amended since that date, aims to prevent a number of problem practices in the consumer marketplace as indicated by consumer complaints as well as field inspections conducted by the Divison of Consumer Affairs. The subchapter is directed toward identified problem practices such as non-availability of advertised items in sufficient quantity to meet reasonably anticipated consumer demand; failure to issue, or misuse of issuance of, rainchecks; and use of unsubstantiated or misrepresented advertising claims. Since general merchandise advertising has been and remains perhaps the primary means of attracting consumers to consider and make purchases in the marketplace, protection against the identified deceptive practices is of distinct social value. The rules in subchapter 9 extend to consumers certain assurances that advertisers must advertise truthfully. Non-compliance allows the consumer to seek clear-cut redress, pursuant to the specific requirements of the rules. Under the Consumer Fraud Act, the Division may also seek specific sanctions where there are serious or persistent violations. In addition to the consumer benefit provided by this subchapter, business and other entities concerned with advertising are benefitted by the removal of unfair competitive advantage going to the minority of advertisers who engage in deceptive practices.

The readoption of subchapter 10 will be beneficial to the consumer who purchases or requests service on a home appliance. The rules ensure that the consumer is provided with a written copy of any warranty or service contract information and is advised, before becoming committed to any repair or servicing expense, of any diagnostic charges or set fees and the method used to determine the total charge. The rules also protect the consumer from deceptive representations by enumerating practices which are unlawful under the Consumer Fraud Act. These practices include commencing work without having obtained the consumer's signature on a written estimate of labor and parts, failing to provide the consumer with a copy of such authorization, making false or unrealistic promises to induce the consumer to authorize the services, charging the consumer more than the estimate without consent, and failing to offer to return replaced parts unless an exchange price is offered.

Subchapter 11 is reserved for future use.

Subchapter 12 protects the consumer who has purchased a sick dog or cat, and indeed seeks to insure that an animal is not seriously ill or impaired before the consumer makes the purchase, since the rules require quarantine of those animals suffering from an infection or contagious disease. Also, the definitions and terminology used in the subchapter reduce consumer confusion concerning a "kennel" as compared to a "pet shop," and what makes an animal "unfit for purchase." The requirement of a written record of the animal's health, and the redress procedures, benefit the consumser by lessening problems and expenses that might result from the purchase of a sick dog or cat.

Subchapter 13 sets forth powers delegated by the Division to county and municipal officers of consumer affairs. These rules provide a working guideline to such officers in the exercise of the powers delegated to them. The rules also provide a significant benefit to the consumer. In a number of instances, complaints may be handled more expeditiously on the local level by those most familiar with the community and the issues involved. Moreover, the educational and training requirements ensure that county and municipal directors, staff employees and representatives are adequately trained to successfully investigate or mediate consumer complaints.

Subchapter 14 permits consumers to make informed decisions on purchases in regulated retail establishments. The rules provide the consumer simplified standards to readily compare the price per unit of measure for comparable commodities. In addition to other factors entering into consumers' purchase decisions, such as package size and desired frequency of shopping, the rules allow the consumer the ability to utilize cost per standard quantity or size as an additional factor. The standardized methods of comparison available to consumers also tend to improve the retail selling environment by enhancing consumer confidence in the utility of their shopping decisions.

Subchapter 15 requires retail establishments to post their refund policy, including all terms and time limitations, at designated locations. The rules do not apply to businesses which, for a period of not less than 20 days after purchase, provide a cash refund for a cash purchase or a cash refund or credit for a credit purchase. Since a store's refund policy is often an element in a purchaser's decision to buy, these rules allow consumers to more properly evaluate an item prior to purchase. In addition, the full disclosure of such a policy will engender more equitable competition among retail establishments.

By creating standards of disclosure, prohibiting certain improper practices and requiring written disclosure of important information about the contractor and the specific contract, subchapter 16 on home improvement transactions gives both consumers and reputable contractors the assurance that work is to be performed according to reasonably defined, objective criteria. Since home improvement work, with the exception of work done by licensed master plumbers and electrical contractors, has been a comparatively unregulated area in the consumer marketplace, the intent of subchapter 16 is to provide a means of taking action against deceptive practices in this area and to reduce uncertainty as to contract terms and criteria of home improvement jobs. The required disclosures and contract inclusions, and the list of prohibitions in subchapter 16, while not entirely curative, have alleviated many consumer problems by providing home improvement contractors with a clear idea of what must be done and what may not be done.

Subchapter 17 has been deleted for the reasons set forth in the Summary statement.

Subchapter 18, consisting of a single provision that sets a $50.00 fee for Plain Language review of consumer contracts, implements legislation designed to protect the consumer by ensuring that consumer contracts are more readily understandable.

The readoption of subchapter 19 will be beneficial to the public because it clearly outlines the procedure by which interested persons may petition the Division for rulemaking. The provisions in this subchapter serve to facilitate public participation in the Division's rulemaking process.

Subchapter 20 has a positive social effect on consumers who purchase tickets of admission to places of entertainment in New Jersey. The rules ensure that ticket agents are in compliance with Chapters 135 and 220 of the Public Laws of 1983, which bar exorbitant markups on ticket resales and require, among other things, that ticket agents meet a bonding requirement. In granting licensure, the Director may consider whether an applicant has a civil or cirminal record and is financially responsible. A bona fide place of business is required, as are full and accurate records, and the practice of advertising unscheduled engagements is barred. All of these steps benefit and protect consumers who purchase tickets of admission to New Jersey places of entertainment or events from a ticket agent.

Subchapters 21 and 22, which require that products sold as kosher be properly prepared and identified, protect the consumer of kosher products from possible misrepresentation. Proper identification of food sold as kosher ensures that merchandise is as represented to the purchaser, a basic principle of the Consumer Fraud Act.

Subchapter 23 relates to the repair of watercraft of all kinds, from catamarans to power boats. Boating is a major leisure time activity for many New Jersey residents and persons who vacation in this State, and these consumers are favorably impacted by the subchapter 23 requirements, which are aimed at the elimination of deceptive practices in watercraft repair. By clarifying rights and responsibilities with regard to watercraft repair, both consumers and watercraft repair dealers are assured, at least to some degree, that repair transactions are conducted in an equitable, mutually agreeable environment. The added confidence that this brings to the area of recreational boating enhances both the boating industry and the enjoyment of the boating public.

Subchapter 24 is reserved for future use.

Subchapter 25 was promulgated to implement the provisions of N.J.S.A. 56:8-39 et seq., an Act Regulating the Seller of Health Club Services. The Act, which supplements the Consumer Fraud Act, was implemented in response to numerous consumer complaints resulting from the bankruptcies of many health clubs. These rules are designed to protect the consumer by ensuring that sellers of health club services provide relevant data about ownership and operations to the Division of Consumer Affairs.

The rules in subchapter 26 implement provisions of the revised "Lemon Law," P.L. 1988, c. 123. Their social impact is decidedly positive, because the rules eliminate to a high degree the frustrations, endless delays and lengthy arbitration processes formerly experienced by consumers who attempted to redress grievances related to a defective motor vehicle. The consumer now has available the option of participating in a summary hearing procedure under the direct control of the Division of Consumer Affairs and the Office of Administrative Law; the purchaser or lessee of a "lemon" is thus assured of active and immediate aid by government agencies in resolving the problem. At the same time, manufacturers are guaranteed an impartial process requiring full documentation of the nonconformity and repair attempts.

Economic Impact

The readoption of N.J.A.C. 13:45A generally will have a favorable economic impact upon the consumer, who will continue to be protected against the adverse effects of unfair practices in a wide range of consumer transactions. A detailed analysis of the economic impact of each of the subchapters of N.J.A.C. 13:45A follows.

The economic impact of subchapter 1 falls solely on mail order or catalog businesses, which must comply with a number of requirements if they do business or are located in New Jersey. The maximum six weeks allowed for delivery (or refund or offer of substitution) may require additional personnel in order to meet the time limit. Also, substitution of equivalent or better merchandise, if the goods originally ordered are unavailable, may add the expense of seeking out such substitutions and supplying them to the customer, along with certain notices and a postage paid card for the customer's use in case a refund or credit is desired. However, the Division considers these business expenses well-justified in order to safeguard the consumer interest in receiving acceptable merchandise in a timely manner. The consumer has incurred a financial obligation or has paid in advance for a mail order item, and will suffer a loss if not provided with that purchase or a satisfactory substitute.

Subchapter 2 impacts economically on those dealers who, were these rules not in place, might benefit competitively from misrepresenting the true price or availability of the vehicles they offer. The mandated disclosures entail minor additional expenditure for advertising space in which to print the details of the offering, especially since there are minimum type size requirements for certain disclosures. Other requirements, however, relate to physical items available or retained in the ordinary course of business, such as inventory details and copies of advertisements; they create no additional economic burden. The rules also save the consumer both time and money, since they reduce deceptive claims that might otherwise lead to higher consumer expenditure. Finally, the rules enhance honest competition.

The readoption of subchapter 3 will have a positive economic impact upon consumers, who will be assured of receiving the quality of meat they desire for which they paid. Sellers of meat at retail will incur the minimal expense of properly labeling meat products.

Consumers will experience a favorable economic impact by virtue of the readoption of subchapter 4 by avoiding the serious economic consequences which can result from the purchase of unsafe products. To the extent any person is manufacturing, distributing or selling any consumer product contrary to an order of the Consumer Product Safety Commission, such person will continue to be barred from doing so and will be subject to a penalty pursuant to the Consumer Fraud Act.

Subchapter 5 impacts economically upon all furniture vendors in the State. The notice-to-customer requirements add some personnel time to delivery costs, as does the need to deliver by a promised date, which might under some circumstances require overtime payment to a carrier. However, there is a distinct economic benefit to consumers who have the option of obtaining a refund for merchandise not delivered on time or of accepting later delivery.

Subchapter 6 provides the consumer who purchases an automobile with a favorable economic benefit. The receipt of a written, itemized specification of legitimate pre-delivery and documentary fee services provides the consumer with the choice of undertaking these services personally at no extra service fee cost. The automotive dealer is required to include a brief 10-point disclosure statement on the automotive sales document. Apart from this, the rules simply require accurate disclosure of the nature and necessity of these services.

Subchapter 7 has the minimal economic impact on automotive repair dealers of requiring conspicuous posting of a consumer disclosure notice regarding the right to a written repair estimate. The rules further require the dealer to make verifying notations of additional repairs that have been mutually agreed upon, or repairs for which verbal authorization has been granted. These notations, and the posting of a sign regarding written estimates, do not cause great expense. The repair dealer is permitted to charge a "diagnostic fee," if the customer agrees to it in advance. For consumers, the economic impact of subchapter 7 involves considerable decrease in time and expense because disputes concerning whether or not specified repairs were mutually agreed upon are minimized.

Subchapter 8, which requires that tire purchasers be provided with certain information about the tire, will enable the purchaser to pursue a claim if the tire is defective, thus avoiding economic loss. Tire distributors and dealers will incur the minimal expense of providing the purchaser with a copy of information required by Federal law to be forwarded to the manufacturer.

By virtue of subchapter 9, consumers gain the economic advantages of being able to compare, with reasonable assurance, the claims made in advertising. The rules save time and expense for consumers, who can largely avoid unnecessary trips seeking unavailable or misrepresented merchandise. The consumer also gains the economic advantage of being able to make meaningful and fairly accurate advertising comparisons, based on standardized requirements for representing the price, former price, comparative features and other qualities of the merchandise being offered for sale to the public. Businesses and other advertisers also gain the economic advantage of defined and uniform standards applicable to all. Not only do consumers feel free to shop with greater confidence, but the reputable advertiser avoids competitive disadvantage in attracting purchasers.

Readoption of subchapter 10 will have a beneficial economic impact upon consumers. Possession of warranty information saves the consumer the price of servicing and repairing an appliance if these services are covered under the warranty. If they are not, the disclosure requirements protect the consumer from expenses occasioned by omissions or deceptive practices in the conduct of the repair or servicing of the appliance. The

only expense sellers of home appliances will continue to incur is the small cost of providing the purchaser with a written copy of warranty and service contract information. Those who repair or service home appliances will incur the expense of preparing and furnishing to the purchaser a written estimate of labor and parts.

Subchapter 12 imposes expense upon a pet dealer in requiring timely veterinary examination(s). In the long term, this expense may be mitigated by less frequent instances of post-sale veterinary treatments for which the dealer is financially liable. Also, the disclosure requirements involve certain costs to the pet shop for written notices, and there is a potential for considerable refunds to customers whose pets turn out to be unfit. The economic impact of these comprehensive rules upon consumers is decidedy favorable; they are protected against expenses incurred for treatment of a pet certified to have been unfit for purchase, and may return the animal for refund or exchange.

The readoption of subchapter 13 will have no economic impact on the approximately 44 county and municipal officers of consumer affairs affected by these rules, since the rules merely advise such officers of the powers delegated to them by the Division Director. Economic impact upon the consumer will be favorable in those instances when a county or municipal consumer affairs agency successfully concludes a consumer fraud action resulting in restitution to the consumer.

Subchapter 14 places minimal economic impact on the regulated retail establishments and food store chains which must adhere to the subchapter's unit pricing rules. Since the regulated establishments are relatively large-scale operations, the cost and inconvenience of maintaining unit price information is minimal, especially in light of recent advances and implementation of computerized checkouts, including scanner/laser technology. Consumers benefit economically by an enhanced ability to comparison shop and to make sound purchase decisions. Enhanced consumer confidence betters the shopping environment; certainty as to defined standards applicable throughout the industry may well result in economic benefit and greater confidence for both the consumer and retailer.

Subchapter 15 creates the limited economic impact upon retail establishments of having to set forth a refund policy in writing and post that writing at designated locations. For those retail establishments with a liberal refund policy, there is no economic impact as a posting is not required. Knowledge of all refund terms and time limitations assure the consumer of receiving a requested refund on any unused and undamaged merchandise.

Among other benefits, subchapter 16 provides consumers with the economic security of having mutually agreed-upon terms specified in a written home improvement contract. The requirement for accurate written disclosure of the identity of the seller/contractor is also of economic benefit, particularly in minimizing the impact of certain unscrupulous "fly-by-night" door-to-door contractors who prey upon unsuspecting consumers. Reputable contractors also benefit in that unscrupulous competitors must compete with standard practice and disclosure requirements set forth in this subchapter, or be faced with the prospect of available sanctions.

Subchapter 17 has been deleted for the reasons set forth in the summary statement.

The subchapter 18 fee for Plain Language review of a consumer contract conforms to the maximum amount permitted by statute. It creates the limited economic impact upon suppliers of consumer contracts of $50.00 per contract review. The impact is minimal when contrasted with the benefit to the consumer arising from clear and simple contracts.

Subchapter 19 will have no adverse economic impact on the public since it merely sets forth the Division's rulemaking procedures. Consumers may benefit economically by identifying areas in which the Division may amend current rules or promulgate new rules for the continued protection of the public in consumer transactions. The only anticipated costs to the Division would be the administrative costs of handling the petitions, which would depend on the number and extent of petitions involved. It should be noted that the requirement that the Division process petitions is already mandated by N.J.S.A. 52:14B-4(f) and these rules merely reflect that requirement.

Subchapter 20 has an adverse economic impact on ticket agents who, pursuant to the enabling statutes, are limited in the amounts they can mark up ticket prices on resale. Also, ticket agents are required to pay licensing fees and premiums to surety companies for bonds, to maintain an office in New Jersey, and to have complete records on all transactions. Against the negative impact on ticket agents, there is a positive economic impact on members of the public who purchase tickets for New Jersey events. Prices for available tickets are not subject to an exorbitant markup. In addition, the consumer, due to the office, bonding, and licensure requirements, is better situated to pursue refunds on cancellations. The Division believes that the public economic benefit significantly outweighs the economic burdens imposed on licensed ticket agents.

Subchapters 21 and 22 will continue to have a positive economic impact upon the consumer of kosher foods, who will be assured of the quality and content of products advertised and sold as kosher. Slaughterhouses and/or wholesalers incur the economic expense of affixing plumbas and identification tags to all food or food products sold as kosher and they also incur expenses in connection with the washing and deveining requirements set forth in the rules. All establishments that sell or serve kosher food incur expenses in connection with exterior and interior sign requirements and preparation, labeling, and display requirements. These include the requirement that establishments serving both kosher and non-kosher food maintain a separate display cabinet for kosher products prepared on the premises and that all establishments maintain separate utensils for use with kosher dairy products. As a business expense, these requirements are not burdensome and in any event are mitigated by the protection against misrepresentation afforded to the consumer of kosher foods.

Subchapter 23 has the minimal economic impact on watercraft repair dealers of requiring conspicuous posting of a consumer disclosure notice of the right to an itemized written repair estimate. The rules also require the repair dealer to make verifying notations of additional repairs that have been mutually agreed upon, or repairs for which verbal authorization has been granted. The customer must receive certain guarantees and an invoice itemizing separately the charges for parts and labor. Such steps and the precision required by the rules obviously result in expenditure for personnel time. However, consumers benefit economically by virtue of enhanced certainty as to the cost and specific components of repairs. Watercraft repair dealers are benefitted by the assurance that the unfair competitive gain by those who would seek unscrupulous advantage over unsuspecting customers has been made unlawful.

The readoption of subchapter 25 will have a minimal economic impact upon sellers of health club services. Currently, the Division licenses over 200 facilities, which are responsible for payment of a biennial registration fee. In the Division's view, this fee, recently increased from $100.00 to $200.00 because administrative costs have far exceeded original estimates, is reasonable as a business expense and is calculated in such a manner as to significantly defray, although not entirely cover, the Division's rising expenses in connection with health club registration. No economic impact upon the public is anticipated.

Subchaper 26, implementing the Lemon Law (P.L. 1988, c. 123), has economic impact upon the automotive industry in direct proportion to the number of defective vehicles sold or leased in New Jersey. Not only are manufacturers liable for replacement or refund of such vehicles but also they incur legal and administrative costs in the resolution of disputes, as well as in the documentation of manufacturer compliance with the law. A manufacturer doing a substantial volume of business in New Jersey may therefore have considerable staff costs related to Lemon Law disputes. Further expenses are added by the necessity of supplying a printed notice of Lemon Law rights to the consumer, which must be provided by the manufacturer through its dealer at the time a motor vehicle is purchased or leased. On the other hand, an aggrieved consumer may be recompensed under subchapter 26 procedures for the economic injury suffered when he or she has acquired a "lemon"—a motor vehicle with substantial defects that remain uncorrected after multiple repair attempts. The consumer who participates in the dispute resolution system structured by these rules can get back his or her investment in the faulty vehicle as well as other costs incurred.

Regulatory Flexibility Statement

Subchapter 1 contains an address disclosure requirement, compliance with which requires simply the addition of a complete street address and the legal name of the company if a post office box number appears in a mail order or catalog offering. There are no recording requirements and no other professional services are needed in order to comply with the rule. While additional personnel may be needed in order to comply with the provisions regarding delivery and substitution of merchandise, to exempt any small business from this rule would destroy its value, which is to protect New Jersey consumers from abuses related to mail order or catalog merchandise offerings. Many catalogs are distributed by major department stores or large retail establishments employing more than 100 people. However, since smaller mail order and catalog businesses come and go with the vicissitudes of retail merchandising, it is not possible to determine the actual number of catalog or mail order businesses presently operating in or into New Jersey, nor whether they fall within the "small

business" definition of the Regulatory Flexibility Act, N.J.S.A. 52:14B-17.

Subchapter 2 primarily affects some 4,000 licensed motor vehicle dealers in New Jersey, all of whom advertise their goods in some fashion, either in the media or by point of purchase displays, circulars, signs, etc. Many of these dealers are "small businesses" as defined in section 2 of the Regulatory Flexibility Act. The subchapter also impacts upon a number of persons who act as brokers, arranging for the sale or lease of motor vehicles from the inventory of others. However, since the rules are concerned with ethics in advertising it is not possible to differentiate on the basis of business size, no exemption is possible from a set of rules relating entirely to truthful advertising claims. There are fairly extensive disclosure requirements both in the various types of advertisements as well as at the point of sale or lease, but the subchapter contains no reporting requirements, and the required records and documentation are those that would be kept in the ordinary course of business. No additional professional services are necessary nor are any initial capital costs entailed in complying with the motor vehicle advertising rules.

It is impossible to estimate the specific number of small businesses which will be affected by the readoption of subchapter 3. However, the requirements of this subchapter are equally applicable to all entities which sell meat at retail, without differentiation as to types and sizes of businesses. The rules impose no reporting or recordkeeping requirements. Compliance requirements include proper labeling of meat and adherence to advertising restrictions and restrictions on the fat and breading content of certain meat food products; retailers must also maintain an adequate supply of advertised products. Costs of compliance will vary widely depending on each retailer's volume of business. Since these rules are necessary to protect the public health and welfare, no exemption based upon business size is possible.

A regulatory flexibility analysis is not required in connection with the readoption of subchapter 4 because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules merely define "consumer product" and state that the manufacture, distribution or sale of any consumer product contrary to any order of the Consumer Product Safety Commission shall be an unconscionable commercial practice subject to the sanctions contained in the Consumer Fraud Act.

Many furniture stores are part of large chains employing more than 100 persons; they cannot be described as small businesses. Nevertheless, hundreds of small independent furniture vendors are affected by subchapter 5, and a regulatory flexibility analysis is required for those enterprises. There are no recording or reporting requirements, no professional services are needed in order to comply, and the only initial cost is for printing required statements in the contract forms or sales documents used by the seller. No exemption is possible for small businesses, because the consumer is entitled to the same delivery protection whether purchasing furniture from a chain or an individual vendor. Indeed, exemption might be inadvisable for small businesses, which could be placed at competitive disadvantage if adherence to delivery dates was not required by virtue of this rule, to the same degree as the large chains of furniture stores.

Subchapter 6 will impact upon all auto dealers, many of which would be classified as small businesses as that term is defined in the Regulatory Flexibility Act. Because the rules proposed to be readopted seek to promote and protect the public welfare, they must be uniformly and consistently applied; no differential treatment can be accorded to small businesses. These rules impose no reporting or recordkeeping requirements. Compliance requirements include itemization on all sales documents of pre-delivery and documentary services and placement on sales documents of disclosure notices with regard to the consumer's right to itemized prices. Compliance costs will vary depending on the sales volume but are expected to be minimal.

Subchapter 7 affects thousands of automobile repair facilities; all of them, with the exception of repair shops operated by major automobile dealers, undoubtedly qualify as "small businesses". The compliance requirements are neither onerous nor costly, consisting principally of providing the customer with a written estimate (including a breakdown of parts and labor necessary to complete the repair), providing a copy of all guarantees, and obtaining customer authorization for the repair work. The rules comport with good business practice and promote fair dealing; thus, no exemption for small businesses can be made. However, the basic expense for compliance includes only small items such as estimate forms or repair order forms, the required customer information sign, etc. Recordkeeping includes items customarily retained in the normal course of a repair business. There are no reporting requirements and no professional services are needed in order to comply.

The readoption of subchapter 8 will affect all tire distributors and dealers, which the rules define to include, in some instances, motor vehicle dealers. The Division estimates that the majority of those affected by these rules would be considered small businesses as that term is defined in the Regulatory Flexibility Act. The only compliance requirement is that tire distributors and dealers provide to the purchaser a copy of certain information about the tire, which information is required by Federal law to be supplied to the manufacturer. Since Federal law requires this information to be supplied to the manufacturer in any event, the rules impose no new reporting or recordkeeping requirements. The rules have not been designed to minimize any adverse economic impact on small businesses, since to do so would defeat the protection the rules are intended to afford; in any event, the economic impact of the rules is slight.

Hundreds of thousands of New Jersey small businesses advertise in various media and are therefore affected by subchapter 9. With minor exceptions, however, the rules merely prohibit deceptive statements and do not impose difficult or costly compliance requirements. The required posting of a newspaper advertisement on the business premises, for example, involves only a few moments' effort, as does the honoring of a raincheck for merchandise that was not available at the time of advertisement, if an advertiser provided such accommodation. Nevertheless, these rules do require careful study and continued adherence; in that sense, they impact considerably on staff time in many small businesses, whether they are advertising entities, advertising agencies, publications, or other media that handle general merchandise advertising. The ethical thrust of the subchapter, namely truth in advertising, makes exemption impossible for any business of any size. Recordkeeping requirements involve only the retention of documents or other written proof substantiating advertising claims, which must be made available for inspection upon request of the Division of Consumer Affairs. There are no reporting requiements and neither capital investment nor professional services are necessary in order to comply with this subchapter.

Subchapter 10 applies to all sellers of home appliances and to those who repair or service home appliances. The Division estimates that a significant portion of those affected by the proposed readoption may be "small businesses" as defined in the Regulatory Flexibility Act. The rules impose no reporting or recordkeeping requirements. The only compliance requirement imposed upon sellers of home appliances is the requirement that they supply the consumer with written warranty and service contract information. Those who service home appliances must disclose to the consumer who requests services, before the consumer becomes committed to any expense, any diagnostic or other set fees and the methods used to determine the total charge. Before commencing work, other than diagnostic work or work included in a diagnostic fee, the servicer must prepare and obtain the consumer's signature on a written itemized estimate of labor and parts. If the consumer's signature cannot be obtained, oral consent is acceptable provided it is appropriately documented on the written estimate. The Division believes that as a business expense the cost of complying with these rules is reasonable and that no professional services will be required to comply. No exemption from the rules based upon business size is possible since to provide such an exemption would undermine the protection the rules provide to the consumer.

Approximately 400 New Jersey pet shops and kennels are subject to the rules contained in subchapter 12. The majority of these enterprises qualify as small businesses for the purposes of the Regulatory Flexibility Act. Subchapter 12 may have created some adverse economic impact upon the pet industry, but this is outweighed, in the opinion of the Division, by the socially beneficial nature of the requirements. The possible adverse economic effect was considered at length by the Division and ceilings were placed on the pet dealer's liability in order to minimize negative impact. The rules also contain recordkeeping and notice requirements which impose some cost, but it is minimal. There are no reporting requirements and no professional services other than those of a veterinarian are required in order to comply. Exemption of any business because of its size would destroy the value of the rules, which aim to protect the welfare of pets and pet owners by decreasing the incidence of poor health among animals offered for sale and providing recourse to customers if such animals are purchased.

A regulatory flexibility analysis is not required in connection with the readoption of subchapter 13 since these rules do not impose reporting, recordkeeping or other compliance requirements upon small businesses. The rules affect only individual county and municipal officers of consumer affairs.

Because subchapter 14, promulgated pursuant to the Unit Price Disclosure Act, P.L. 1975, c. 242, does not apply to retail establishments with floor area of less than 4000 square feet or whose combined annual gross receipts from the sale of consumer commodities is less than $2 million, it excludes small businesses. The Act states that no establishment greater than 4000 square feet or with gross receipts of more than $2 million shall be exempt from unit pricing regulations but otherwise permits the Director latitude as to coverage. Repetition of the same standard in these rules implements the statutory intent to avoid adverse impact on smaller businesses.

The readoption of subchapter 15 will affect all retail establishments, some of which would be classified as small businesses under the Regulatory Flexibility Act. The rules impose no reporting or recordkeeping requirements. Compliance requirements consist of setting forth a refund policy in writing and posting that writing at designated locations. Retail establishments may choose to use the services of a professional sign maker in order to comply with the rules. Initial capital costs will vary depending on store size but as a business expense are expected to be reasonable. Since these rules are necessary to protect the public welfare, no exemption based upon business size is possible.

Many thousands of home improvement contractors are affected by subchapter 16 since the definition of "home improvement" covers a large variety of business activities from construction of swimming pools to installation of carpeting. Because home improvement contractors are not licensed or registered as such (except plumbing and electrical contractors whose aggregate number licensed is 14,700), not even an estimate can be made of their total number. However, it is likely that most home improvement contractors in New Jersey fall within the definition of "small business" provided by the Regulatory Flexibility Act. The major requirements contained in this subchapter relate to truthful disclosures and sales representations, avoidance of certain deceptive practices and adherence to specific rules for written contracts. There are no recordkeeping or reporting requirements, and no professional services other than those of a printer are needed in order to comply. No exemption is possible for a small business because of the nature of the rules, which promotes fair dealing and specific statement of contract terms. The Division believes that none of the requirements are especially burdensome and that any inconvenience or expense involved, such as for the preparation of a proper contract, is far outweighed by the necessity of halting fraudulent practices, as well as by the general benefit this subchapter provides to the consumer of home improvement services.

Subchapter 17 has been deleted for the reasons set forth in the summary statement.

Subchapter 18, which sets the fee of $50 for review of a consumer contract to ensure compliance with the Plain Language Law, affects creditors, sellers, lessors, and persons in the business of preparing and selling forms of consumer contracts who seek a compliance opinion. Many of the parties affected may be small businesses, but the precise number is impossible to state given the great variety of contract-suppliers within the listed classes. In any case, there are no compliance requirements in this subchapter other than the payment of the fee if a contract review, which is optional under the Plain Language Law, is desired.

Subchapter 19 does not impose any reporting or recordkeeping requirements upon small businesses, as defined under the Regulatory Flexibility Act, since it merely informs the public of the requirements for submitting a petition for rulemaking to the Division of Consumer Affairs. While the rules contain certain requirements relating to the contents of the petition, such requirements impose no costs on petitioners, nor should they require the engagement of professional services. Because the petition process is voluntary, no differentiation in requirements based upon petitioner business size is made.

Because coverage of subchapter 20 is restricted to ticket sales for New Jersey events, only a small number of agents are presently licensed. All of these agents are believed to be small businesses as defined in the Regulatory Flexibility Act, but since the legislative mandate to license and regulate ticket agents, N.J.S.A. 56:8-26 et seq., does not exempt any such business on the basis of size, the rules in subchapter 20 do not do so either. There are a considerable number of recordkeeping requirements, as well as reporting requirements related to such matters as change of address or ownership interest. The services of a surety are necessary in order to be bonded. Compliance costs include license fees and bond premiums. All of these expenses reflect statutory requirements aimed at protecting the consumer against price-gouging and deceptive practices.

The readoption of subchapters 21 and 22 will impact upon retail establishments that sell kosher food, dealers in kosher food or food products, New Jersey-based manufacturers, wholesalers, processors, slaughterhouses and all others along the chain from the time the product is manufactured, or from slaughter to the time of sale, who hold themselves out as kosher or dealing with kosher food or food products. The Division estimates that many of these entities would be considered small businesses as that term is defined in the Regulatory Flexibility Act. The rules contain reporting requirements applicable to Division inspectors, who are required to utilize and file with the Director approved report forms, and to establishments that sell or serve kosher food. The latter must file with the Division Director a certification that they meet Orthodox Jewish dietary laws or advise the Director that the establishment is not under rabbinical supervision. Any change in kosher or rabbinical supervision status must also be reported. Similar reporting requirements apply to those giving kosher supervision. The rules also contain recordkeeping requirements applicable to meat and poultry dealers; these entities must keep and maintain for two years separate and complete purchase records regarding all kosher and non-kosher meat and poultry. Compliance requirements include, for establishments selling or serving both kosher and non-kosher food, maintenance of a separate display cabinet for kosher products unless they are pre-packaged and preparation of a sign to be affixed to the cabinet. For all establishments, compliance with the regulations requires maintenance of separate, labeled utensils for kosher dairy food preparation; advertising and exterior sign requirements; and washing, deveining and identification requirements. Compliance costs will vary depending upon business size and whether non-packaged or pre-packaged meats are sold; stores which handle prepackaged products will be excused from most handling and display requirements. The only professional services required would be those a kosher supplier uses in the ordinary course of business. No exemptions from these rules are possible based upon business size since uniformity is essential in preventing misrepresentation of kosher products.

Subchapter 23 impacts upon the approximately 250 watercraft repair businesses in New Jersey; it may be presumed that they are all small businesses under the criteria in the Regulatory Flexibility Act. The subchapter contains minor recording requirements, such as notation of telephoned authorizations to proceed with repairs, but no direct expenditures are involved other than the cost of the sign informing consumers of their right to a written estimate. There are no reporting requirements, and other professional services are not necessary in order to comply. Exemption from these rules based on size of business is impossible; such exemption would destroy their value, which is the promotion of fair dealing between providers and customers of watercraft repair services.

Subchapter 25 applies to all sellers of health club services, the majority of which are small businesses. Each facility must file a registration application or a claim of exemption from registration. Certain documentation is required for exemption claims, but the information needed for documentation should be readily available from the facility's lease, deed or architectural plans. Each facility must also keep and make available for review by the Division complete and accurate records relating to the maintenance of a security bond. These records would normally be in the possession of the club operator; thus, neither expense nor effort is required to make them available for review. The annual cost of compliance with the rules proposed for readoption is, as a business expense, slight and was specifically designed to minimize the financial impact on small businesses. In recognition of the expense incurred by small businesses which sell long-term memberships in order to comply with the statutory requirement of posting a bond or letter of credit, the Division has set the biennial registration fee at the minimum level necessary to offset the Division's costs in connection with health club registrations.

Subchapter 26 affects dozens of American and foreign manufacturers that produce motor vehicles sold or leased and registered in New Jersey. As far as the Division can determine, none of these entities employ fewer than 100 employees. They therefore do not qualify as small businesses under the definition in the Regulatory Flexibility Act. One provision, however, does impact on repair dealers, many of which qualify as small businesses: N.J.A.C. 13:45A-26(c) requires the repair facility dealer to supply documentation of repair attempts. The number of such affected businesses is impossible to determine, since a repair attempt may take place outside as well as within the State. In any case, the impact upon these small businesses is slight, inasmuch as documentation of repair attempts is a record that would be maintained in the ordinary course of business. Because the record of repair attempts is essential to the Division's dispute resolution system, it is not feasible to exempt small businesses from the requirement to assist in the process by supplying the record upon request.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-17.

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

13:45A-21.3 Display and handling requirements

(a) A Kosher food or food product sold by a restaurant, hotel, store, catering facility or other place which advertises, represents or holds itself out as selling, serving or offering for sale **exclusively Kosher food or food products or** both Kosher and Non-Kosher food or food products may be falsely represented to be Kosher within the meaning of N.J.A.C. 13:45A-21.2 unless the following display and handling requirements are observed.

1.-3. (No change.)

13:45A-22.1 Definitions

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

"Properly identified Kosher meat" means Kosher meat which is obtained from animals which are approved[,] and slaughtered[,] in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the Kosher plumba [or Kosher tag] placed on such Kosher **meat at the slaughterhouse where the animal was slaughtered.**

"Properly identified Kosher poultry" means poultry which is approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the Kosher plumba placed on such poultry at the slaughterhouse where the poultry was slaughtered.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Telephone and Telegraph

Proposed Repeal and New Rule: N.J.A.C. 13:70-3.44

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1990-437.

Submit comments by September 19, 1990 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeal and new rule would allow for track associations to keep the public telephones open during the racing program rather than being closed one hour prior to the first race post-time and the remainder of the racing program. The proposed repeal and new rule deletes the telegraph from the rule as it is no longer used at the racetracks.

Social Impact

The proposed repeal and new rule would be beneficial to the public to allow them to use the public telephones during the racing program for either business or personal reasons.

Economic Impact

The proposed repeal and new rule would have a minimal economic benefit to the track associations; however, it may have a positive benefit for the racing public for individuals who must conduct business while they are attending races.

Regulatory Flexibility Statement

The proposed repeal and new rule imposes no reporting, recordkeeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Track associations would be allowed to keep public telephones at race tracks open during the race day.

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

13:70-3.44 Telephone [and telegraph]

[(a) All public telephones and telegraph wires at the track or in the grounds of the association conducting the meeting shall be closed with the opening of the pari-mutuel window for the first race of the day.

(b) No calls or wires shall be allowed to be made or received after the telephones and telegraph wires are closed until after the last race has been finished except by officials of the New Jersey Racing Commission, or duly accredited members of the press.] **All public telephones at the race track may remain open during the race day, with the approval of the Commission.**

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Protest by Jockey

Proposed Amendment: N.J.A.C. 13:70-13.8

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1990-438.

Submit comments by September 19, 1990 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment sets forth procedures for a jockey to protest a happening in the race for which he or she would like to file an objection with the stewards regarding possible interference with the jockey's mount in a race. In conjunction with the proposed repeal and new rule, N.J.A.C. 13:70-19.23 published elsewhere in this issue of the New Jersey Register, the proposed amendment would allow for the use of a "fast official" so that the stewards may make the race official prior to the jockey coming back, dismounting and weighing out in the event that there was no objection lodged in the race.

Social Impact

The proposed amendment would allow the stewards the ability to make a race official more timely in order to save time on the racing program. This is a direct benefit to the public especially at night time thoroughbred racing, since it will enable the associations to conduct their racing program more efficiently and to conclude earlier. The use of the "fast official" this amendment would facilitate saves 15 to 20 minutes on a racing program.

Economic Impact

The use of the "fast official" facilitated by this amendment also enables the public additional time to collect winning wagers and to prepare for the next race. The proposed amendment would have a positive impact on the general public by allowing them to collect their wagers sooner and to enable them to have additional time to handicap the next race.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes reporting requirements on jockeys wishing to protest a happening in a race.

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

13:70-13.8 Protest by jockey

If a jockey wishes to protest a happening in a race, he **or she** must so notify [the clerk of the scales immediately upon his arrival at the

scales for weighing in.] **an outrider that is equipped with a two-way radio for communication with the stewards. The jockey shall then proceed to the clerk of scales and contact the stewards upon dismounting.**

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Declaring Race Official
Proposed Repeal and New Rule: N.J.A.C. 13:70-19.23

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1990-435.

Submit comments by September 19, 1990 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule replaces the current N.J.A.C. 13:70-19.23, setting forth procedures that the stewards must utilize to determine whether a claim of foul has been lodged by a jockey in a race prior to the stewards making a race official.

Social Impact

The proposed new rule would allow the stewards the ability to make a race official sooner in order to save time on the racing program. This is a direct benefit to the public especially at night-time thoroughbred racing since it will enable the associations to conduct their racing program more efficiently and to conclude earlier. The use of the "fast official" saves 15 to 20 minutes on a racing program.

Economic Impact

The use of the "fast official" also enables the public additional time to collect winning wagers and to prepare for the next race. The proposed new rule would have an economic impact on the general public by allowing them to collect their wagers sooner and to enable them to have additional time to handicap the next race.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, record keeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule imposes requirements on stewards and placing judges pertaining to declaring a race official.

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

13:70-19.23 Declaring race official

[After and not until the jockeys riding the first six horses to finish have been weighed in and found to have carries the correct weight, the clerk of scales shall notify the stewards who shall notify the placing judges that the race is official. Upon receipt of such notice, the placing judges shall promptly display the official sign.] **The stewards shall communicate with the outriders after a race to determine if any claim of foul has been lodged by a jockey in the race. If the outriders report that there has been no claim of foul, the stewards may permit a "fast official" to be posted. The stewards shall notify the placing judges that a race is official and the placing judges shall promptly display the official sign.**

(b)

NEW JERSEY RACING COMMISSION

Harness Rules
Radios, Receivers and Transmitters
Proposed Repeal and New Rule: N.J.A.C. 13:71-22.1

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1990-436.

Submit comments by September 19, 1990 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would allow for track associations to keep the public telephones open during the racing program rather than being closed one hour prior to the first race post-time and the remainder of the racing program. The rule proposed for repeal contains radio, receiver and transmitter security requirements no longer operative.

Social Impact

The proposed new rule would be beneficial to the public to allow them to use the public telephones during the racing program for either business or personal reasons.

Economic Impact

The proposed new rule would have a minimal economic benefit to the track associations; however, it may have a positive benefit for the racing public for individuals who must conduct business while they are attending races.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Track associations would be allowed to keep public telephones at race tracks open during the race day.

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

13:71-22.1 [Radios, receivers and transmitters] **Telephone**

[(a) All radios, receivers and transmitters on the licensed premises of any race track shall be operated, monitored or tape recorded under the supervision of the security director. A complete list of operating and maintenance personnel shall be submitted to the track security, the State Police and the New Jersey Racing Commission. Instant dismissal and further appropriate action shall be taken for the transmittal of information either in vernacular or code, regarding performances of horses, races, race-results, mutuel odds, pay-off prices or any other pertinent information.

(b) Final approval shall rest with the New Jersey Racing Commission before the sets become operational.]

All public telephones at the race track may remain open during the race day, with the approval of the Commission.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Location

Proposed Amendment: N.J.A.C. 14:3-5.1

Authorized By: Board of Public Utilities, Scott A. Weiner, President.
Authority: N.J.S.A. 48:2-13.
BPU Docket Number: AX90060555.
Proposal Number: PRN 1990-442.

Submit written comments by September 19, 1990 to:
Karen J. Kennedy, Esq.
Board of Public Utilities
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment will require all utilities to make application to the Board for permission to close or relocate an office as described in subsections (a) and (b) of this rule. The application shall be made 60 days prior to closing or relocation and demonstrate that such office closure or relocation is not unreasonable and will not unduly prejudice the public interest. The application shall also set forth the means by which customers and other interested parties are notified of relocation. Utilities are also required to notify their customers of the pending application for approval to relocate or close the subject office and to maintain and provide toll free or local exchange numbers for use by the general public and customers affected by an office closing or relocation.

Social Impact

Requiring utilities to make application to the Board 60 days prior to closure or relocation of a regional office and to notify its customers of the pending application will place the Board in a better position to ensure that utility customers are given adequate notice and an opportunity to be heard in connection with office closure, or relocation.

Economic Impact

Utilities will incur minor administrative expenses associated with applying for Board approval of office closure or relocation as well as costs associated with posting notice of the pending application. The notice shall be by means of newspaper advertisement and by posting notice at the office location.

Regulatory Flexibility Analysis

The proposed amendment establishes an administrative process. The requirements of such process must be followed by those seeking approval of an office closure or relocation. Parties to such activities may be small businesses as that term is defined under the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. There are no small gas or telephone utilities to which this amendment would apply.

There are, however, approximately 100 small water and sewer utilities, approximately 600 small solid waste utilities and one small electric utility. Although technically this proposed amendment would apply to solid waste utilities, presently no solid waste utilities have payment offices. While the preparation and filing of formal petitions is normally done by an attorney, such professional representation is not a requirement of this rule; a person or entity may act on its own behalf. Although small businesses will incur expenses associated with posting notice of a pending office closure or relocation, such expenses are commensurate with the number of customers served. Therefore, the burden of administrative expense falls equally on both small and large businesses and no differentiation in compliance requirements based on business size is provided.

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

14:3-5.1 Location, **relocation and closing**

(a) Each utility shall maintain in or within reasonable proximity of its service area an office, the current location of which shall be furnished to the Board, where applications for service, complaints, service inquiries, bill payments, and so forth, will be received.

(b) Each utility shall furnish the Board with the current location of the offices where maps and records covering the various service areas are available to supply, upon reasonable request, information to customers, governmental bodies, other utilities and contractors.

(c) In the event that a utility desires to close or relocate an office, the following procedures shall be followed:

1. At least 60 days prior to the closing or relocation of an office described in (a) or (b) above, a utility shall apply for approval with the Board, demonstrating that such closure or relocation is not unreasonable, will not unduly prejudice the public interest, and setting forth the means, upon Board approval of the application, by which customers and other interested parties will be adequately notified of the closing or relocation and alternatives available in the case of a closed office.

2. The utility shall simultaneously notify its customers and the clerk of each affected municipality of the pending application for permission to relocate or close the subject office by means of posting notice at the office location and, within three days of application, by placing notice of the office closing or relocation in the newspaper(s) serving the affected area.

i. The notice shall inform customers of their right to present to the Board, in writing, any objections they may have to the office closure or relocation; and

ii. The notice shall specify a date certain for submission of comments which date shall not be less than 20 nor more than 30 days after publication and posting.

3. An office shall not be closed or relocated until the utility has been informed, in writing, that the Board has approved such request.

(d) Utilities shall maintain and provide toll free or local exchange numbers for use by the general public and customers affected by an office closing or relocation for billing, service and sales inquiries. This toll free number or local exchange number shall be posted on any notice at the office location as well as in the notice placed in the newspaper(s), pursuant to (c) above, serving the affected area.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Administration

Minimum Adjustments

Proposed Amendment: N.J.A.C. 17:1-1.10

Authorized By: Margaret McMahon, Director, Division of Pensions.
Authority: N.J.S.A. 52:18A-96.
Proposal Number: PRN 1990-424.

Submit comments by September 19, 1990 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

There are occasions subsequent to retirement where, for various reasons, the Division of Pensions determines that monies are payable to the retirement system. The purpose of this proposed amendment is to permit the Bureau of Retirement within the Division of Pensions to continue to make the necessary arrangements for repayments within a reasonable period of time. It is felt that a reasonable period of time for such repayments is 12 months and any schedule involving a repayment period beyond 12 months would necessitate a determination by the Board of Trustees of the particular retirement system involved.

Social Impact

This proposed amendment will affect retirants from the State-administered retirement systems who owe debts to their paticular retirement system at the time of their retirement, but who do not pay the balance

due at or after the time of their retirement. No social impact is anticipated.

Economic Impact

The retirants affected by this proposed amendment will not experience any additional adverse economic impact with the adoption of this amendment since they are legally indebted for the outstanding amount. The retirement system may achieve a small increase in its financial integrity by having the necessary funds involved in the debt available at or near the time of retirement when such monies are needed to fund the retirant's retirement benefits.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this amendment will not have any adverse effect upon small business or private industry in general.

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

17:1-1.10 Minimum adjustments

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

(d) Rules concerning the bad balances in retirement accounts are as follows:

1.-2. (No change.)

3. All money found to be due and payable subsequent to a member's retirement shall be repaid in one sum or scheduled for repayment within a period of 12 months. Any other schedule of repayment shall be referred to the Board of Trustees.

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

(a)

DIVISION OF PENSIONS

Alternate Benefit Program
Transfers; Interest
Proposed Amendment: N.J.A.C. 17:1-2.36

Authorized By: Margaret M. McMahon, Director, Division of Pensions.

Authority: N.J.S.A. 18A:66-192.

Proposal Number: PRN 1990-423.

Submit comments by September 19, 1990 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment attempts to clarify the language within an existing rule to emphasize that interest will not be added to transferred monies to the Alternate Benefit Program unless 30 days has passed from the time that the Division of Pensions has received all of the documents and other information necessary for the Division to process the transferred funds.

Social Impact

The proposed amendment will only affect participants in the Alternate Benefit Program who are transferring funds from a State-administered retirement system, and such transfer is not effectuated within 30 days after the Division of Pensions has received the material necessary to process such a transfer. No social impact is anticipated.

Economic Impact

The clarification of the language within the existing rule will not have any adverse financial effect upon the Alternate Benefit Program participants who may be affected by this proposal.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this amendment will not have any adverse effect upon small business or private industry in general.

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

17:1-2.36 Transfers; interest

Pursuant to the provisions of N.J.S.A. 18A:66-173, when payment of the transferred member's reserves in the State-administered retirement system is made more than 30 days after eligibility for the transfer, interest is added to the reserves being transfered from the system to the carriers of the Alternate Benefit Program. **The 30-day period after eligibility for transfer shall not begin to run until the Division of Pensions has received all of the documents or other related information necessary to effectuate the transfer in question.** The rate of interest is the average rate of return, to the nearest hundredth percent, of the State Cash Management Fund (State accounts) as reported by the Division of Investment for the fiscal year ending June 30 preceding the period for which interest is payable. No interest is payable if **the** amount of interest is less than $10.00.

HUMAN SERVICES

(b)

DIVISION OF ECONOMIC ASSISTANCE

Public Assistance Manual
Family Support Act Requirements for Job Opportunities and Basic Skills (JOBS) Training Program and Related Title IV-A (AFDC) Provisions
Proposed Amendments: N.J.A.C. 10:81-1.12, 2.2, 2.8, 2.17, 2.18, 3.16, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1 through 14.7, 14.10 through 14.15, 14.17, and 14.20 through 14.22.
Proposed New Rules: N.J.A.C. 10:81, 14.3A and 14.24.
Proposed Repeals: N.J.A.C. 10:81-2.9 and 5.9.
Proposed Repeals and New Rules: N.J.A.C. 10:81-3.18, 3.19, 14.8 and 14.19.

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

Authority: N.J.S.A. 44:10-1 et seq.; and 44:10-3; Family Support Act of 1988 (P.L. 100-485); Section 402(a)(8)(A)(ii) of the Social Security Act; and 54 FR 42146.

Proposal Number: PRN 1990-441.

Submit comments by September 19, 1990, to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10:81 implement Title II provisions of the Family Support Act (FSA) of 1988, Public Law 100-485, which creates the Job Opportunities and Basic Skills Training (JOBS) program for applicants and recipients of Aid to Families with Dependent Children (AFDC). The JOBS provisions were published as a final rule by the Family Support Administration on October 13, 1989, at 54 FR 42146. The JOBS program is designed to assist recipients to become self-sufficient by providing needed employment-related activities (including mandatory educational and training programs) as well as necessary supportive services to enable participation. All states are mandated by P.L. 100-485 to have a JOBS program under a State Plan approved by the Secretary of the United States Department of Health and Human Services (USDHHS) no later than October 1, 1990.

Sections 301 and 302 of the FSA are also incorporated herein. Guaranteed child care and other Federally matched supportive services are provided by Section 301 provisions for recipients participating in approved educational and training activities (defined as employment-directed activities for purposes of these proposed amendments) or engaged in employment. Section 302 permits extended child care payments for 12 months after the loss of AFDC benefits for certain individuals who lose AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregards.

At the time of enactment of the FSA, New Jersey had implemented its own welfare reform program, Realizing Economic Achievement (REACH). REACH is the employment and training program for AFDC recipients in the State. The proposed conforming amendments combine within the framework of the REACH program the elements of JOBS necessary to align the two programs. As such, the REACH program shall serve as New Jersey's JOBS program. REACH has been implemented in all 21 counties of the State under an interim approved Plan for JOBS.

Several general modifications are included throughout the text of the proposed amendments. One is the deletion of all text concerned with or referencing the Work Incentive (WIN) program since that program (Title IV-C) has been repealed by the FSA due to the establishment of the JOBS program. Another modification addresses the fact that the function of making determinations of incapacity was previously handled by the Medical Review Team (MRT) in the Division of Economic Assistance (DEA). That determination has been transferred to the Division of Medical Assistance and Health Services (DMAHS), Disability Review Section. As such, text has been amended to reflect the transfer of that function. Throughout the text, all references to the MRT have been eliminated and the name changed to Disability Review Section (DRS). Likewise, forms used by DRS which were referred to as "PA" forms have been changed to be correctly identified as DRS forms.

Similarly, the proposed amendments contain technical revisions, such as reference corrections and grammatical and punctuation changes throughout.

Identification of the REACH program as the work and training program for eligible AFDC families is established at N.J.A.C. 10:81-1.12.

At N.J.A.C. 10:81-2.2(a)8, the reference to the "overview" to the REACH program provided by the county welfare agency (CWA) income maintenance (IM) worker is deleted. Under REACH, the IM worker provided an overview of the program and then referred the participant to the REACH case manager for a full explanation of program requirements. The FSA identifies orientation to the program as a title IV-A function to be handled by the IM worker. Thus, the referral to case management for the orientation shall no longer be appropriate; the first responsibility of the case manager after referral will be evaluation and assessment of the participant.

The proposed amendments at N.J.A.C. 10:81-2.8 reflect the work/training program change in AFDC from WIN to REACH as an eligibility requirement for receipt of AFDC benefits. It is stated in the text that participation in REACH is required of all AFDC recipients who are not exempt. Rather than the former procedure of referring volunteers for work/training to the WIN unit, such referrals are to be made to case management.

The responsibilities of the IM worker during the application process due to REACH modifications as a result of the FSA, are delineated at N.J.A.C. 10:81-2.8(b) and include, providing an orientation to REACH; determining participant status; informing volunteers of their right to participate; identifying participant's target group; referral of participants to case management for evaluation; and, referral of particpants to the agency IV-D unit (child support unit) for child support orders, when appropriate.

Existing text from N.J.A.C. 10:81-2.9 is being repealed and recodified at N.J.A.C. 10:81-2.8(c) for clarification purposes.

The proposed amendment at N.J.A.C. 10:81-2.17(e) aligns policy concerning termination of employment for AFDC-N cases without good cause, with text proposed at N.J.A.C. 10:81-14.8(e) and existing language which was relocated to N.J.A.C. 10:81-2.8(c).

Concerning the verification of attendance in school, college, training or vocational programs of children 16 years of age or older, language is amended at N.J.A.C. 10:81-2.17(g) to include children in all three segments of the AFDC program (AFDC-C, -F, -N) and existing text deleted.

The proposed amendment at N.J.A.C. 10:81-2.18 clarifies the requirement that AFDC-F or -N principal earners exempt from participating in REACH due to remoteness, shall register with the State Employment Service.

Current text at N.J.A.C. 10:81-3.18 is being repealed and replaced with a new rule containing amended existing text identifying the Federal work criteria to be met by the principal earner in an AFDC-F segment family in order to qualify the intact family for the Federally matched -F segment, and with the criteria for determining the principal earner in both the AFDC-F and -N segments. Language concerning REACH participation by the principal earner is added for both segments.

Specifications at N.J.A.C. 10:81-3.18(b)4 indicate that the principal earner in AFDC-F has 30 days after application for the AFDC program in which to enroll in REACH, unless exempt. This requirement is Federally mandated by the FSA. If the principal earner is exempt from REACH for the reason of remoteness, then he or she is required to register with the State Employment Service in accordance with the requirements cited at 54 FR 42241. The penalty for noncompliance with these requirements is that the principal earner, and the second parent, if that parent is not participating in REACH, will be rendered ineligible for assistance under the -F segment or any other segment of the program. Likewise, a refusal to apply for or to accept unemployment compensation for which the individual qualifies, carries the same penalty as set forth at N.J.A.C. 10:81-3.18(b)6.

N.J.A.C. 10:81-3.18(b)7 describes the concept of "quarters of work" as currently defined in the Social Security Act. Previous text had not included the qualification for such quarters by attendance full-time in a school program that is designed to prepare the individual for gainful employment, or in an education or training program established under the Job Training Partnership Act (JTPA), Public Law 97-300; nor did previous text delineate Section 213 of the Social Security Act which discusses how individuals earn Social Security credits. Each credit is a quarter of coverage.

Previous text was reformatted at N.J.A.C. 10:81-3.18(b)8 and clarifies that Form PA-22, Employment Criteria for AFDC-F families, is to be utilized by the IV-A agency in determining eligibility for AFDC-F.

N.J.A.C. 10:81-3.18(c) discusses the AFDC-N segment applicant and recipient families. At N.J.A.C. 10:81-3.18(c)1, language is added which correlates with language at N.J.A.C. 10:81-2.8(c); that text discusses applicant families who voluntarily terminate employment to qualify for assistance and reiterates the 90-day penalty period of ineligibility in such instances. If that parent is the principal wage earner of the family then that parent is referred to the State Employment Service during the penalty period. Other text addresses the -N segment recipient family. Enrollment in REACH replaces registration with the State Employment Service. In the case of families who are exempt from REACH participation due to remoteness, registration with the State Employment Service is required.

N.J.A.C. 10:81-3.19 is repealed and replaced with a new rule to clarify employment and training requirements through REACH for AFDC-C, -F, and -N families. Reference is made to N.J.A.C. 10:81-14 as the subchapter which describes participation criteria in REACH, as well as the components of REACH, penalties, fair hearing procedures, and the supportive services available through the REACH program.

Existing language concerning AFDC-C stepparents is deleted at N.J.A.C. 10:81-3.18(b)4 and relocated at N.J.A.C. 10:81-3.19(d) and amended to incorporate REACH requirements which replace obsolete WIN procedures.

Voluntary participation in REACH in accordance with the FSA, is delineated at N.J.A.C. 10:81-3.19(f). Volunteers are defined as those individuals who are exempt from REACH participation but decide to participate anyway. Such individuals have the right to also stop participation at any time without loss of assistance payments. Those individuals are not subject to sanctioning procedures as a result of nonparticipation in the program. If the volunteer stops participation without good cause, he or she shall not be given priority to participate again so long as other individuals are actively seeking to engage in REACH activities.

N.J.A.C. 10:81-3.19(g) discusses those individuals who have been verified as exempt from REACH due to incapacity. Such individuals are referred to the Division of Vocational Rehabilitation Services as they were under the WIN program. The acceptance of the referral is optional on behalf of the individual and does not affect a recipient's entitlement to AFDC benefits. New Federal policy in the FSA states that if the individual is the principal earner in an AFDC-F family and upon referral is determined to be capable of being retrained and refuses such retraining, then the family loses AFDC-F benefits; however, such families would be eligible for State funded AFDC-N benefits.

Policy at N.J.A.C. 10:81-3.19(h) delineates that the individual shall be sanctioned under REACH for failure to report for REACH evaluation and assessment if he or she is a mandatory REACH participant and

attempts by the agency case manager to contact the individual in writing and by telephone fail, and if good cause does not appear to exist.

The proposed amendment at N.J.A.C. 10:81-4.23 introduces the new recovery procedures set forth at N.J.A.C. 10:81-14.24 for the overpayments of REACH child care benefits, post-AFDC child care benefits and REACH transportation and related payments made to a REACH participant or service provider. Those recovery procedures are mandated by the FSA.

Notice requirements mandated by the FSA due to changes in the manner of payment of child care benefits are delineated at N.J.A.C. 10:81-7.1. Such timely notices are not required unless the changes result in a discontinuation, suspension, reduction or termination of benefits, or they force a change in child care arrangements.

Proposed amendments at N.J.A.C. 10:81-7.4 specify procedures as mandated by the FSA, for continuation of REACH child care and supportive service benefits pending a fair hearing. If an individual contests reduced, discontinued or terminated child care or transportation benefits, or a determination of ineligibility for such benefits, the reduced amount, discontinuance or determination of ineligibility remains unchanged until after the fair hearing decision is rendered.

The proposed amendment at N.J.A.C. 10:81-7.20 defines separation of income maintenance, social services and REACH case management. Activities which involve both income maintenance and REACH case management functions are set forth at N.J.A.C. 10:81-7.20(d)4.

Proposed amendments at N.J.A.C. 10:81-8.22 clarify the provision of the extension of Medicaid benefits for an additional three months for those families who received AFDC-C or -F prior to April 1, 1990 and who qualify for this extension because of loss of the $30.00 or one-third disregards. The proposed amendments also define those individuals in the family who are not eligible for this extension.

Definitions are added to N.J.A.C. 10:81-9.1 designating "REACH" as New Jersey's JOBS program, and defining "JOBS" as meaning Job Opportunities and Basic Skills Training Program as created by the FSA. Primary wage earner and principal earner are defined and obsolete definitions are deleted.

The TEEN PROGRESS Project, a four-year Federally sponsored Demonstration implemented in August of 1987, has eliminated procedures for new applicants as of April 1, 1990. However, participants enrolled prior to that date must comply with project requirements until the expiration of the Program. As such, N.J.A.C. 10:81-12 has been modified to delete language which is no longer applicable, and to align sanction proceedings with those required under the FSA for REACH.

Added text at N.J.A.C. 10:81-14.1(a) specifies that REACH incorporates the requirements of the Family Support Act which established the JOBS program, the Federal work/training program which replaced WIN.

Definitions at N.J.A.C. 10:81-14.2 are being amended to delete references to "deferred participant" as that category no longer exists under the proposed REACH revisions.

Among the new definitions included are those concerning "satisfactory progress" in an educational component and in a training component. The definitions require that the standards include both qualitative (for example, grade point average; increase in skills and competencies) and quantitative (for example, reasonable time limit for completion of the course of study/training program) elements. These definitions are consistent with those established in the Federal JOBS regulations at 54 FR 42146. The definitions are to be used to determine whether the individual should remain within a specific component and be provided with supportive services. A participant should be demonstrating an increase in skills and competencies in order to assure that participation in educational and training activities is meaningful and productive. Both definitions provide that a participant may still be considered to be making satisfactory progress during a probationary period or due to mitigating circumstances.

N.J.A.C. 10:81-14,3 covers participation requirements for the individual in REACH. Text has been amended throughout the subsection to delineate FSA participation requirements.

Reasons for exempting individuals from participation in the REACH program have been deleted from N.J.A.C. 10:81-14.3(b) and (c) and are now listed under the new section, N.J.A.C. 10:81-14.3A, which contains expanded provisions to meet FSA requirements and to delineate exemptions in more detail.

Current text at N.J.A.C. 10:81-14.3(b) is revised to provide a general description of exemption from REACH participation and to reference the new N.J.A.C. 10:81-14.3A. Text also emphasizes that exemptions shall be reviewed by IM no less frequently than at each redetermination of AFDC eligibility. If there is a change in exemption status, IM must notify the recipient, and case management, who in turn shall advise the provider of REACH activities.

REACH previously had deferred individuals from participating in the program if the reason for the deferral was time-limited, meaning that the period of nonparticipation was short in duration. With the exception of the homeless and persons in non-approved client-selected activities, all of the REACH deferrals at N.J.A.C. 10:81-14.3(c) are deleted and have been reformatted as exemptions in the proposed rules at N.J.A.C. 10:81-14.3A.

Language pertaining to full-time employment is deleted at N.J.A.C. 10:81-14.3(h) and relocated at N.J.A.C. 10:81-14.3(c), with revisions. Under the FSA provisions, full-time employment of 30 hours or more constitutes an exemption; however, states were allowed the option to define what constitutes "30 hours" of employment in order to meet this exemption at the state level. New Jersey, under the REACH program, has requested a waiver to allow participants the right to volunteer for participation in other REACH activities even if they are employed full-time. Thus, rather than defining the specifics of "30 hours" of employment which would constitute exemption, the waiver ensures a mutually agreed upon solution on a case-by-case basis, which focuses on the specific circumstances of the individual and his or her family. The resources of REACH are made available to the interested client to improve his or her skills or to attain education which would lead to a better job. The agency will endeavor to provide such support services as are available under these proposed amendments if needed by the participant to help the individual maintain employment.

No provision exists in the FSA for exemption of the homeless from REACH due to their special circumstances. Such individuals are considered mandatory participants unless otherwise exempt. REACH can accommodate those individuals through assignment to appropriate activities as determined by the case manager and the REACH participant based on the special circumstances of the case. Text at N.J.A.C. 10:81-14.3(d) clarifies policy concerning the homeless. Such families may be eligible for emergency assistance (EA) benefits regardless of REACH participation since EA eligibility does not require compliance with AFDC work/training requirements.

N.J.A.C. 10:81-14.3(g)3 (recodified from (f)) describes the REACH participation requirement of "limited" participation of no more than 20 hours per week in REACH activities by a parent or caretaker relative who provides care for a child at least two years old but under six years of age. Formerly this type of situation was listed as a deferral under REACH. Text is amended to further clarify that under the FSA requirements this "limited" participation does not apply to a custodial parent under age 20 if that individual has not completed high school or its equivalent, is not otherwise exempt, and child care arrangements are available to ensure the individual's participation. Only one parent or other relative in a family may be allowed this "limited" participation in REACH.

Existing text at N.J.A.C. 10:81-14.3(i) has been amended to include FSA provisions concerning client-selected activities. As with other REACH activities, the individual in a client-determined activity (that is, the individual is enrolled in an education or training program he or she has selected, outside of REACH activities, at the time the individual is supposed to begin participation in REACH) must first complete an assessment and develop an employability plan to determine the appropriateness of the client-selected activity to the individual's employment goal. The plan is then evaluated to see if the individual has selected a reasonable and feasible plan to lead to gainful employment.

The agency may approve the client-selected activity as approved participation in REACH if the criteria specified in this subsection are met. If the activity is approved, it is included in the individual's final REACH agreement. The approval is subject to periodic review and may be altered after the review; at such time, the individual may be required to accept employment. Clients are informed of these facts at the time of the initial approval of the client-selected activity. If approved, other REACH activities may not interfere with participation in the client-selected activity. Participants in approved activities may be eligible for supportive services. If the activity is not approved, the individual, unless otherwise exempt, shall be required to participate in other REACH activities. An individual who disagrees with the decision made by the agency concerning the non-approval of his or her activity as participation in REACH, may appeal the decision through the fair hearing process.

N.J.A.C. 10:81-14.3(j) describes the FSA target group concept. For the JOBS program (REACH), the FSA provides certain safeguards to assure

that the increased Federal funding intended to assist individuals in avoiding long-term dependency is directed largely towards those individuals who are most in need of assistance. If a state fails to expend 55 percent of its JOBS allotment on members of the state's target population, the Federal matching rate for all JOBS expenditures for that same year will be reduced to 50 percent.

Target groups are as follows: Long-term recipients who have been receiving AFDC for any 36 of the preceding 60 months; individuals who are AFDC recidivists, that is, individuals who make application/reapplication for AFDC, and have received AFDC for any 36 of the preceding 60 months immediately preceding the most recent month for which application has been made; individuals who are custodial parents under age 24 and who have not completed high school or its equivalent, and are not currently enrolled in such programs; custodial parents under age 24 with no work history; and potentially ineligible families whose youngest child is age 16, that is, that child is within two years of being ineligible for AFDC due to age, thereby rendering the entire family ineligible.

Procedures are delineated concerning the determination of a family's target group placement. Target group status shall be decided no later than the initial assessment. Once the target group is established, it shall remain with the case until case termination. When a new application is taken, then a new target group determination can be created, based on the circumstances of the case at that time.

N.J.A.C. 10:81-14.3(k) deals with Federal JOBS participation requirements for individuals with certain educational needs or certain family circumstances.

Participation requirements for dependent children age 16 to 18, who are not attending school, are stated at N.J.A.C. 10:81-14.3(l). Such dependent children who are not themselves parents, are mandatory REACH participants.

The FSA requires that to the extent educational services are available and state resources permit, the state must (with certain exceptions) require the custodial parent under 20 who has not finished high school (or its equivalent) to participate in an appropriate educational activity. Educational requirements are set forth at N.J.A.C. 10:81-14.3(m). The proposed amendments divide such custodial parents into several distinct groups. The first group is the custodial parent under age 18.

Such a parent with no high school diploma or equivalent, regardless of the age of the youngest child is required to complete the high school education or equivalent. Attendance must be full-time unless good cause is demonstrated. In exceptional circumstances, criteria has been established to excuse the individual from high school attendance provided that he or she participates in other preparatory educational activities. That criteria is delineated at N.J.A.C. 10:81-14.3(m)1iii.

The next group is the category of individuals between age 18 and 19, with no high school diploma or equivalent, regardless of the age of the youngest child. Such individuals are required to participate in preparatory educational activities. Once again, certain criteria are established so that in certain instances, such individuals may be required to participate in training or work activities instead of the educational activities. These proposed amendments are set forth at N.J.A.C. 10:81-14.3(m)2ii.

At N.J.A.C. 10:81-14.3(n), educational requirements are set forth for individuals over age 20 with no high school and require preparatory educational activities consistent with the individual's employment goal. Participation in an educational activity may be precluded if the individual demonstrates a basic literacy level needed for his or her employment goal, or the employment goal established in his or her plan does not require a high school diploma.

Participation requirements for the principal earner in an AFDC-F family are described at N.J.A.C. 10:81-14.3(o). If under 25 years of age with no high school diploma, preparatory educational activities may be required. Otherwise, participation for 16 hours per week in a REACH work supplementation program (WSP), in a community work experience program (CWEP) or in an on-the-job training (OJT) program is required. CWEP hours of participation may be less based on the maximum number of hours of participation determined for that activity.

Text at N.J.A.C. 10:81-14.3(p) reiterates the policy mentioned above pertaining to individuals with children under six years of age. Such individuals are only required to participate a maximum of 20 hours unless they are under 20 years of age and do not have a high school education (see above explanation).

N.J.A.C. 10:81-14.3(q) states that remedial educational activities are mandatory for individuals without a high school diploma to help them achieve a basic literacy level when their employment goal does not require a high school education.

N.J.A.C. 10:81-14.3(r) mandates limited English proficiency education if such instruction in English is necessary for the participant to achieve his or her employment goal.

N.J.A.C. 10:81-14.3(s) discusses AFDC applicants' and recipients' right to voluntarily participate in REACH regardless of exemption status and their right to stop participation at any time without the loss of assistance.

N.J.A.C. 10:81-14.3(t) explains the concept of a REACH participant for purposes of determining the State's participation rate for Federal financial participation (FFP). An AFDC recipient who is assigned to a REACH program component, including educational activities, job skills training, job readiness activities, job search, OJT, WSP, CWEP and post-secondary education level is considered a participant. An individual's hours of participation for the week can be a combination of the hours of participation in more than one activity. An individual active only in assessment, employability development planning or case management is not considered a participant for these purposes.

N.J.A.C. 10:81-14.3A is reformatted text which has been deleted from N.J.A.C. 10:81-14.3(b) and (c) in order to delineate the categories of individuals exempt from participation in REACH as mandated by the Family Support Act. Modifications in the exemptions are as follows.

The age limit is reduced from 65 years of age to age 60 years to follow the FSA provisions for exemption of elderly AFDC recipients from REACH participation. Language concerning incapacity is amended to include appropriate procedures which were eliminated by the repeal of text at N.J.A.C. 10:81-3.18. Language is added to provide that although pregnancy in and of itself is not considered reason for incapacity, the Federal provisions permit the period of recuperation after childbirth, if prescribed by the woman's physician/psychologist, to satisfy an incapacity exemption.

New text also addresses the Federal concern that persons who are incapacitated be encouraged to participate in REACH if there are reasonable accommodations available for the individual's specific condition rather than immediately exempted from REACH due to the incapacity. This philosophy is in line with the concept that the purpose of the work/training provisions is to aid families in becoming self-sufficient rather than dependent on the welfare system. During the determination of the incapacity, eligibility for the individual will continue for a period of 30 days while verification of the incapacity is taking place. If the verification period is delayed due to difficulty in obtaining a medical appointment, then the 30-day limit may be extended to 45 days with continued eligibility until that time.

Due to the repeal of text at N.J.A.C. 10:81-14.3(c) because of the elimination of the REACH deferrals, text has been relocated at N.J.A.C. 10:81-14.3A(a)4. The former REACH deferral for illness has now been changed to a REACH exemption per Federal FSA provisions. Text has been expanded to clarify what constitutes minor ailments and injuries which do not exempt the individual under illness. A provision is included at N.J.A.C. 10:81-14.3A(a)4; to provide for referral to social services for individuals with symptoms of alcohol or substance abuse.

Exempt status is allowed for persons who are required in the home in order to care for another member of the household with a medical impairment as verified by a physician or licensed psychologist.

The deferral for pregnancy under REACH has been changed to an exemption to follow Federal provisions. Women were formerly deferred under REACH in the sixth month or later of pregnancy. Language at N.J.A.C. 10:81-14.3A(a)6 is aligned with the Federal provisions so that a woman, with medical verification of the expected date of delivery, is exempt after the first trimester of pregnancy.

Also formerly listed as a deferral under REACH was the instance of an individual caring for a child under two years of age. That circumstance is also recategorized per FSA provisions under exemption criteria from participation in work training. Text at N.J.A.C. 10:81-14.3A(a)7 accommodates this change. Obsolete language is also deleted pertaining to the definition of "brief and infrequent" absence from the child. Text is amended at N.J.A.C. 10:81-14.3A(a)7i and ii to further clarify that under the FSA requirements this exemption does not apply to custodial parents under age 20 if that individual has not completed high school or its equivalent, is not otherwise exempt, and child care arrangements are available to ensure the individual's participation. Only one parent may be exempt from participation in REACH due to this exemption criteria. Likewise, text includes reference to those parents with a child under six years of age. Such parents are not exempt from participation in the program, however, their participation is limited to 20 hours in a week so long as child care can be arranged. Again, only one parent in the family may be allowed this limited participation level (20 hours/week) in an activity due to care of a child under six; this limited participation is not

available to custodial parents under 20 who have not completed high school or its equivalent if that individual is not otherwise exempt and child care arrangements are available.

N.J.A.C. 10:81-14.3A(a)8 addresses the exemption due to remoteness. This too had been a deferral under former REACH provisions. Additional text has been included to complete the definition of commuting time per FSA provisions; that definition has been expanded to accommodate commuting distances beyond one hour each way to state that if the round-trip commuting time in the area where the participant lives usually exceeds the two hours round trip, then the acceptable commuting time considered reasonable for purposes of this requirement shall be the generally accepted community standard for commuting exceeding one hour as determined at the county level. If the principal earner in an AFDC-F or -N segment is exempt for reason of remoteness, that individual must register with the State Employment Service for purposes of the AFDC work/training requirement.

Text at N.J.A.C. 10:81-14.3A(a)9 concerns the exemption of the other caretaker relative or parent in an AFDC-C segment family when another adult relative in the home is a mandatory REACH participant and has not refused to participate in REACH or to accept employment without good cause. Under REACH, such situations were also classified as deferrals; this new text serves to align this criteria with Federal exemptions.

Also relocated at N.J.A.C. 10:81-14.3A(a)10 due to the deletion of the text pertaining to deferrals, is language concerning participation of the other parent (not the principal earner) in the AFDC-F segment if the principal earner is participating in the program. So long as the principal earner is not exempt for any other reason, then the second parent may be exempt from participation in REACH.

Language at N.J.A.C. 10:81-14.3A(a)13 discusses a new exemption resulting from the final rules published at 54 FR 42146 by the Family Support Administration concerning VISTA volunteers pursuant to the Domestic Volunteer Service Act Amendments of 1979 (Public Law 96-143). The Act provides that a person enrolled for full-time service as a volunteer under Title I of the Domestic Volunteer Service Act of 1973, and who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment, shall not be denied such assistance or services because of the volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

N.J.A.C. 10:81-14.3A(a)14 specifies that full-time employment of 30 or more hours a week under FSA provisions constitutes an exemption.

The proposed amendments at N.J.A.C. 10:81-14.4 redefine responsibilities of the case manager and emphasize the importance of an open and accurate exchange of information between case management and income maintenance.

When income maintenance refers REACH mandatory and volunteer participants to case management, the first responsibility of the case manager is to evaluate and assess the participant's existing employment-related skill levels, education level and characteristics related to employability and the local job market, and supportive service needs. These components are necessary in order that an employability goal may be determined when the case manager, with the participant, develops a REACH Employability Plan and REACH Agreement.

At N.J.A.C. 10:81-14.4(a), reference to the REACH Employability Plan is included since it is developed in conjunction with the REACH Agreement, in consultation with the participant through a conference(s).

The proposed amendment at N.J.A.C. 10:81-14.4(b) clarifies that the case manager shall notify income maintenance, for the purpose of imposing a sanction, in situations of noncompliance with REACH participation requirements, or not to impose a sanction if the participant complies before the sanction period begins. Text is also amended to emphasize the continued reevaluation of needs and services of a participant, and the arranging and monitoring of procedures necessary for collection of post-AFDC child care fees.

Text is deleted at N.J.A.C. 10:81-14.4(f) concerning REACH orientation, which is conducted by IM staff, not the case manager. The proposed amendment provides that, as part of the initial assessment of an individual, the case manager shall determine the participant's literacy level or, if unable to make the determination, refer the participant to the appropriate entity for literacy level determination. Additionally, instruction in English as a second language shall be mandated if it is necessary for the participant to achieve his or her long-term employment goal.

N.J.A.C. 10:81-14.5 discusses the development of and content to be included in the REACH Employability Plan based on the initial assessment, and used in conjunction with the REACH Agreement. The case manager develops the Employability Plan in consultation with the participant, including a participant in a client-selected activity, and to the maximum extent possible, should include the preferences of the client. The Employability Plan must take into account available REACH program resources, participant's supportive service needs, skills level and aptitudes and local employment opportunities. The Employability Plan basically outlines the REACH activities and services needed by the participant to achieve an employment goal, which should reflect the availability of jobs in the local and/or relevant market. Satisfactory progress in a participant's activities, educational or otherwise, are to be recorded on the Employability Plan at certain intervals of time.

N.J.A.C. 10:81-14.5 is amended to stipulate that the REACH Agreement shall include the hours of participation required in a REACH program activity by a participant, for purposes of determining a State's participation rate for FFP.

N.J.A.C. 10:81-14.6(a) emphasizes the importance of income maintenance communicating effectively with case management.

The proposed amendments at N.J.A.C. 10:81-14.6 primarily are concerned with the IM worker's responsibility to provide REACH program orientation to AFDC applicants and recipients. IM staff must determine exempt or mandatory status for REACH participation at the time of application or redetermination for AFDC and identify the participant's target group; inform individuals in writing or orally, of the availability of REACH program activities, supportive services, including but not limited to, child care, post-AFDC child care, Medicaid extension, payments for transportation, work-related expenses and car maintenance; explain participation requirements under the principle of mutual obligation and complete the REACH Employability Plan and the REACH Agreement. The rights, responsibilities and obligations of participants and consequences of noncompliance with REACH participation requirements, mandatory and voluntary participation, as well as agency obligations, should all be explained to the participant. Orientation may be conducted in a group or individual setting and it is during the orientation process that voluntary participants may decide whether to continue in REACH.

The proposed amendments at N.J.A.C. 10:81-14.6 also explain orientation procedures for post-AFDC participants and affirm the appropriate date of orientation for applicants and recipients being redetermined. The proposed amendments also emphasize that the REACH Addendum to the PA-IJ must be signed, indicating enrollment in the REACH program.

Procedures concerning hearings and notices are delineated at N.J.A.C. 10:81-14.7. New Jersey is utilizing the established hearing process which is handled by the Office of Administrative Law. Text is reformatted at N.J.A.C. 10:81-14.7(a) concerning the fair hearing process.

Text is revised at N.J.A.C. 10:81-14.7(b) concerning notices. Text has been amended concerning actions taken by the CWA regarding receipt of timely notice. Exception to timely notice occurs in the instance of change in the manner of payment of supportive services, unless changes result in discontinuance, reduction or termination, or force a change in child care.

N.J.A.C. 10:81-14.7(c) deals with rules on the continuation of REACH child care and supportive service benefits pending a hearing. If the participant had been receiving child care or transportation benefits and is awaiting a hearing because of a reduction in any of those benefits, such benefits continue at the reduced level pending the hearing. Participants who experience a discontinuance or suspension of child care or a specific REACH supportive service benefit are not entitled to receive those benefits pending the hearing. If the individual had not been receiving child care benefits, and is awaiting a hearing due to not receiving child care benefits or a specific REACH supportive service benefit, such benefits will not be provided pending the outcome of the hearing. Any participant who contests the amount of the child care benefit or a specific REACH supportive service benefit, shall continue to receive benefits in the amount determined by the agency pending the result of the hearing.

N.J.A.C. 10:81-14.7(d) deals with employed REACH participants who wish to appeal violations in New Jersey wage and hour statutes, including on the job training (OJT) and work supplementation (WSP) participants. These appeals are processed through the New Jersey Department of Labor's Divisions of Compensation and Workplace Standards. Employee complaints on such issues as work assignments, working conditions and wage rates are handled through these Divisions.

Current text at N.J.A.C. 10:81-14.8 has been deleted. New text has been reformatted and expanded to include FSA provisions relating to noncompliance, good cause, conciliation and sanctions to realign information for ease of understanding and usage, and to incorporate new concepts

from FSA within the existing regulations. Specific changes are delineated as follows:

In accordance with Federal regulations, the concept of the conciliation process is delineated for resolution of disputes prior to imposition of a sanction. The new language provides that either the recipient or the case manager can request conciliation. Under current procedures this process is entitled the conciliation conference.

The reformatted text at N.J.A.C. 10:81-14.8(b) describes situations not applicable to noncompliance. The Federal regulations allow "good cause" for noncompliance if necessary supportive services are not available; under REACH the individual shall be temporarily excused from participation.

At N.J.A.C. 10:81-14.8(c) text has been amended regarding indications of noncompliance. Formerly under REACH, individuals who failed to attend orientation were considered to be in noncompliance. Under new procedures, orientation is part of the application and redetermination process; text has been added to address non-attendance at REACH evaluation sessions. Language is added to include as an indication of noncompliance, the individual who reduces earnings without good cause, and the individual who refuses necessary and supportive services without good cause, without providing alternative arrangements or demonstrating that such refusal would not prevent or interfere with participation. Language is added to include the individual who ceases participation in REACH employment-directed activities without good cause.

N.J.A.C. 10:81-14.8(d) introduces the concept of the "conciliation conference" and reformats text concerning notification to the participant of noncompliance through use of Form R-8, Conference Letter.

N.J.A.C. 10:81-14.8(e) stipulates that the participant is responsible for providing information to the agency so that good cause determination can be made. Good cause for noncompliance has been expanded to include that the parent or other relative is providing care of a child under age six, and the employment would require such individual to work more than 20 hours per week; acceptance of the job would result in a net loss of cash income to the family of the participant; homelessness of the individual's family; and, circumstances beyond the participant's control prevent participation in REACH. These revisions are required by the FSA.

New text at N.J.A.C. 10:81-14.8(f)1 explains conciliation procedures to resolve noncompliance situations in the conciliation conference. Specific responsibilities of the case manager during conference proceedings are delineated. The individual's rights and responsibilities under REACH are reviewed, and the consequences of continued failure to participate are specified. Conciliation efforts are documented in the individual's case record, and copies of all notices are included in the case record. N.J.A.C. 10:81-14.8(f)2 discusses the conciliation conference and emphasizes efforts at conciliation prior to initiating any sanction.

Text has been added and reformatted at N.J.A.C. 10:81-14.8(g) and (h) concerning the decision to impose sanctions. Sanctions shall be imposed only in cases where the case manager determines that there has been a willful refusal without good cause to comply with REACH requirements.

New text is added at N.J.A.C. 10:81-14.8(i) to specify that the needs of only the individual under sanction are deleted in determining eligibility for AFDC and the amount of the assistance payment. Current REACH policy has substantially changed in the AFDC-F segment in that under present policy in the AFDC-F segment the needs of the entire family are deleted if the principal earner does not cooperate with REACH; proposed policy requires that the principal earner and the second parent (if that parent is not participating) have their needs deleted for failure of the principal earner to cooperate in REACH. In AFDC-C or -F segments, in situations where the mandatory participant is the only dependent child, only that child's needs are removed (the caretaker relative(s) may continue to receive AFDC-C or -F benefits if otherwise eligible) as opposed to current rules where the entire family was determined ineligible for AFDC.

N.J.A.C. 10:81-14.8(i)8 provides that during the sanction period, an adult individual loses categorical eligibility for Medicaid under Federal JOBS requirements; however, in New Jersey, the individual remains eligible for Medicaid. Children 16 to 18 years old who are sanctioned for noncompliance with REACH requirements will continue to be eligible for Medicaid if there are other AFDC eligible children in the family.

N.J.A.C. 10:81-14.8(j) deals with current policy concerning voluntary cessation of employment in AFDC-N.

N.J.A.C. 10:81-14.8(k) and (l) delineate sanction periods for noncompliance with REACH program requirements, or the REACH Agreement, without good cause and renewed participation after the sanction period, as per FSA requirements. Proposed sanction periods are:

1. For the first instance, the sanction period shall continue for one payment month or until the failure to comply ceases, whichever is longer. For this sanction period New Jersey has requested a waiver that the penalty period should extend at least one full calendar month as opposed to FSA requirements that the penalty would cease at the time of compliance.
2. For the second instance, the sanction period shall continue for three payment months or until the failure to comply ceases, whichever is longer.
3. For the third instance, the sanction period shall continue for six payment months or until the failure to comply ceases, whichever is longer.
4. Continued noncompliance after expiration of the sanction period will result in continued sanction.

A new concept at N.J.A.C. 10:81-14.8(m), per FSA provisions, is identified as determining when failure to comply ceases. The case manager shall determine when the failure to comply ceases, based on the demonstrated willingness of the individual to participate in the REACH program after the sanction period has ended, for a basic period of up to two weeks.

N.J.A.C. 10:81-14.10 expands the description of the job search component of the REACH program in accordance with FSA provisions. The proposed amendment explains that job search is the primary activity in which REACH mandatory and voluntary participants who have job skills and experience applicable to the labor market, engage in an organized set of activities, including referrals to potential employers, with the goal of obtaining full-time employment.

Job search requires participation of an equivalent of 20 hours per week for FFP purposes and may be conducted in group or individual settings; however, group job search is stressed in order to maximize FFP. The individual is allowed to participate in job search for a period of eight weeks in any period of 12 consecutive months for FFP purposes. Participation in job search beyond this compulsory time period is permitted, however, is an unmatchable REACH activity for FFP purposes; the individual must participate in another REACH component such as education or training in order to claim FFP.

N.J.A.C. 10:81-14.10(c) deletes reference to early intervention job search since the State chose not to implement optional FSA requirements as such procedures are not applicable to REACH job search operations.

N.J.A.C. 10:81-14.11 describes the REACH Work Supplementation Program (WSP). The proposed amendment at N.J.A.C. 10:81-14.11(a) distinguishes that AFDC funds are used to develop and subsidize employment for REACH participants in WSP as an alternative to aid provided by AFDC.

N.J.A.C. 10:81-14.11(c) defines the time of placement in WSP as the date on which the agency and the employer agree on the terms of the placement of the specific individual.

N.J.A.C. 10:81-14.11(f)2 clarifies conditions of employment under WSP. During the first 13 weeks in WSP, employee status is not provided to participants; text has been added to define employee status as conferring benefits available to regular employees (for example, insurance coverage and vacation time). At N.J.A.C. 10:81-14.11(f)4 text has been added stating that no WSP participant can be assigned to fill any established, unfilled position at the employment site.

N.J.A.C. 10:81-14.11(g) has been amended to clarify that earned income of WSP participants is budgeted as in any AFDC case with income. Due to the re-ordering of the application of the earned income disregards for AFDC earned income, the WSP disregard procedure is no longer unique to WSP participants. Through REACH, transportation and training-related allowances were provided for employment-directed activities. The FSA regulations have reclassified WSP as subsidized "employment" rather than as an employment-directed activity. As such, expenses for transportation are disregarded from the earnings for WSP participants. Additional FSA provisions increase the work expense disregard from $75.00 to $90.00 and change the order of application of disregards. For WSP participants, the earned income disregard of $90.00 is applied first; the $30.00 and one-third disregard is applied next. The child care disregard is not applied to WSP earned income.

N.J.A.C. 10:81-14.11(h) provides an explanation of WSP. Individuals may remain in WSP for nine cumulative months during the lifetime period that AFDC is received. The calculated grant (or residual grant) that the WSP recipient receives is calculated monthly by subcontracting earnings and other countable income from the AFDC grant based on family size. If the individual becomes ineligible for AFDC, the individual shall continue in the WSP job until the WSP contract ends. If more than one individual in the family participates in WSP, the Federal reimbursement to the State will not exceed the grant amount per family based on family

size. A REACH participant cannot participate in WSP and on-the-job-training (OJT) at the same time.

Supportive services for a WSP participant include the JOB and CAR allowances (described in N.J.A.C. 10:81-14.19). Necessary child care payments are made directly to the child care provider. Medicaid coverage is provided, and if the family loses eligibility for AFDC, the family may be eligible for extended Medicaid benefits (described at N.J.A.C. 10:81-14.20). Child care payments after loss of AFDC eligibility shall be treated as post-AFDC child care benefits (as per requirements at N.J.A.C. 10:81-14.18). When the WSP contract is fulfilled, the individual shall be eligible for post-AFDC child care for the number of months remaining in the 12-month period.

N.J.A.C. 10:81-14.12 discusses the REACH Community Work Network Experience Program (CWEP). Community work experience is a short term or part-time unsalaried work assignment with a public or nonprofit employing agency for the purpose of providing work experience for AFDC recipients. REACH participants in community work programs are provided the necessary transportation, child care and other related services or reimbursed for costs directly related to participation in the program as part of the REACH Agreement.

Language concerning reimbursement of child care costs is amended at N.J.A.C. 10:81-14.12(c) to align reference to earned income child care disregard limits with FSA changes proposed at N.J.A.C. 10:82-4.4. Other FSA provisions are incorporated at N.J.A.C. 10:81-14.12(e). Language is added to provide that, for AFDC-C participants with assigned child support, that child support is to be deducted from the grant (minus the $50.00 pass-through) prior to dividing the grant by the Federal minimum wage in order to determine the maximum number of hours required for participation in CWEP. This computation will decrease the number of hours required. Language is expanded to emphasize that in coordinating CWEP with other activities, job placement will have top priority. In keeping with the employability goal of each individual, a provision is added to reevaluate the participant's employability plan at the conclusion of each CWEP assignment.

N.J.A.C. 10:81-14.12(g) is revised to include examples of appropriate public employing agencies for CWEP participants.

N.J.A.C. 10:81-14.12(h) confirms that after nine months of participation in a CWEP position, the participant is not required to continue in that assignment unless the maximum number of hours of participation are no greater than the AFDC grant divided by the highest of either the Federal minimum wage (excluding child support collection and minus the $50.00 pass-through) or, the hourly rate of pay for employees in the same or similar job at the same site.

At N.J.A.C. 10:81-14.13(b), language is changed to align with FSA regulations concerning participant status in that for a parent with a child under age two deferred status is not recognized under FSA.

N.J.A.C. 10:81-14.14(b) incorporates FSA provisions applicable to REACH on-the-job training (OJT). The FSA requires that if the individual makes satisfactory progress in OJT, then he or she shall be retained by the employer as a regular employee at the end of the OJT as established in contracts between the IV-A agency and the employer. The agency is responsible for monitoring the progress of the participant during the OJT assignment to ensure that an appropriate placement has been made in accordance with the individual's employability goal. Previously under REACH following the WIN demonstration provisions, OJT was considered to be a training component and the wages earned counted as earned income for the calculation of eligibility and grant determination; child care and other related expenses were supplied through REACH for the length of the OJT contract.

A significant change in the proposed amendments as warranted by the FSA, is that if the family becomes ineligible for AFDC benefits during the contract period, they may be eligible for appropriate supportive services available to individuals with earned income. Transportation costs shall be paid from the $90.00 work expense disregard. Child care benefits shall be handled through post-AFDC child care benefits if the family meets those eligibility requirements. Family members participating in an OJT program are eligible for Medicaid so long as they remain eligible for AFDC. When the family loses eligibility for AFDC, they may be eligible for extended Medicaid.

The participant in an OJT shall be compensated by the employer at the same rates as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the Federal minimum wage.

N.J.A.C. 10:81-14.15(b) is amended to provide that the Adult Basic Education (ABE) program can be used in helping the REACH participant achieve the basic literacy level.

The purpose and scope of REACH supportive services has been clarified at N.J.A.C. 10:81-14.17(a). The agency shall pay for or reimburse the costs of transportation and other work/training-related supportive services if the case manager determines that the services are not provided by other resources, and are necessary for the individual's participation in REACH. These supportive services are to supplement existing resources available to the participant in employment and employment-directed activities including educational programs, evaluation and assessment.

Text at N.J.A.C. 10:81-14.18(a) has been reformatted. New text is added to explain that REACH child care benefits and post-AFDC child care benefits are available, to the extent necessary, to permit an AFDC family member to accept employment, to remain employed, to participate in a REACH employment-directed activity or to complete the initial assessment of employability. FSA requires that child care be provided for certain children as delineated at N.J.A.C. 10:81-14.18(a)1i.

Existing text regarding child care arrangements has been recodified from N.J.A.C. 10:81-14.18(a)1 to N.J.A.C. 10:81-14.18(a)2. Language at N.J.A.C. 10:81-14.18(a)2ii, iii, and iv deals with specific FSA requirements regarding those arrangements.

N.J.A.C. 10:81-14.18(a)3 incorporates FSA mandates on agency responsibilities about child care. The agency must inform families requesting child care benefits of their rights and responsibilities, and respond to the request for child care benefits within a reasonable period of time. The caretaker relative must have the opportunity to choose the type of child care arrangements from among all those arrangements authorized for payment through the REACH program.

The FSA requires coordination of child care activities with existing resources in the county. Additional text at N.J.A.C. 10:81-14.18(a)4 explains the coordination process.

Hearing and notice provisions per the FSA with regard to child care issues are described at N.J.A.C. 10:81-14.18(a)5. A significant difference concerning benefits paid pending the hearing with respect to child care issues is that the child care benefit will remain at the reduced level, not a prior higher level, until the hearing. Likewise, if the family is awaiting a hearing due to nonreceipt of child care benefits, no child care benefits are to be received until after the hearing, pending the result.

N.J.A.C. 10:81-14.18(a)6 describes the FSA procedures concerning refusal of child care benefits by the participant and of the individual's responsibility in such instances to ensure that the refusal will not prevent or interfere with participation in REACH or employment.

N.J.A.C. 10:81-14.18(a)7 has been added to advise that the county welfare agency must take reasonable precautions to guard against fraud and abuse in the funding and provisions of REACH child care benefits.

Language is deleted at N.J.A.C. 10:81-14.18(d)1 and 5 since, under the State REACH program, a one-year participation time limit applied to an individual in an employment-directed activity unless a waiver was requested to extend the time limit. FSA does not require a one-year limit.

Text is added at N.J.A.C. 10:81-14.18(d) to include the concept of bridge payments for child care. Such payments have been paid under REACH. The FSA limits the time frame of payment of such costs. Those payments are used to ensure the continuation of child care services between REACH activities or between REACH activities and employment, when gaps in participation occur due to the scheduling of specific activities or the start date of the job.

Text at N.J.A.C. 10:81-14.18(g)1i is deleted since it is no longer necessary to request authorization from an individual to make vendor payments on his or her behalf under FSA provisions. Revised text at N.J.A.C. 10:81-14.18(g)2 permits direct payment of child care costs to participants in exceptional or emergency siutations only.

Text at N.J.A.C. 10:81-14.18(g)4iii-v is a clarification of communication responsibilities of IM staff, case managers and lead child care entities to ensure prompt payment of child care vendors in instances where REACH participants become employed or transition into post-assistance child care benefits.

ADFC-N segment cases will have their child care costs paid by the direct payment method up to the maximum rates established by the Department of Human Services as set forth at N.J.A.C. 10:81-14.18(g)5.

Transportation costs and work/training related expenses comprise a part of the need for supportive services, and how these needs are met is described in N.J.A.C. 10:81-14.19 in accordance with FSA requirements; therefore, it is necessary to delete certain existing subsections which have been revised to align with FSA procedures.

Text at N.J.A.C. 10:81-14.19(a) explains the current responsibility of the case manager to determine if work/training related expenses are necessary for REACH participation and are not provided through exist-

ing resources. It has been indicated throughout N.J.A.C. 10:81-14.19 that participant allowances are excluded as income for purposes of the Food Stamp Program. The various types of REACH participant allowances (PALs) are detailed as follows.

Text has been rewritten at N.J.A.C. 10:81-14.19(b) to describe the provision of transportation-related expenses (TRES). Payment or reimbursement for transportation costs and/or meals for participation in training shall be provided for: REACH preparation activities such as evaluation, assessment, and REACH Agreement conferences; educational employment-directed activities such as GED or job skills training; noneducational employment-directed activities, including but not limited to, job search and CWEP programs; employment, only when a participant is starting employment until receipt of the first paycheck and not to exceed one month. Transportation costs for WSP, OJT, and regularly employed individuals are not covered in this section as those costs are accounted for through the $90.00 work expense disregard.

N.J.A.C. 10:81-14.19(b)2 emphasizes that in utilizing transportation allowances, REACH is the payor of last resort outside of any REACH contractual agreements; and that the most available and economical means of transportation be used during the period of need for the specific activity.

Transportation allowances delineated at N.J.A.C. 10:81-14.19(b)3, 4 and 5 allow for payment of actual cost of transportation/meals, of up to $6.00 per day ($30.00 per week). Higher amounts may be provided up to a maximum of $60.00 per week, provided that circumstances are documented concerning the need for the higher TRE, and that it has been approved by the supervisor of the case manager. In extraordinary situations allowances in excess of $15.00 per day may be provided with approval of the DEA.

N.J.A.C. 10:81-14.19(c) provides for transportation costs for transporting children to and from child care facilities (TCCs). Those costs are non-REACH, Title IV-A funds. Costs of transporting children of REACH participants may be covered when the transportation is to and from a licensed child care center or day camp, or if the child is a "special needs" child of a REACH participant requiring such services.

N.J.A.C. 10:81-14.19(d) provides for a $100.00 cumulative allowance for participant in REACH employment-directed activities (EDAs). These allowances for necessary expenses based on need, are used to enable the individual to participate in EDAs including training and educational programs, job search, and CWEP. WSP and OJT are not eligible for this allowance which is accounted for through the $90.00 work expense disregard. Allowable expenditures include, but are not limited to, books, supplies, equipment, uniforms and tools, which are not available from any other funding source. The eligibility period for the cumulative $100.00 EDA allowance, defined at N.J.A.C. 10:81-14.19(d)4, begins with the first REACH employment-directed activity and ends with the last day of participation in the employment-directed activity. N.J.A.C. 10:81-14.19(d)6 provides that the case manager may determine that EDA payments exceeding the $100.00 maximum may be made in extraordinary circumstances, with approval from DEA.

N.J.A.C. 10:81-14.19(e) introduces an allowance for employed REACH individuals. That allowance is capped at $100.00 for the eligibility participation period and is based on need. Actual expenses for necessary items which permit an individual to accept or maintain employment are covered through this allowance. Payments are issued in preparation for and during the course of employment, including the post-AFDC employment period. Participants in WSP and OJT programs are eligible for the allowance. The allowance is entitled the Job Allowance (JOB). Expenses which are covered through this allowance are delineated at N.J.A.C. 10:81-14.19(e)2; examples of allowable items covered through this reimbursement are special clothing needed for particular types of jobs (including safety glasses), tools and equipment, and union dues (also permitted are initial union membership fees which must be paid as a prerequisite to employment), REACH remains the payor of the last reosrt, outside of any REACH contractual agreements.

Text at N.J.A.C. 10:81-14.19(e)4 provides that AFDC-C, -F, and -N recipients who become ineligible due to income from employment and who were not participating in REACH, may be eligible for JOB Allowance payments provided such individuals comply with REACH requirements for payments (including the signing of a REACH Agreement).

Text delineating the eligibility participation period for JOB Allowances is at N.J.A.C. 10:81-14.19(e)5. The JOB Allowance is a cumulative allowance which begins the first day the participant receives a firm job offer and accepts the position, and ends with the date of termination of all extended REACH benefits (the transitional child care and extended Medicaid benefits for one year post-AFDC). The eligibility period for WSP and OJT programs begins with the effective date of the activity and ends with the date of termination of all extended REACH benefits.

In special circumstances, determined on a case-by-case basis, the JOB payment allowance may exceed the $100.00 maximum eligibility limit in the eligibility participation period. Such payments require the written approval of DEA which must be obtained before payment can be issued. Those procedures are set forth at N.J.A.C. 10:81-14.19(e)6.

The $500.00 motor vehicle cumulative allowance (CAR) is described at N.J.A.C. 10:81-14.19(f). Again, the eligibility for payments through this allowance is based on need up to the cumulative total of $500.00 in an eligibility participation period. Payments are issued for actual expenses incurred. The period covers the time frame from the beginning of the first activity and ends with the termination date of all extended REACH benefits. Expenditures covered through this allowance are set forth at N.J.A.C. 10:81-14.19(f)1.

Certain circumstances must exist for payments through the CAR Allowance to be issued. Those conditions appear at N.J.A.C. 10:81-14.19(f)2, and include the following: no alternative, less expensive, means of transportation can be available to the participant; the motor vehicle must be owned by the participant or a member of the immediate family living in the same home as the participant who is eligible for AFDC as a member of that same filing unit or as an essential person to that family, and the vehicle will be available to the participant for travelling to and from REACH activities or a job; the costs of the repair or service cannot be met through the regular transportation cost process (TREs) even at the maximum funding level; documentation has been obtained, including an estimate of repair costs, supporting the need for the repairs; the general overall condition of the motor vehicle justifies the repairs; the repairs are necessary to make the vehicle operable, roadworthy, or are required for the vehicle to pass the State safety inspection; the REACH activity needed by the participant is not available in the vicinity of the participant's home or at a location accessible by less costly means of transportation; and, the agency provided those services needed by the participant through its resources and the participant is in need of services from other sources beyond the scope of the activities already provided. N.J.A.C. 10:81-14.19(f)3 permits the county to develop a list of REACH approved mechanics.

Further restrictions are placed on payments made for insurance purposes and are stated at N.J.A.C. 10:81-14.19(f)4. Use of the CAR Allowance payment for insurance premiums is limited to the quarterly payment. That payment may include any surcharges mandated by the insurer due to the participant's past driving record. Insurance payments are authorized for only those vehicles actually owned by the participant. After the quarterly premium is paid through the CAR Allowance process, the participant must be financially able to continue to pay for insurance costs. Should the participant cancel the insurance after the quarterly premium is paid via the CAR Allowance and receives reimbursement of the premium, then that shall constitute an overpayment and the agency shall take action to recover those monies as delineated at N.J.A.C. 10:81-14.24.

In extraordinary circumstances, the CAR Allowance may exceed the $500.00 limit. Those situations shall be determined on a case-by-case basis and payments may be issued only with the written approval of the DEA. Text has been included to address this issue at N.J.A.C. 10:81-14.19(f)5.

The eligibility participation period for full EDA, JOB, and CAR Allowances is delineated at N.J.A.C. 10:81-14.19(g). The participant is eligible to receive allowances for EDA, JOB, and CAR up to the maximum cumulative amounts ($100.00, $100.00 and $500.00 respectively) and is not again eligible for these maximum allowances unless the individual is off assistance for 12 consecutive months (including post-AFDC extended benefits). If the reach participant remains off AFDC for less than one year and then returns to AFDC and REACH, the individual is eligible for the balance remaining in the EDA, JOB, and CAR Allowances (less expenditures made previously).

Procedures for payment of EDA, JOB and CAR Allowances are delineated at N.J.A.C. 10:81-14.19(h). The participant is eligible to receive up to the maximum amount of the allowance during the participation period, either as a one-time lump sum payment or in a number of smaller payments, issued retrospectively as reimbursement or prospectively if needed; or, payments may be issued to the vendor when possible.

N.J.A.C. 10:81-14.19(i) delineates procedures to ensure prudent county administration of funds for TRE, EDA, JOB, CAR, TCC, and CWEP by providing REACH activities at locations accessible to participants by inexpensive means of transportation and by scheduling more than one REACH activity on the same day when possible.

N.J.A.C. 10:81-14.19(j) reiterates the existing reimbursement to CWEP participants of $10.00 per month for expenses such as clothing, personal care items, and similar costs identified at N.J.A.C. 10:81-14.12(c)3.

Text at N.J.A.C. 10:81-14.20 aligns post-AFDC Medicaid benefits with FSA requirements. Recipients who transitioned into Medicaid extension benefits prior to April 1, 1990 may be eligible for an additional three months of Medicaid under former Federal provisions.

Text at N.J.A.C. 10:81-14.21(b) clarifies the determination of eligibility and the calculation of benefits of those REACH participants serving as child care providers. Those individuals may be placed in one of the 600 child care provider slots that have been allocated among the counties based on the AFDC population in the county. The earned income disregard amounts have been amended to comply with the FSA requirements.

Text at N.J.A.C. 10:81-14.21(e) addresses the calculation of the net loss of cash income. The calculation method is the approved FSA determination and is designed to prevent a family from accepting a job if the employment would penalize the family if they would have less disposable income after employment than would be available to the family while receiving assistance. The calculation is a manual process which is done on a case-by-case basis at the time of the offer of employment. If the agency makes payments for child care costs, cause for net loss of cash income does not exist.

The calculation is a two-step process. Step 1 involves subtracting the applicable earned income disregards from the gross earnings received from the new job and adding any unearned income to this total to determine countable income to the family. That countable income is then subtracted from the needs allowance standard for that family's size. The result is the adjusted grant.

In Step 2, subtract from the gross earnings from the new job the actual expenses incurred by the family by accepting the new job. Add in the adjusted grant from Step 1. Compare the total remaining earned income to the cash assistance payment (that is, the flat grant less any unearned income) for the family. If the available income is less than the flat needs allowance standard, there is a net loss of cash income equal to the difference between the two figures.

Text at N.J.A.C. 10:81-14.22(a)4 describes prioritized referral procedures to the CWA IV-D unit by case management.

N.J.A.C. 10:81-14.24 addresses overpayments and underpayments of supportive service benefits as required by the FSA. These procedures apply to all supportive service benefits including child care benefits delineated at N.J.A.C. 10:81-14.18 and other supportive service benefits outlined at N.J.A.C. 10:81-14.19. The overpayment is an amount paid which exceeds the amount for which the participant or provider was eligible. Overpayments are recovered either by direct payment from the client or the provider to the agency, or through a reduction in future benefits until the amount is repaid. Reductions in benefits as a method of recovery can only be made from the type of benefit in which the overpayment occurred (for example, child care can only be recovered from future child care benefits). The exception to overpayments is the instance of a provider whereby the agency is obligated to make full payment under a contract; FFP cannot be claimed in such cases. Detailed records must be kept by the county regarding such overpayments.

Social Impact

Studies indicate that the average length of time an AFDC family receives assistance is about two years. Included in that average are many families who remain on assistance for a protracted period of time. Often, the parent (or parents) in those families lacks the necessary skills or basic education to find employment and become self-sufficient. In many cases, the parent began to receive assistance as a teenager, never finished high school, and has never developed the skills needed to find and maintain employment. Additionally, further research has identified other factors which foster welfare dependence, and cite the need for reliable and affordable child care as well as other support services, such as transportation, as necessary in order to obtain and keep a job. The JOBS program provisions authorize Federal monies to address head-on, the above described problems.

REACH has focused on the same goals as JOBS. As such, it has provided necessary educational and training programs to enable individual families to break the welfare cycle. REACH has supported participants in those efforts by providing the child care and other services needed. However, there are two striking differences between the two programs. REACH has placed emphasis on new applicant families and the need to help them avoid dependency on the welfare system from the time of their initial application for assistance, whereas JOBS targets those families who have been long-term recipients, either continuously on assistance or recidivists over a period of years. Those Federal target groups are historically considered to be the hardest to serve, and consequently, the least likely to attain self-sufficiency.

REACH will continue to assist both types of families to attain the basic skills required to achieve self-sufficiency.

Secondly, REACH has stressed educational programs or training to aid individuals in obtaining employment; JOBS, on the other hand, strongly supports educational programs and the attainment of the high school diploma (or its equivalent) for participants under the age of 25, unless the long-term employment goal of the individual does not require such education. JOBS further emphasizes the importance of education and a more literate workforce in that it sets forth a minimum literacy level of 8.9 years; satisfactory progress requirements for participation in the educational and training components; and full-time participation in such components by individuals under 25 years of age with no high school diploma, regardless of the age of the youngest child.

The foundation of the REACH program has been the wide range of programs and services it makes available to participants through access to comprehensive educational and employment opportunities and a social service network. The proposed amendments will enable the diverse REACH population to maximize the use of those resources to support families in their movement toward independence from welfare as the amendments assure that needy families with children can obtain the education, training, and employment that will help them avoid long-term welfare dependence. Other amendments in the supportive services area provide for child care and other services in support of employment, education and training activities.

The proposed amendments specify certain populations (that is, target groups) and activities to be offered based on an assessment of the participant's particular needs and skill levels. Flexibility is incorporated into the proposed amendments to accommodate various educational needs of participants in line with individual employment goals and the various county opportunities available to participants to prepare them for employment in jobs they can realistically be expected to obtain based on local job market offerings.

The proposed amendments will have an overall beneficial family impact. The objectives of the proposed program revisions to provide training, education, job placement and employment to end welfare dependency will result in parents having the primary responsibility for the support and welfare of their children. The REACH program amendments are designed to help parents meet these responsibilities.

It is a fact that women and their children represent the overwhelming proportion of AFDC recipients. The amendments target within this group those that are most dependent, the never-married mothers who did not complete high school and who had their first child at a young age. Program provisions address the special needs of these single parents.

For two-parent families, the proposed amendments provide for spousal participation, thus involving both parents in a better future for their family through cooperation with the requirements of REACH. The FSA mandates that the principal earners in AFDC-F segment cases have 30 days only after application for the AFDC program to enroll in REACH, unless exempt from participation. Further, the proposed amendments require that principal earners who are exempt from REACH for the reason of remoteness register with the State Employment Service. Likewise, AFDC-F principal earners must participate in a community work experience program, in a work supplementation program, or on-the-job training for a minimum of 16 hours per week. These provisions substantiate the involvement of that parent in employment and through the 16-hour weekly participation requirement in specific employment-directed components with on-the-job experience, emphasize unsubsidized employment as the means to self-sufficiency. This change to the REACH program will require counties to plan for adequate slots in those REACH components to meet this Federal requirement for such families.

In order to assure that participation in REACH employment-directed activities is meaningful and productive for the individual, "satisfactory progress" in the activity is mandated in the proposed amendments. This provision assures that training and educational activities offered through REACH result in an increase in REACH participants' skills and competencies, serves to track an individual's progress toward his or her employment goal, and aids in determining whether the participant should continue in the activity. Such progress, as well as participant attendance at activities, will result in increased monitoring by case managers at the county level. Such records will also be used to determine whether the agency will continue to provide related supportive services for participation in a particular activity pursuant to these proposed amendments.

The proposed amendments delineate related REACH functions under Title IV-F affecting eligibility for and the amount of the AFDC payment which must be performed by Title IV-A staff. These functions include determining participant status, informing volunteers of their right to participate, identifying participant's target group, and implementing sanctions. As such, the responsibilities of income maintenance staff and case managers in the REACH client flow have been affected accordingly.

REACH deferrals are eliminated in the proposed amendments. The FSA exempts individuals from participation in most of the situations where REACH previously temporarily deferred the individual. The exceptions are homeless individuals and individuals in non-approved client-selected activities as discussed below. The FSA recognizes that supports available through REACH (including training and employment opportunities) assist in the development of the individual's ability to ultimately provide for the housing needs of his or her family, thus avoiding homelessness. As such, the homeless are mandatory participants, per proposed amendments, unless otherwise exempt. REACH can accommodate those individuals through assignment to appropriate activities based on special circumstances of the case.

In deference to choices and commitments made by a mandatory participant prior to being scheduled for REACH participation, the proposed amendments delineate criteria for evaluation of the client-selected training or education program or activity (in which the individual is enrolled) for approval of the activity for REACH participation. If the activity does not meet the conditions for approval, the FSA requirements mandate participation in another REACH activity. The proposed amendments represent a drastic change from present REACH policy concerning this issue whereby such individuals in non-approved client-selected activities would be temporarily deferred from REACH participation. The FSA philosophy emphasizes preparation of the individual for employment in the local job market and relies on the employability planning process which sets an employment goal for each participant. As such, the proposed amendments consider the job market as well as the individual's employment goal in evaluating client-selected activities for approval as REACH participation. The FSA, in keeping with the goal of tailoring program participation to the needs of the individual and his or her success in securing viable employment in the local job market, serves to protect such individuals from wasting more time and money in activities which do not serve to better the individual's future.

Voluntary participation in REACH, in accordance with the FSA, is defined as participation by an individual who is determined exempt from REACH. Such individuals have the right to stop participation at any time without loss of assistance payments so long as he or she remains exempt; sanctioning procedures as a result of nonparticipation in the program by the volunteer do not apply in these instances. This change in the definition of a "volunteer" will affect those individuals currently defined as volunteers during the phase-in of the REACH program into the 21 counties. Present policy designates "volunteers" as those participants who request involvement in REACH even though the individual may not be included in the phase-in population (for example, new applicants) or has been determined deferred or exempt from participation. This concept will affect the participation count for Federal matching purposes, as anyone not exempt or in sanction status is included in the population of participants.

Provisions concerning the sanctioning process have considerable impact on the amount of the assistance payment received by the family if a family member is sanctioned. Under present policy in the AFDC-F segment, the needs of the entire family are deleted if the principal earner does not cooperate with REACH; proposed policy requires that the principal earner and the second parent (if that parent is not participating) be deleted in determining eligibility for AFDC and the amount of the assistance payment. Further, in AFDC-C or -F segments, in situations where the mandatory participant is the only dependent child, only that child's needs are removed as opposed to current rules where the entire family is determined ineligible for AFDC. The proposed amendments reflect the Federal interpretation that even though the child is under sanction, he or she remains a "dependent" child to the parent(s) or caretaker relatives and if they are otherwise eligible, shall retain AFDC benefits.

The State has proposed a process to aid case managers in determining when a "failure to comply" ceases. Case managers will decide when the failure to comply ceases, based on the demonstrated willingness of the individual to participate in REACH after a sanction period has ended for a trial time frame of up to two weeks. This process establishes dates of compliance giving the case manager more administrative control.

Provisions concerning the work supplementation program (WSP) concerning the application of the earned income disregards and payment for transportation expenses incurred from WSP participation are revised. Due to the reordering of the application of the earnings disregards for AFDC earned income, the WSP disregard procedure is no longer to unique WSP. FSA regulations has reclassified WSP as "subsidized employment" rather than as an employment-directed activity. Therefore, expenses for transportation shall now be disregarded from the earnings for WSP participants due to the Federal reclassification of this component.

Possible barriers to REACH participation have been removed through the expansion of supportive service allowances as authorized under the Family Support Act when the agency determines such allowances are necessary for participation in REACH. For individuals in the various REACH components these expenses include both on-going and special expenses. Participants in a REACH activity or employment will benefit from these proposed enhancements to the rules which support participation in the program.

The provisions concerning child care and supportive service benefits received pending a hearing are Federal mandates of the FSA. These rules clarify the levels of benefits to be received by the individual as determined by the agency until the results of a hearing are made known. These amendments, and provisions concerning recovery of overpayments of supportive service benefits (including child care), both affect Federal financial participation.

REACH participants and New Jersey taxpayers will benefit significantly from these proposed amendments. The rules maximize Federal financial participation in that they align REACH requirements with the Federal JOBS program. These proposed amendments serves to provide enhanced employment-related opportunities and supportive services to assist families in their movement from welfare dependency to independence through employment.

Economic Impact

The proposed amendments reflect procedural adjustments and modifications, as well as program revisions as a result of the implementation into REACH of the Federal Family Support Act provisions for JOBS and related supportive services. The approach tailors the existing REACH program to address policies and procedures mandated by the Federal AFDC work/training program (JOBS), while maintaining the existing framework of REACH. The intent is to make these changes within the limits of the funds budgeted for the Department of Human Services for REACH in State Fiscal Year 1991. Beginning with State Fiscal Year 1991, these amendments require State spending in the amount of approximately $23 million.

These dollars will be spent on primarily transitional services, that is, Medicaid benefits and child care vouchers for up to one year post-AFDC, or $9 million and $16.7 million dollars respectively. The remaining $1.9 million will be spent on educational services including: English as a second language, remedial education and high school equivalency education such as general educational development (GED) programs.

Federal financial participation will be available to the State. Child care vouchers are matched 50 percent through Title IV-A funding. Through Title XIX funds, the transitional Medicaid benefits are matched also at the 50 percent rate while educational programs are matched by Title IV-F at 60 percent. By implementing these proposed amendments, additional enhanced Federal matching at 60 percent and 90 percent in case management, job search and related activities and JTPA supplementation is anticipated to be realized by the State. Approximately $7.5 million in additional financial participation is estimated in State Fiscal Year 1991 if the State can meet the FSA participation rates and target group requirements delineated in the proposed amendments.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposed repeal of N.J.A.C. 10:81-3.18 and 14.8 can be found in the New Jersey Administrative Code.

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

10:81-1.12 Other programs

(a) Other related assistance programs include (also see [subchapter 8] **N.J.A.C. 10:81-8**):

1.-4. (No change.)

5. [Work Incentive Program (WIN), a joint responsibility of the State Department of Labor and Industry and the Division of Public Welfare and Youth and Family Services for the purpose of training and/or placing in employment appropriate AFDC-C and -F recipients.] **The Realizing Economic Achievement (REACH) program assists AFDC recipients to achieve independence from public assistance through employment and activities leading to employment. The REACH program incorporates the provisions of the Federal Job Opportunities and Basic Skills Training (JOBS) Program and serves as New Jersey's employment and training program for eligible AFDC families. The Division of Economic Assistance, Department of Human Services, supervises the administration of the REACH/JOBS program.**

6. (No change.)

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

10:81-2.2 Purpose and scope of first contact

(a) Responsibility of the agency during the initial contact shall include, but not be limited, to:

1.-7. (No change.)

8. Providing an [overview of] **orientation to** the REACH program to each applicant for assistance in accordance with N.J.A.C. [10:81-14.4(g)] **10:81-14**. The IM worker will determine the need for each individual to participate in REACH as a condition of eligibility for AFDC (see N.J.A.C. 10:81-14.3). Further, the IM worker shall:

i. (No change.)

ii. Refer AFDC applicants and recipients who do not meet the exemption criteria at N.J.A.C. [10:81-14.3(b) for REACH orientation] **10:81-14.3A to case management for initial REACH evaluation of employability (individual evaluation) and assessment of the individual's skill level and/or literacy level by the appropriate county entity**; and

iii. (No change.)

10:81-2.8 [WIN registration in AFDC-C and -F segments (WIN counties only)] **REACH participation in AFDC-C, -F, and -N segments**

(a) [The IM worker has responsibility for determining each AFDC-C and -F family member's need for registration for the WIN program. This will be done by completion of Form PA-401, Case Review Document, in accordance with criteria established in N.J.A.C. 10:81-3.18(b) and (c). The exemptions as described in N.J.A.C. 10:81-3.18(b)2 will be explained to each applicant.] **The IM worker has responsibility for determining each AFDC-C, -F and -N family member's need to participate in REACH (the AFDC work/training program) as a condition of eligibility for AFDC (see N.J.A.C. 10:81-14), unless exempt. The REACH exemptions as described in N.J.A.C. 10:81-14.3A will be explained to each applicant.**

1. If an individual claims exemption due to incapacity, [he/she] **he or she** shall be given Form [PA-5] **DRS-1**, Examining Physician's Report, to be completed by a physician or licensed or certified psychologist of [his/her] **his or her** choice and returned to the CWA for payment **as authorized by the Division of Medical Assistance and Health Services**. [The initial PA-401 form shall reflect that the individual is temporarily exempt.]

i. If the completed [Form PA-5] **DRS-1** indicates that the individual will be incapacitated for at least 90 days, the client shall be referred to the Division of Vocational Rehabilitation Services by means of Form PA-14, Referral for Services.

[ii. Upon receipt of a completed PA-5, PA-401 is to be completed identifying the category as "Supplement to Initial" and indicating only the new status of the individual previously reported in the temporary exempt category on the "Initial" PA-401.]

2. Those individuals not exempt **from REACH** shall be informed that they must [register for the WIN] **participate in the REACH** program **(see N.J.A.C. 10:81-14.3 and 14.8 for failure to participate in REACH)**. [(See N.J.A.C. 10:81-3.18 regarding WIN program and failure to register for WIN.)]

[i. All nonexempt applicants shall be referred to ES immediately upon determination that they are in all other respects presumptively eligible for AFDC-C or -F benefits. While the initial presumptive eligibility (P.E.) check will be issued at the same time as the referral to ES, subsequent P.E. and regular assistance checks will be contingent upon evidence of the client's WIN registration or of "good cause" for failure to register.]

[ii.]**i.** The IM worker shall immediately refer all individuals who wish to volunteer **for participation in REACH** to [ES/WIN for registration (See N.J.A.C. 10:81-3.18)] **case management**.

[3. Referral for WIN registration is accomplished by the IM worker's completion of part A Form R-1 (Inter-agency Referral for WIN Registration) and the forwarding of a copy of the form to the ES/WIN. The IM worker shall provide the applicant with a copy of the form and (unless ES/WIN is co-located at welfare office) written information regarding the location where registration is to occur and the date on which he/she is to appear for WIN registration. A separate R-1 form shall be completed for each member of the eligible unit who is referred for registration.

i. If the client fails to appear as directed for registration and the ES/WIN worker is unable to contact the client within five working days from the date of referral, the case will be returned to the county welfare agency. The CWA will send a second referral letter to the client stating that failure to comply with this second appointment for registration will result in the initiation of appropriate adverse action unless he/she can demonstrate good cause for failing to register.

ii. ES/WIN will notify the CWB within five working days if the individual appeared at the WIN office but failed to complete all registration requirements. The client, therefore, is not registered for WIN.

4. Within three working days of ES/WIN's completion of the registration process, ES/WIN will notify the CWB in writing (via a completed Form MA 5-95, WIN Registration Record, and Part B of the R-1 form) that the individual has been registered for WIN. The CWB's copy of Form MA 5-95 shall be placed in the central WIN file, and Part B of the R-1 form placed in the client's case folder.

5. If, upon referral, ES/WIN believes an individual referred as a mandatory registrant should be exempt, ES/WIN shall state its reasons in writing to the CWB and request CWB review of the case. The decision of the CWB is binding upon the ES/WIN. If the CWB does not respond, in writing, within 30 calendar days after the initial request for review, ES/WIN shall register the person as exempt.

6. Within three days of final determination of eligibility for assistance payments, the CWA shall notify ES/WIN whether or not it approved or denied AFDC-C or -F eligibility for any client referred for registration, through procedures arranged at the local level.

i. If ES/WIN has not received a notification of grant approval or denial from the CWA within 30 calendar days of registration, ES/WIN liaison will contact the CWA/IM liaison to determine the disposition of the case.

7. Functions of IM control: The IM control clerk shall:

i. Keep a daily log of all referrals to ES/WIN, with exempt or non-exempt status of each individual indicated;

ii. Match registrations to referrals when received;

iii. Submit to the IM supervisor a list of all mandatory cases for which registration is not returned within eight working days; and

iv. Send to ES/WIN a written request for information on each missing registration (copy of request will be placed in the case record).

(b) The CWA has the responsibility through the IM control clerk for ensuring that the parent who is the principal earner in AFDC-F and AFDC-C and -F companion cases is certified by the Separate Administrative Unit (SAU) within 30 days of receipt of assistance.

1. Functions of the IM control clerk: The IM control clerk shall:

i. Keep a daily log of all principal earners in AFDC-F and AFDC-C and -F companion cases referred to ES/WIN for registration;

ii. Match the completed WIN Certification Record (MA 5-96) received from the SAU with the WIN Registration Record (MA 5-95) received from ES/WIN;

iii. Attach the completed MA 5-96 to the MA 5-95 and place both forms in the central WIN file;

iv. Submit to the IM Supervisor a list of all appropriate registrants for which a WIN Certification Record is not received within 30 days of the date for referral for WIN registration;

v. Send to the local SAU a written request for information on each missing certification (copy of request will be placed in the case record).]

(b) During the application process the income maintenance worker shall:

1. Provide an orientation to the REACH program to applicants;

2. Determine the participant status for REACH;

3. Inform exempt REACH applicants of their right to voluntarily participate in the REACH program;

4. Refer nonexempt applicants and volunteers for REACH evaluation by the case manager;

5. Establish REACH participant's target group category in accordance with N.J.A.C. 10:81-14.3(j); and

6. Refer REACH applicants and participants to the county welfare agency IV-D Child Support Unit for child support orders.

(c) The IM worker shall inform AFDC-N applicants that the condition of insufficient income or resources upon which eligibility is based cannot be the result of a voluntary termination of employment without good cause (see N.J.A.C. 10:81-14.8(e)) within the last 90 days prior to application by either of the applicant parents regardless of reason. When voluntary termination of employment causes ineligibility, neither the father nor the mother will be included in the eligible family for a period of 90 days. The 90-day penalty period shall begin with the date of the termination of employment. However, eligibility shall be considered for the children.

10:81-2.9 [Employment in AFDC-N] **(Reserved)**

[The IM worker shall inform AFDC-N applicants that the condition of insufficient income or resources upon which eligibility is based cannot be the result of a voluntary termination of employment within the last 90 days, and further, that the father must agree to accept employment, better employment, or training for either unless he has good cause for refusal. When voluntary termination of employment causes ineligibility, neither the father nor the mother will be included in the eligible unit for a period of 90 days. However, eligibility may be considered for the children.]

10:81-2.17 Verification

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

(e) For AFDC-N cases, if the condition of insufficient income is the result of the applicant having left a job within 90 days of the date of application, the IM worker will verify with the employer that the termination was not voluntary or will ask the applicant to demonstrate good cause for leaving. [(See N.J.A.C. 10:81-2.9 and 3.18(l).)] The IM worker will also verify that the applicant has registered with the Division of Employment Services. If the client does not have evidence of having registered, registration Form NJES-511F (Job Service Self-Registration Application) shall be completed at initial application and Form NJES-1A for subsequent registration renewals and redeterminations (see N.J.A.C. 10:81-2.18). **If the termination was voluntary, without good cause (see N.J.A.C. 10:81-14.8(e)), then both parents shall not be eligible for assistance for a period of 90 days beginning with the date of termination of employment.**

(f) (No change.)

(g) [AFDC-C and -F: The CWA shall verify attendance in a school, college, training or vocational program of AFDC-C and -F children aged 16 and 17 for WIN registration purposes and aged 18 for eligibility for the AFDC-C or -F segment. (See N.J.A.C. 10:82-1.9.)] **The CWA shall verify school attendance in a school, college, training or vocational program of dependent children ages 16 to 19 at the time of application as an eligibility criterion of AFDC (see N.J.A.C. 10:82-1.5(a) and 1.9).**

[(h) The CWA shall verify school attendance of children aged 16 and 17 relevant to work registration and training programs (see N.J.A.C. 10:82-1.9) and aged 18 for eligibility in AFDC-N segment. (See N.J.A.C. 10:82-1.5(a) and 1.9.)]

[(i)](**h**) (No change in text.)

10:81-2.18 State Employment Service registration (AFDC)

(a) [The following] AFDC applicants/recipients [are] required to register with the State Employment Service: AFDC-F **or -N** principal earners exempt from [WIN registration] **REACH participation** due to remoteness [including all principal earners in non-WIN counties; all AFDC-N fathers; appropriate AFDC-C applicants/recipients residing in non-WIN counties (see N.J.A.C. 10:81-3.19); and AFDC children (residing in non-WIN counties) who are 16 and 17 years old who are not attending school and are not employed] **shall register with the State Employment Service.**

1.-3. (No change.)

10:81-3.16 Deprivation of parental support or care (AFDC-C)

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

(d) The determination of incapacity for persons other than those delineated in N.J.A.C. 10:81-2.7 is made by the [medical review team] **Disability Review Section, Division of Medical Assistance and Health Services,** on the basis of medical evidence provided by the IM worker. This is done in the following way:

1. Forms [PA-5 (or 5A and PA-6] **DRS-1 (or DRS-1A) and DRS-2** (see appendix C) must be completed and forwarded with all pertinent medical and hospital records to the [Bureau of Medical Affairs at the Division of Public Welfare] **Disability Review Section, Division of Medical Assistance and Health Services**. This should be done as quickly as possible and must be completed within 30 days[:].

i. Give Form [PA-5] **DRS-1** or [PA-5A] **DRS-1A** to applicant to be filled in by [his/her] **his or her** physician and returned to the welfare [board] **agency**. If applicant prefers, the IM worker will send the form with signed release to the doctor. The client should be warned that many physicians may not be as prompt in returning this form by mail as when filling it in the client's presence. When the form is returned, it must be reviewed for completeness, including the physician's signature[;].

ii. Complete Form [PA-6] **DRS-2** (Medical Social Information Report). This requires full and careful discussion with applicant of the relevant information and possibly a home visit.

(e) The existence of a physical or mental defect, illness, or impairment must be substantiated by current medical information (pertinent within the past three months):

1. (No change.)

2. The unsupported opinion of the examining physician that an incapacity exists may, in itself, be accepted. However, material presented under the heading of Social Evaluation and Plan on Form [PA-6] **DRS-2** (see appendix C) or in other portions of the case record should also be evaluated in demonstrating that incapacity exists.

3.-4. (No change.)

(f) Parent incapacitated by mental defect, illness or impairment:

1.-2. (No change.)

3. Where the report of the examining physician, institutional or clinic records are available, and appear to provide current data adequate to a determination that "incapacity" exists, these shall be accepted. Whenever, in the judgement of the [MRT] **Disability Review Section**, special psychiatric, neurological or psychological examination of testing is necessary or advisable, special consultants or facilities may be used. (See [form PA-7] **Form DRS-8** in appendix C.)

(g) (No change.)

(h) Refusal to undergo diagnostic evaluation, treatment or related services:

1. In situations where a parent applicant claims to be "incapacitated" but refuses to undergo diagnostic evaluations considered by the [Medical Review Team] **Disability Review Section** as essential to a determination of [his/her] **his or her** "incapacity", the entire family is ineligible for the AFDC-C segment. However, refusal shall not affect the eligibility of [his/her] **his or her** spouse and child for AFCD-F or -N.

2.-4. (No change.)

(i) (No change.)

(j) **Payment for expenses incurred in medical eligibility determinations:** Payment for medical expenses incurred on behalf of an AFDC-C (incapacitated) applicant in the determination of initial eligibility shall be the responsibility of the CWA and made from the administration account. The CWA shall advise the physician that payment of the fee will be at the applicable rate contained in the schedule of fees for professional and diagnostic services as compiled by the

[Bureau of Medical Affairs] **Disability Review Section**. Transportation for diagnostic evaluations will be available. [(See Assistance Standards Handbook 513.)]

(AGENCY NOTE: Current text of N.J.A.C. 10:81-3.18 is being repealed and replaced with the following new text:)

10:81-3.18 Work criteria; determination of principal earner

(a) Determination of principal earner in AFDC-F and -N: In order to determine qualification for AFDC-F and -N eligibility, a determination must first be made as to which parent is the principal earner in that family.

1. The "principal earner" or primary wage earner is whichever parent earned the greater amount of income in the 24-month period immediately preceding the month of application for AFDC-F or -N. This designation thereafter shall apply for each consecutive month for which the family receives AFDC-F or-N.

2. When either parent can qualify as the principal earner because both parents earned an identical amount of income in such 24-month period, the principal earner shall be whichever parent earned the greater amount of income in the most recent consecutive six-month period of such 24-month period.

3. If both parents earned an identical amount of income in such six-month period, the CWA shall designate which parent shall be the principal earner.

(b) AFDC-F segment eligibility for families with both natural or adoptive parents in the home is based on deprivation of parental support to the children in that family due to unemployment of the parent who is designated the principal earner. Form PA-22, Employment Criteria for AFDC-F Families, is to be used by the CWA in determining eligibility for AFDC-F. Form PA-22 may be reproduced by each CWA. After the initial application, the CWA shall reexamine Form PA-22 whenever the circumstances surrounding employment in a two-parent household change. To qualify for AFDC-F, the following criteria shall be met:

1. The principal earner has been unemployed for at least 30 days prior to the receipt of public assistance;

i. Unemployed is defined as:

(1) Not working at all;

(2) Working less than 100 hours a month; or

(3) Participating in work which exceeds the 100 hour per month standard but is intermittent and the excess hours are of a temporary nature, as evidenced by the fact that the principal earner was under the 100 hours standard for the two prior months and is expected to be under the standard during the next month;

2. The principal earner has not, without good cause, within such 30-day period prior to the receipt of public assistance, refused a bona fide offer of employment or training for employment;

3. The principal earner has not voluntarily terminated employment within the last 30 days;

4. The principal earner will participate or apply for participation in REACH within 30 days after receipt of AFDC unless exempt;

i. When a family unit is found ineligible for AFDC-F because the applicant or recipient principal earner refuses to participate in the REACH Program, unless exempt (see N.J.A.C. 10:81-14) or, is exempt at the time due to the reason of remoteness as set forth at N.JA.C. 10:81-14.3A(i) and refuses to register with the State Employment Service, the principal earner and the second parent (if that individual does not participate in REACH) will be rendered ineligible for assistance under all segments of the AFDC program. Sanctions shall be applied as set forth at N.J.A.C. 10:81-14.8.

5. The principal earner has not refused retraining through the State's Division of Vocational Rehabilitation Services when it has been determined that he or she is capable of being retrained;

6. The principal earner has not refused to apply for or accept unemployment compensation for which he or she qualifies;

i. An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he or she would have been eligible to receive such benefits upon filing application, or he or she performed work not covered by such law which, if it had been covered, would (together with any covered work he or she performed) have made him or her eligible to receive such benefits upon filing application;

ii. The applicant shall also be informed that refusal to apply for or accept unemployment compensation for which he or she qualifies will render the principal earner and the second parent (if that individual does not participate in REACH) ineligible for assistance; and

7. The principal earner has six or more quarters of work (as described in i below), no more than four of which may be quarters of work as defined in i(2) below, within any 13 calendar-quarter period ending within one year prior to the application for such aid; or, within such one-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States; or was qualified (see (b)6i above) for such compensation under the State's unemployment compensation law.

i. A "quarter of work" with respect to any individual means a period (of three consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which:

(1) The individual received earned income of not less than $50.00;

(2) The individual attended full-time, an elementary school, a secondary school, or a vocational or technical training course (approved by the Secretary of the United States Department of Health and Human Services (USDHHS)) that is designed to prepare the individual for gainful employment, or in which such individual participated in an education or training program established under the Job Training Partnership Act, Public Law 97-300; or

(3) The individual earned Social Security credits as delineated at Section 213 of the Social Security Act. Such credits are earned by working in a job covered by Social Security. Each credit is a quarter of coverage. A quarter of coverage is earned for each quarter, based on earnings in the quarter. An individual can earn four Social Security credits each year, but no more than four credits can be counted for any one year, regardless of total earnings. The Secretary of USDHHS determines and publishes annually in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding year.

(c) AFDC-N segment eligibility for families with both natural or adoptive parents in the home when the principal earner does not satisfy the Federal work criteria delineated in (b) above is based on the deprivation of parental support to the children in that family due to underemployment of the primary wage earner (principal earner). The following additional sanctions, aside from the work/training sanctions set forth for REACH at N.J.A.C. 10:81-14.8, shall apply in AFDC-N segment cases if financial eligibility is the result of voluntary cessation of employment without good cause.

1. Applicant families: If -N segment financial eligibility is the result of voluntary cessation of employment without good cause as set forth at N.J.A.C. 10:81-14.8(e), including cessation of employment due to inappropriate work habits by either of the applicant parents, regardless of reason, within 90 days prior to the date of application for AFDC, neither of the parents shall be included in the eligible family. This penalty shall extend for a period of 90 days beginning with the date of the termination of employment. Eligibility shall be considered only for the children in such instances.

i. The parent, if that parent is determined to be the primary wage earner for the family as delineated in (a) above, shall be promptly referred to the State Employment Service, New Jersey Department of Labor. The parent shall cooperate with efforts of the State Employment Service and the CWA in actively seeking employment during the penalty period.

ii. At the end of the 90-day penalty period the parents may be granted assistance under AFDC-N so long as other non-financial eligibility requirements are satisfied and financial need exists.

2. Recipient families: if an employed primary wage earner (principal wage earner) voluntarily ceases employment for whatever reason without good cause (see N.J.A.C. 10:81-14.8(e)), both parents' needs shall be deleted from the eligible family under AFDC-N. The primary wage earner shall register with the State Employment Service.

i. Refusal of the unemployed primary wage earner to accept a job or training through REACH, without good cause, will likewise result in both parents being deleted from the eligible family in accordance with the work/training sanction periods set forth at N.J.A.C. 10:81-14.8.

3. If the applicant or recipient principal earner in an AFDC-N segment is exempt from REACH participation due to the reason of remoteness as set forth at N.J.A.C. 10:81-14.3A(i), he or she shall register with the State Employment Service. Failure to do so shall result in the sanctioning of both parents (if the other parent is not participating in REACH) by the CWA as set forth at N.J.A.C. 10:81-14.8.

4. If the other parent, who is not the principal earner, in an AFDC-N family expresses interest in REACH (except in the situations described in (c)1 and 2 above), the IM worker will provide all available information and make a referral upon request to case management for initial assessment of employability.

5. AFDC-N children age 16 to 18 years old and who are not attending school or an equivalent vocational program are required to participate in REACH unless otherwise exempt.

10:81-3.19 [AFDC-C and -F (Non-WIN Counties)] **Employment and training requirements**

[(a) In those geographical areas designated as non-WIN counties, registration for WIN shall not be considered as an eligibility requirement nor will the IM worker complete Form PA-401, WIN Case Review Document. See N.J.A.C. 10:81-3.18(b) for verification of employment for those applicants/recipients who are required to register with the State Employment Service.

(b) In non-WIN counties, the AFDC-C recipient shall cooperate with efforts of the CWA and/or State Employment Service in actively seeking employment and shall be required to accept employment or training when suitable opportunity can be identified as available, unless the CWA determines that the individual is exempt according to the criteria as set forth in N.J.A.C. 10:81-3.18(b)2.

1. Failure or refusal without good cause to seek, accept or retain employment or training shall be cause to delete such individual from the eligible unit, in accordance with N.J.A.C. 10:82-2.5. "Good Cause" shall be determined without reference to sex of the individual on the basis of N.J.A.C. 10:81-3.18(1)12.

i. The penalty for failure or refusal without good cause shall continue until such time as the individual demonstrates willingness to cooperate.

(c) For AFDC-F cases in non-WIN counties, the principal earner shall register with the State Employment Service. The principal earner shall also cooperate with efforts of the State Employment Service and the CWA in actively seeking employment and shall be required to accept employment or training when a suitable opportunity can be identified as available, unless the CWA determines that the individual is exempt according to the criteria set forth in N.J.A.C. 10:81-3.18(b)2.

1. Failure of the principal earner to register with the State Employment Service or refusal without good cause (see N.J.A.C. 10:81-3.18(1)2) to seek, accept or retain employment or training shall render the entire family ineligible for assistance under the AFDC-F. In such cases, eligibility for AFDC-N will not be considered.

i. The penalty for failure or refusal without good cause shall continue until such time as the principal earner demonstrates willingness to cooperate.

(d) AFDC-C and-F children who are not exempt from registration shall be required to register with the State Employment Service and all available resources for training and employment shall be offered to them. (See N.J.A.C. 10:82-2.5 for penalty of ineligibility for refusal to cooperate.)]

(a) REACH requirement: Each individual who does not satisfy exemption criteria set forth at N.J.A.C. 10:81-14.3A shall participate in the Realizing Economic Achievement (REACH) Program, the AFDC work and training program. Participation in REACH is required as a condition of eligibility for AFDC-C, -F, and -N. If the individual requests Medicaid only with no AFDC cash assistance or is eligible for Medicaid only because the cash assistance benefit is $10.00 or less, then the individual shall participate in REACH unless exempt for the reasons set forth at N.J.A.C. 10:81-14.3A.

(b) REACH participation criteria, descriptions of REACH components, sanctioning in REACH, fair hearings and available supportive services are set forth at N.J.A.C. 10:81-14.

(c) Penalties for failure to participate in REACH: If a mandatory individual fails to participate in REACH, the penalties set forth at N.J.A.C. 10:81-14.8(i) and (j) shall apply. Any appeals resulting from failure to participate in REACH will be handled according to established procedures for fair hearings (see N.J.A.C. 10:81-6 and 14.7). Any individual rendered ineligible for AFDC due to failure to participate in REACH shall not be eligible for assistance under any segment of the AFDC program.

(d) AFDC-C stepparents: In AFDC-C cases where the stepparent is designated as an individual whose presence in the home is essential to the well-being of the spouse and is thus included in the eligible family (see N.J.A.C. 10:82-2.9), the procedures below are to be followed with respect to REACH participation:

1. Criteria identified in N.J.A.C. 10:81-3.18(a) shall be used to determine the principal earner in the household.

2. The eligible family member designated as the principal earner shall be required to participate in REACH unless exempt.

3. If the principal earner refuses or fails to participate in REACH, as appropriate, the penalty specified in N.J.A.C. 10:81-14.8(i) shall be imposed.

4. When the principal earner is participating in REACH, the other parent shall be exempt from participation in REACH for the reason set forth in N.J.A.C. 10:81-14.3A(j).

(e) Fair hearings: An individual who is dissatisfied with his or her specific participation requirements in REACH may request a fair hearing (see N.J.A.C. 10:81-6 and 14.7).

(f) Voluntary participation in REACH: "volunteers in REACH" are defined as those individuals who meet the REACH exemption criteria at N.J.A.C. 10:81-14.3A and decide to participate in REACH, regardless of the exemption. The IM worker shall inform all exempt AFDC-C, -F, and -N applicants and recipients of their right to voluntarily participate in REACH and of their right to stop participation at any time without loss of assistance payments. During county phase-in to the REACH program, that individual who voluntarily agrees to participate in REACH and who is not a member of a required county phase-in group shall be treated as REACH mandatory, unless the individual satisfies REACH exemption criteria. If that individual is found to be exempt from REACH and decides to participate, then the individual is a "volunteer in REACH".

1. If an exempt individual "volunteers" to participate in REACH, he or she is not subject to sanctioning due to nonparticipation (see N.J.A.C. 10:81-14.8).

i. In determining the priority of participation within the REACH target populations (see N.J.A.C. 10:81-14.3(j)), the agency shall give first consideration to applicants for or recipients of AFDC who are exempt but "volunteer" to participate.

ii. When a "volunteer for REACH" stops participation in REACH without good cause, that individual shall not be given priority to participate again so long as other individuals are actively seeking to participate, unless the individual loses exemption status and becomes REACH mandatory.

(g) Individuals exempt from REACH participation due to incapacity shall be referred by income maintenance to the Division of Vocational Rehabilitation Services. Form PA-14, Referral for Services, shall be used for this purpose. Acceptance of referral for such services is optional with the individual and shall not affect a recipient's entitlement to benefits. If the principal earner in AFDC-F is determined as capable of being retrained and refuses such retraining, then the family is eligible for AFDC-N segment benefits (see N.J.A.C. 10:81-3.18(b)5).

(h) Failure to report for evaluation and assessment: When a mandatory REACH participant fails to appear for a scheduled evaluation interview with case management or for assessment with the appropriate county entity and the participant fails to respond to the agency Conference Letter (Form R-8) sent by case management staff, cannot be contacted by telephone and good cause does not appear to exist, then case management will notify the IM worker of the individual's failure to participate so that appropriate action can be taken to remove the needs of that individual, subject to Title IV-A notice requirements. All conciliatory efforts shall be taken by case management to avoid sanctioning the individual, whenever possible, prior to referral to IM for sanctioning.

10:81-3.31 Release from a State institution

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

(e) Responsibility for initial planning for the return of a patient to the community rests with the institutional authorities. When public assistance is necessary and the person appears eligible, the Bureau of Transitional Services will coordinate the application with the institutional authorities and with the appropriate CWA. The Bureau of Transitional Services under the Division of Mental Health and Hospitals will be responsible for reviewing such referrals to assure that all essential information is assembled, and for expediting the processing of an application by the appropriate county welfare agency for final determination of eligibility.

1. The institution will routinely complete the following forms without change (a stock supply which will be provided to them by the Division of Economic Assistance) and will forward copies to the Bureau of Transitional Services along with copies of staff notes pertinent to each case:

i. (No change.)

ii. [Form PA-7,] **Form DRS-8,** Report of Findings by Psychiatric Diagnostic Group, where appropriate.

2. (No change.)

(f) When a parent is about to be released from a veteran's hospital, the hospital will make referral in writing, with the knowledge and consent of the veteran, to include the following minimum information:

1.-3. (No change.)

4. In addition, the hospital will complete, without charge, the following forms as appropriate;

i. [PA-7] **DRS-8**, Report of Findings by Diagnostic Group;

ii. (No change.)

iii. [PA-5] **DRS-1**, Examining Physician's Report;

iv. [PA-5A] **DRS-1A**, Report of Eye Examination

5. (No change.)

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

10:81-4.7 Temporary payee in an emergency situation

(a) In emergency situations that deprive the child of the care of the relative through whom he or she has been receiving aid, a person shall be designated to receive payments for a temporary period necessary to make and carry out plans for the child's continuing care and support. If such person qualifies as a parent-person, a new application will be taken in his or her name and such person will be a temporary payee only until the application is approved. This designation should be accomplished without interruption of the grant or action on a new application (see N.J.A.C. 10:82-5.10[(c)5] **(d)5**).

1. (No change.)

(b) Child placed temporarily in institution for sheltered care: In such emergency situation (see (a) above), when there is no parent substitute available and the child must be placed temporarily in an institution for sheltered care, the temporary payee shall be the superintendent or other chief executive officer of the institution. Payments made pursuant to this paragraph are not subject to Federal matching (see also N.J.A.C. 10:82-5.10[(c)5] **(d)5**). **In these situations, the following policy and procedures shall be followed:**

1.-6. (No change.)

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

10:81-4.10 Selection of a protective payee

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

(e) The CWA is required to make protective payments when a parent(s) is disqualified from participation in the AFDC program due to refusal or failure to cooperate with [ES/WIN] **the REACH program**; refusal to accept employment, voluntary cessation of employment, or failure to cooperate with CSP, unless the following applies:

1. (No change.)

10:81-4.16 Appointment of a representative payee

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

(c) In order to satisfy the requirements of the law regarding representative payees the following shall apply:

1. When the recipient has already been determined by the [Medical Review Team] **Disability Review Section** as incompetent, the Record of Action fulfills the requirement for a review by the State [division] **Division.**

2. In all other situations, the CWA shall forward to the [Medical Review Team] **Disability Review Section** all relative medical data as required for determining medical eligibility. The Form [PA-6] **DRS-2** Medical-Social Information Report, should state that the purpose of submittal is for review as a basis for appointment of a representative payee.

3. The [Medical Review Team] **Disability Review Section** will review the material on the basis of functional incompetency as defined by law, and the resulting Record of Action shall represent the findings of a review by the State Division.

10:81-4.23 Basis for recovery of overpayments

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

(d) Procedures to recover any overpayments of REACH child care benefits, post-AFDC child care benefits and REACH transportationn and related supportive service payments made to a REACH participant or service provider are set forth at N.J.A.C. 10:81-14.24(b) and (c).

10:81-5.4 Competency status in AFDC

(a) The IM worker should be alert to the development of medical or mental problems which may affect the adequate functioning of the parent. Such evidence shall be submitted to the [medical review team] **Disability Review Section** for special review.

(b) (No change.)

10:81-5.6 Requirements with respect to deprivation of parental support or care in AFDC-C

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

(c) Incapacity status for a natural or adoptive parent is listed below:

1. (No change.)

2. The review date will be designated for the CWA by [Medical Review Team] **the Disability Review Section, Division of Medical Assistance and Health Services**. "Incapacity" shall be considered as continuing until the [Medical Review Team] **Disability Review Section** officially determines that such incapacity no longer exists. The IM worker shall prepare Form [PA-6A] **DRS-2A**, Interim Medical-Social Report, for the redetermination review. The CWA shall maintain controls on review dates so that any specific medical information or reports requested by the [Medical Review Team] **Disability Review Section** may be obtained. In addition, the [Bureau of Medical Affairs] **Disability Review Section** shall maintain a control file in order to ensure appropriate and timely reevaluation by [the Medical Review Team] **that Section**. The [Bureau of Medical Affairs] **Disability Review Section** will notify county welfare agencies one month in advance of cases scheduled for such review by means of Form [PA-655] **DRS-5**.

3. In any case in which, subsequent to a finding of "approved", the incapacitated parent becomes a beneficiary of Federal disability benefits or SSI benefits for reasons other than age, this of itself shall be considered conclusive proof of continuing incapacity, and the [CWB] **CWA** shall disregard the "review date" for submittal to the [Medical Review Team] **Disability Review Section**.

4. It is the responsibility of the IM worker to submit the record to the [Medical Review Team] **Disability Review Section** for special review if available evidence the raises question of continuing incapacity during the interval between redetermination review dates. The special review shall be requested through use of Form [PA-6A] **DRS-2A**, Interim Medical-Social Report, together with all material previously submitted.

(d) (No change.)

(e) When "incapacitated" natural or adoptive parent is in an institution:

1. (No change.)

2. Submittal to [Medical Review Team] **Disability Review Section:** As soon as the date of discharge is known, or if the CWA learns that the parent has already been discharged to his or her home, the CWA shall submit the required record material to the [Medical Review Team] **Review Team Section** as appropriate to the situation; that is, if official determination of incapacity had already been made, the previous record shall be submitted for review with a completed

Form [PA-6A] **DRS-2A**; if the case had not been previously submitted, than a [PA-6] **DRS-2** giving current situation and Form [PA-5] **DRS-1** (Examining Physician's Report) shall be submitted. Whenever practical, the [PA-5] **DRS-1** form should be prepared by a staff physician of the institution.

3. An abstract of the hospital record may be accepted in place of Form [PA-5] **DRS-1,** when the parent is in the hospital or has been released within the past three months. The client's consent in writing for release of the information shall accompany the request.

10:81-5.9 [Registration for WIN program in AFDC-C and -F] **(Reserved)**

[(a) The IM worker shall reevaluate each eligible unit member's registration status through appropriate completion of Form PA-401. A check mark shall be placed in the appropriate box identifying it as a "replacement review".

(b) For persons who were previously exempt and now must register, the IM worker will complete and transmit to ES/WIN Part A of Form R-1, WIN Registration Inter-Agency Referral. For cases involved in WIN-Interface, Form R-1 is not to be completed. WIN Interface is the automated exchange of WIN registration information between the Department of of Labor (DOL) and the Division of Public Welfare (DPW). If a person was previously registered as a volunteer, a letter shall be sent by the CWA to such individual advising that he or she is now a mandatory WIN registrant and, as a result, is subject to appropriate WIN sanctions. The letter shall also state the reason for loss of exempt status.

(c) For persons who were previously required to register but are now exempt, the CWA shall send a letter advising that he or she has been deregistered. The letter shall also advise that he or she may choose to register voluntarily and that he or she may withdraw such registration at any time without adversely affecting his or her assistance payments, provided WIN status does not change in a way which would again require WIN registration. The letter shall also state the reason for his or her change to exempt status and deregistration.

(d) Individuals now exempt due to incapacity must be referred by the IM worker to the Division of Vocational Rehabilitation Services, using Form PA-14.

(e) The letter notifying the client of a change in WIN status will be completed in triplicate: the original mailed to the client, copy 1 forwarded to the appropriate WIN sponsor (ES/WIN), and copy 2 attached to the WIN Registration Record (MA 5-95) located in the county welfare agency's central WIN file.

(f) Employment in AFDC-N: General principles as provided in N.J.A.C. 10:81-3.18(1) shall apply.

(g) AFDC-C and -F cases in Non-WIN Counties: See N.J.A.C. 10:81-3.19.]

10:81-6.11 Representation at hearings

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

(c) In hearings involving a determination by any component of the DEA, [(that is, determinations by the Bureau of Medical Affairs or the Bureau of Employment Programs)] the matter at issue shall be presented by the appropriate staff representative(s) of the DEA.

10:81-6.14 Hearings involving medical issues

(a) If the hearing involves medical issues, requiring a diagnosis or a report from an examining physician, or concerning a determination by the State [Medical Review Team (MRT),] **Disability Review Section,** the ALJ may issue an order requiring a medical assessment by someone other than the person who made the original medical determination. (45 CFR 205.10(a)(10))

(b) (No change.)

10:81-7.1 Notice to client of county welfare agency decision

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

(d) Adverse action and exception to timely notice: Timely notice may be dispensed with but adequate notice shall be sent not later than the effective date of action when:

1.-11. (No change.)

12. Changes in the manner of payment (for example, from direct payment of child care costs to disregard of child care payments from the earned income of the individual) of REACH child care benefits are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction or termination of benefits, or they force a change in child care arrangements (see N.J.A.C. 10:81-14.18).

(e)-(m) (No change.)

10:81-7.4 Continuation of assistance

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

(e) Upon receipt of a timely request for a fair hearing concerning REACH child care and supportive service benefits, benefits shall be received as follows until a written decision is rendered:

1. If the individual had been receiving REACH child care or transportation benefits and is awaiting a hearing because such benefits were reduced, the individual is not entitled to receive REACH child care or transportation benefits at the prior unreduced level. Benefits shall continue at the determined reduced level pending the hearing.

2. If the individual is not receiving a child care benefit or a specific REACH supportive service benefit, as delineated at N.J.A.C. 10:81-14.19, for which he or she believes he or she is eligible and is awaiting a hearing due to non-receipt of that benefit, he or she is not entitled to receive that benefit pending the hearing.

3. If the individual had been receiving REACH child care benefits or transportation benefits and is awaiting a hearing because such benefits were discontinued or terminated, he or she is not entitled to receive those benefits pending the hearing.

4. If the individual is contesting the amount of the REACH child care benefit received and is awaiting a hearing, he or she shall continue to receive the REACH child care benefit in the amount previously established by the agency, pending the hearing. Likewise, if the individual is contesting the amount of a specific REACH supportive service benefit received, the amount of the benefit shall remain in the amount previously established by the agency, pending the hearing.

10:81-7.20 Separation of income maintenance, [and] social services, **and REACH case management services**

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

(c) REACH case management services are those activities directed toward fulfilling the work/training requirements of the AFDC program. The Federal Family Support Act of 1988 (P.L. 100-485) established the work/training requirements under Title IV-F of the Social Security Act. Those requirements are set forth in the REACH program. REACH case management assists individuals by providing evaluation for REACH, making referrals to the county assessment entity, in completing REACH employability plans and agreements, in obtaining necessary supportive services for participation in REACH and in monitoring the individual during REACH participation.

[(c)] **(d)** The function of providing financial assistance through income maintenance is conducted separately from the functions of providing or arranging for social services **or for REACH participation.** The [two] **three** must be coordinated so that the client's interests may be effectively served. The IM worker with whom the client is in contact must always be alert to possible need for a service **or REACH** referral. The units will share information adequately to fulfill these requirements.

1. Interrelated activities: Interrelated activities which involve both income maintenance, [and] **social** services **and REACH case management** include but are not limited to:

i.-iii. (No change.)

iv. [WIN] **REACH** program **(see N.J.A.C. 10:81-14)**;

v.-vi. (No change.)

2. (No change.)

3. Some situations which would call for **social** services include:

i.-iii. (No change.)

iv. Follow-ups resulting from recommendations of [Bureau of Medical Affairs] **Disability Review Section**;

v.-viii. (No change.)

4. Interrelated activities which specifically involve both income maintenance and REACH case management include but are not limited to:

i. REACH exemption status;

ii. REACH target group assignment;

iii. Sharing information concerning AFDC IV-A, IV-D and IV-F eligibility of individuals and families;

iv. Sanctions of individuals for noncooperation in REACH;

v. Sharing information concerning need of emergency asistance by a family; and

vi. Determinations of gross income and family size at time of case closing for post-AFDC benefit purposes.

10:81-8.22 Persons eligible for medical assistance

(a) (No change.)

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1.-3. (No change.)

4. Any family formerly receiving AFDC-C or -F qualifying for this extension **prior to April 1, 1990** because of the loss of the $30.00 or one-third disregards, shall receive an additional three months of Medicaid extension if, at the expiration of the 12-month extension, the family would be eligible for AFDC if the $30.00 and the one-third still applied. To receive this additional three months of Medicaid extension, the family must demonstrate to the satisfaction of the CWA that, had the $30.00 and one-third disregard of earned income not been time-limited, the family would have been continuously eligible for AFDC from the time it became ineligible for AFDC.

5. Eligibility for the 12-month Medicaid extension is not available for any month to any individual who, exept for income, resources or hours of employment, is not otherwise eligible to receive AFDC. The following individuals shall not be included in the eligible family for Medicaid extension.

[i. Children who are between the ages of 18 (not scheduled to graduate by the 19th birth date) and 19 at the beginning of Medicaid extension; and

ii. Children who reach 18 or 19 (who are not scheduled to graduate by the 19th birth date) and therefore "age out" during the medicaid extension.]

i. Any child who reaches the age of 18, or any child who is attending a secondary or vocational school full-time up to the month of graduation or age 19, except that such child shall be evaluated for Medicaid eligibility for other appropriate Medicaid programs; and

ii. All other family members who are receiving Medicaid extension solely because of the presence in the home of a child who "ages out," as in (b)5i, above.

6. When an AFDC-C family loses eligibility for a money payment as a result (wholly or in part) of the collection of child or spousal support through the Child Support and Paternity process, Medicaid eligibility continues for a period of four calendar months beginning with the month in which such ineligibility begins.

i. In order to qualify for this extension of Medicaid benefits, the family must have received and been eligible to receive AFDC-C in at least three of the six months immediately preceding the month in which ineligibility for a money payment begins[.];

ii. Any child who reaches the age of 18, or any child who is attending a secondary or vocational school full-time up to the month of graduation or age 19, except that such child shall be evaluated for Medicaid eligibility for other appropriate Medicaid programs; and

iii. All other family members who are receiving Medicaid extension solely because of the presence in the home of a child who "ages out," as in (b)5i, above.

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

10:81-8.24 Determination of eligibility; Medicaid [special] **Special**

(a) All appropriate regulations in the Assistance Standards Handbook regarding income shall apply in determining financial eligibility. Requirements related to the [WIN] **REACH** program, employment or training, school attendance of a child, and the Child Support and Paternity program are not applicable.

(b)-(e) (No change.)

10:81-9.1 Definitions

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

. . .

"BIC" means Bureau of Integrity Control.

["BLO" means the Bureau of Local Operations in the Division of Economic Assistance.

"BMA" means the Bureau of Medical Affairs in the Division of Economic Assistance.]

. . .

"Categorical assistance" means Federal programs including Aid to Families with Dependent Children[,] **and** Refugee Resettlement Program [and Cuban/Haitian Entrant Program].

. . .

["CHEP" means Cuban Haitian Entrant Program.]

. . .

["Cuban/Haitian Entrant Program (CHEP)" means a federally-funded program designed to aid Cuban and Haitian entrants.]

. . .

["ICS" means the Integrity Control Section of the Bureau of Local Operations.]

. . .

["ISS" means Institutional Services Section of the Bureau of Local Operations.]

"JOBS means Job Opportunities and Basic Skills Training Program (created by the Family Support Act of 1988, P.L. 100-485) for recipients of Aid to Families with Dependent Children (AFDC) to assist recipients to become self-sufficient by providing needed employment-related activities and support services.

. . .

"Medicaid Special" means Medicaid coverage available to the following individuals on the basis of financial eligibility regardless of other program requirements ([e.g., WIN] **for example, REACH**, employment, training, CSP, or school attendance): any dependent child under 21[,] **or** an independent child under age 21.

. . .

["Medical Review Team (MRT)" means a unit within the Bureau of Medical Affairs of the State Division, composed of a Medical Consultant and a Medical Social Worker, which is responsible for determinations of medical eligibility, based on information submitted by CWAs.]

. . .

"NJSES" means the New Jersey State Employment Service, New Jersey Department of Labor [and Industry].

. . .

"Primary wage earner" means principal earner and shall be referred to as the principal earner in this chapter.

"Principal earner" means the parent who earned the greater amount of income in the 24-month period immediately preceding the month of application for AFDC-F or -N.

. . .

"REACH" means Realizing Economic Achievement, REACH is New Jersey's JOBS program to assure that AFDC recipients obtain the education, training and employment that will help them avoid long-term welfare dependence.

. . .

"Work Incentive Program (WIN)" mean a **former** program **prior to JOBS** designed to place in employment, or train for employment, appropriate recipients of AFDC-C or -F.

. . .

10:81-10.7 Eligibility

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

(e) Work and training requirements: Refugees who are under the -C or -F segment of the AFDC program are subject to the work and training requirements governing that program.

1. An affidavit signed by the applicant(s) of a two-parent family attesting to past work history shall be considered sufficient official verification for AFDC-F purposes provided the affidavit indicates the period of time in which the work was performed (see N.J.A.C. [10:81-3.18(k)7)] **10:81-3.18(b)7**).

2. (No change.)

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

10:81-12.1 General provisions and purpose

(a) This subchapter is for use by county welfare agencies (CWAs) participating in the "TEEN PROGRESS" Demonstration in the cities of Newark and Camden. **No application for TEEN PROGRESS participation shall be taken after April 1, 1990. The project is a four-**

year demonstration project which commenced October 5, 1987 and shall continue through October 5, 1991. Individuals who are currently participating may remain eligible for the duration of the demonstration. The objective of TEEN PROGRESS is to provide educational and work-related activities to 1,800 AFDC participants, age 19 and under, with at least one child (regardless of the age of the child). The goal is to develop a plan which will lead the individual to self-sufficiency, thereby reducing the individual's dependency on public assistance. This subchapter shall at all times be used and interpreted in conjunction with N.J.A.C. 10:81, N.J.A.C. 10:82, N.J.A.C. 10:87, and N.J.A.C. 10:90, as appropriate.

[(b) The purpose of this subchapter is to:

1. Identify individuals included in the TEEN PROGRESS Demonstration;

2. Establish policy for determining eligibility for the demonstration; and

3. Establish procedures for providing educational and work-related activities to project participants.

(c) The purpose of this demonstration is to provide educational and work-related activities, to 1,800 applicants for AFDC who are age 19 and under, and who have one child.]

[(d) The following existing program practices will be targeted to this population:]

(b) The TEEN PROGRESS Demonstration provides for the following:

1.-3. (No change.)

4. Training-related expenses which [will] include transportation to and from the training or education site, cost of meals, uniforms, materials and similar expenses;

5.-6. (No change.)

[(e) The following new program practices will be implemented:]

[1.] **7.** (No change in text.)

[2.] **8.** Required participation of absent fathers in [WIN Demo] **the REACH program**, Food Stamp Job Search, or General Assistance Employability Program (GAEP), if they are retrieving AFDC or General Assistance (**GA**);

Recodify existing 3. through 8. as **9. through 14.** (No change in text.)

10:81-12.3 [Eligibility] **TEEN PROGRESS participation requirements**

(a) AFDC recipients [meeting] **who met** the following conditions [are] **were** required to participate in the demonstration:

1.-4. (No change.)

5. The recipient and her child(ren) [are] **were** receiving AFDC benefits together for the first time.

(b) Fathers of the children [will be] **are** mandatory participants in the demonstration and eligible for services under the demonstration, if:

1.-2. (No change.)

(c) (No change.)

(d) Eligibility for participation in the demonstration [is] **was** determined at the following times:

1. (No change.)

2. When a change in the circumstances of an AFDC recipient [occurs] **occurred** and that change [is] **was** the birth of the first child.

10:81-12.4 Exemptions and deferrals

(a) Individuals who are exempt from work and training under N.J.A.C. [10:81-3.18(b)2] **10:81-14.3A**, except for the exemption for care of the youngest child under age six, shall not be eligible for TEEN PROGRESS for the duration of their exemption. Individual's exempt status shall be determined prior to random assignment to experimental or control groups.

1. (No change.)

2. Participants [temporarily deferred] **exempt** because of illness or other good cause which could change monthly shall be monitored by the case manager.

(b) (No change.)

10:81-12.6 PROGRESS Plan

(a) (No change.)

(b) Failure of the participant to comply with the PROGRESS Plan requirements without good cause shall be considered noncompliance with AFDC employment and training requirements set forth at N.J.A.C. [10:81-3.18] **10:81-14.8.**

10:81-12.7 Overview of the process

(a) The operation of this demonstration [will] includes the following [steps]:

[1. Intake and orientation;]

[2.] **1.** Assessment of educational status, employability and need for support services, and [completion] **amendment** of the PROGRESS Plan **as appropriate; and**

[3. Registration requirements; and]

[4.] **2.** (No change in text.)

(b) (No change.)

10:81 12.8 Intake and orientation

(a) The intake process for this demonstration [will follow] **followed** regular AFDC intake procedures concerning the taking of AFDC applications and obtaining eligibility information, set forth in N.J.A.C. 10:81-2.4 and 10:81-3, including the establishment of paternity (see N.J.A.C. 10:81-11). The intake worker [shall perform] **performed** initial screening of applicants and [refer] **referred** those applicants age 19 or under who [appear] **appeared** to meet the criteria at N.J.A.C. 10:81-12.3(a) for participation in the demonstration.

(b) Upon referral to the demonstration, the case manager [shall review] **reviewed** eligibility and [determine] **determined** whether exemptions under former rule, N.J.A.C. 10:81-3.18(b)2 applied (**see current N.J.A.C. 10:81-14.3A**) (with the exception of care of youngest child under age 6). For those who [are] **were** not exempt, the case manager [will explain] **explained** the nature of the demonstration, [obtain] **obtained** informed consent, and [arrange] **arranged** for literacy and aptitude testing and [collect] **collected** other baseline information. After this process [is] **was** completed, the case manager [will give] **gave the** names of all non-exempt eligibles to the evaluator for random assignment to the experimental and control groups.

1. Experimental group participants [shall receive] **received** written material explaining the program components and their responsibilities. All other formal intake procedures [shall be] **were** followed (see N.J.A.C. 10:81-2). Control group participants [will receive] **received** written material explaining their rights and responsibilities in the existing AFDC program.

2. Those placed in the experimental group [shall be] **were** given an appointment with the case manager for orientation.

(c) The purpose of the orientation session [is] **was** to begin to involve the client in a realistic plan leading to self-sufficiency. Orientation [will include] **included** a private interview or group session conducted by the case manager. The participant [may] **could** bring another person for support and guidance, such as a parent, teacher or the child's father. In the orientation session, the case manager [shall provide] **provided** an in-depth explanation of the purpose of the demonstration, the kinds of support services available through the demonstration and the program services available to the client. The case manager [will emphasize] **emphasized** completion of high school or an equivalency degree for those who [have] **did** not [finished] **finish** school. For those still in high school, the case manager [will give] **gave** early attention to any support services that [can] **could** avoid a break in the participant's education or facilitate early return to school.

10:81-12.11 Sanctions

(a) Participants who fail to comply with program requirements set forth in this demonstration, without good cause, will be subject to the sanctioning process. Good cause includes the reasons set forth at N.J.A.C. [10:81-3.18] **10:81-14.8(e)**. The following actions by a participant constitute failure to comply with program requirements:

1.-5. (No change.)

(b) Sanctions shall be imposed for the [following time] **sanction** periods **set forth at N.J.A.C. 10:81-14.8(k)** [:].

[1. One payment month for the first instance of noncompliance;

2. Three payment months for the second instance of noncompliance; and

3. Six payment months for all subsequent instances of non-compliance.]

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

(f) If a participant complies with program requirements [during] **prior to the effective date of the imposition of** the sanction [period], the sanction may be suspended and the participant's AFDC grant level restored effective for the first of the month following the month in which the participant complied.

1.-2. (No change.)

3. If a sanctioned individual decides to cooperate during the sanction period, the individual will remain ineligible for AFDC for the entire sanction period or until the failure to comply ceases, whichever is longer. Renewed participation requirements in TEEN PROGRESS after the expiration of the sanction period are set forth at N.J.A.C. 10:81-14.8(l).

(g) (No change.)

10:81-14.1 General provisions

(a) This subchapter is for use by the county welfare agencies (CWAs) in the Realizing Economic Achievement (REACH) program as an integral part of N.J.A.C. 10:81, N.J.A.C. 10:82[, N.J.A.C. 10:87,] and N.J.A.C. 10:90, and shall at all times be used and interpreted in conjunction with these documents as appropriate. **REACH incorporates the requirements of the Family Support Act of 1988, P.L. 100-485, which established the Job Opportunities and Basic Skills (JOBS) program under Title II of that Act, the Federal work/training program which replaced WIN. The Act also guarantees, through Title III provision, necessary supportive services for participation in work/training components. Therefore, satisfying REACH requirements will ensure compliance for participants with the Federal JOBS work/training mandates for receipt of AFDC benefits.**

1. If any regulations herein contradict or conflict with existing regulations or policy established in N.J.A.C. 10:81, N.J.A.C. 10:82 [, N.J.A.C. 10:87,] or N.J.A.C. 10:90, with the exception of N.J.A.C. 10:81-12, such material is superseded by this subchapter. [The REACH regulations do not supersede the regulations for Teen PROGRESS.] **Applicants/participants registered for TEEN PROGRESS prior to April 1, 1990 shall comply with TEEN PROGRESS regulations set forth at N.J.A.C. 10:81-12.**

2.-3. (No change.)

(b) Principles of the REACH program: REACH is designed to [lead] **assist participants** to **gain** independence from public assistance through employment and activities leading to employment. At the core of REACH is the principle of mutual obligation[,] under which the agency will make available a variety of employment, training and [education] **educational** opportunities as well as support services, [and actively assist the individual in attaining independence, and the individual will participate in his or her future] **which will enable the individual to participate in activities that affect his or her own future and which should lead to the individual's attainment of independence from assistance**. The emphasis of REACH will be on participation, not penalties, with the program designed to be flexible to support each family's movement to economic self-sufficiency through employment, and to consider the dignity and self-respect of the individual. These principles are to serve as a framework within which the regulations set forth in this subchapter are to be applied.

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

10:81-14.2 Definitions

The following definitions shall apply to REACH:

"Basic literacy level" means a literacy level that allows a person to function at the level of an individual who has proficiency at a grade 8.9 level.

. . .

"Compliance" means participation in REACH [orientation] **evaluation** and assessment, and in employment or the REACH employment-directed activity as set forth and scheduled in the REACH Agreement.

"County IV-A agency" means the county board of social services in the respective county.

["Deferred participant" or "temporarily deferred participant" means a mandatory REACH participant whose participation is temporarily deferred for the reasons at N.J.A.C. 10:81-14.38(c).]

"EDA" means an employment-directed activity including non-educational employment-directed activities (that is, but not limited to: work supplementation programs, community work experience programs, and on-the-job training) and educational employment-directed activities (that is, but not limited to: English as a Second Language, Adult Basic Eudcation, secondary, technical and post-secondary educational programs).

"Excused participant" means a mandatory REACH participant whose participation is excused for the reasons at N.J.A.C. 10:81-14.3[(d)](e).

. . .

"Limited English proficiency" means the ability to speak, read, write or understand the English language to function in the community.

"Mandatory participant" means an individual applying for or receiving AFDC who is required to participate in REACH, and whose participation is not exempt [or temporarily deferred].

. . .

"Satisfactory progress in an educational component" means that the participant in any educational activity is meeting, on a periodically measured basis of less than one year, such as a term or quarter, a consistent standard of progress based upon a written policy that was developed by the educational institution or program in which the participant is enrolled, and approved by the appropriate State and/or local education agency and the county IV-A agency. The standard shall include a qualitative measure of the participant's progress, such as a satisfactory grade point average or performance, and quantitative measure, such as a reasonable time limit by which a student is expected to complete his or her studies. Upon review and approval by the State or local education agency and the county IV-A agency, the standard shall provide that a student who does not meet the institution's or program's progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstances. Such circumstances include the death of a relative, injury or illness of the REACH participant or other special circumstance.

"Satisfactory progress in a training component" (that is, on-the-job (OJT), Community Work Experience (CWEP) and skills training) means that the participant in a training activity is meeting, on a periodically measured basis of less than one year, such as quarterly, a consistent standard of progress based upon a written policy that was developed by the training provider, and approved by the county IV-A agency. The standard shall include both a qualitative measure of the participant's progress, such as competency gains or proficiency level, and a quantitative measure, such as a reasonable time limit for completion of the training program. Upon review and approval by the county IV-A agency, the standard may provide that a student who does not meet the training program's progress standard is nonetheless making satisfactory progress during a probationary period, or shall be deemed to be making satisfactory progress because of mitigating circumstance. Such circumstances include the death of a relative, injury or illness of the REACH participant or other special circumstance.

. . .

10:81-14.3 REACH participation

(a) Participation: All individuals shall, except as otherwise provided in this subchapter, participate in REACH as a condition of eligibility for AFDC. Individuals in immediate need shall be entitled to a presumptive eligibility determination in accordance with N.J.A.C. 10:81-3.3 prior to REACH participation. Referral for REACH participation will be made after a final determination of AFDC eligibility is made. However, individuals determined presumptively eligible for AFDC may participate in REACH on a voluntary basis before that final eligibility determination.

1. AFDC-C: All individuals, including a stepparent included in the eligible unit as a person whose presence in the home is essential to the well-being of the spouse, are required to participate in REACH, except as otherwise provided in this subchapter. Failure or refusal to participate may result in the imposition of the sanctions specified at N.J.A.C. 10:81-14.8[(f)].

2. AFDC-F: All individuals are required to participate in REACH, except as otherwise provided in this subchapter. Criteria identified at N.J.A.C. 10:81-3.18[(k)10] shall be used to identify the

principal earner in the household. Failure or refusal to participate may result in the imposition of the sanctions specified at N.J.A.C. 10:81-14.8[(f), which will vary depending upon whether the noncomplying participant is the principal earner].

3. AFDC-N: All Individuals are required to participate in REACH, except as otherwise provided in this subchapter. Failure or refusal to participate may result in the imposition of the sanctions specified at N.J.A.C. 10:81-14.8[(f), which will vary depending upon whether the noncomplying participant is the principal earner].

(b) [Exemptions:] **Exemption from REACH participation:** Individuals classified as exempt, **as delineated at N.J.A.C. 10:81-14.3A,** are not required to participate in employment or REACH employment-directed activities. However, they may participate on a voluntary basis **(see N.J.A.C. 10:81-3.19(f) and 14.3(s) for "volunteers in REACH").** An individual may claim at any time that he or she is entitled to an exemption. **Any exemption which does not have a stated reevaluation period shall be reviewed at such time as the condition is expected to terminate, but no less frequently than at each redetermination of AFDC eligibility. During the periodic review, if there is a change in exemption status or the individual decides to volunteer for participation, the IM worker shall take appropriate action on the change in status and update FAMIS accordingly. The IM worker shall promptly notify the recipient of any change in the recipient's exemption status.** [The following categories of individuals are exempt from participation in REACH:

1. Children and students: Children under age 16; or between 16 and 18, enrolled or accepted for enrollment as full-time students for the next school term in an elementary, secondary, or vocational or technical school; or under age 19 and attending full-time, a secondary school or the equivalent level of a vocational or technical school, and expected to complete the program of the school before reaching age 19.

2. Persons who are:

i. 65 years of age or older.

ii. Incapacitated: When verified that a physical or mental impairment as determined by a physician or licensed or certified psychologist or by the Bureau of Medical Affairs, either by itself or in conjunction with age, prevents the individual from engaging in employment and/or training, and such incapacity is expected to exist for a continuing period of at least three months. Alcohol or drug addiction shall be considered physical impairments if they prevent an individual from engaging in employment or training.

(1) Uncomplicated pregnancy of itself shall not be considered incapacitating; however, any claim to complications shall be verified in writing by a physician or licensed or certified psychologist by use of Form PA-5, Examining Physician's Report.

iii. Required in the home: When verification is obtained that a physical or mental impairment, as determined by a physician or licensed or certified psychologist, of another member of the household requires the individual's presence in the home on a substantially continuous basis, and no other appropriate member of the household is available.

3. The parent who is not the principal earner in the AFDC-N segment.

4. Teen PROGRESS participants: Individuals who have become part of the Teen PROGRESS study are subject to the participation requirements of that program (see N.J.A.C. 10:81-12).]

1. IM shall notify case management of a change in exemption status. Likewise, if during case management contact with the participant it is discovered that circumstances render a change in the exemption status, the case manager shall notify the IM worker concerning the change in circumstances so that appropriate action can be taken and FAMIS updated.

2. Providers of REACH activities shall be advised of a change in recipient's exemption status by the case manager.

[(c) Temporary deferrals: Participation in REACH may be temporarily deferred for circumstances likely to change that make current participation impossible or impracticable. Unless otherwise specified, individuals classified as temporarily deferred will be subject to monthly review as part of the case management function for changes in circumstances that make them eligible to participate again. The following categories of individuals are temporarily deferred from participation in REACH:

1. Ill: When determined on the basis of medical evidence or on some other sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training. Reasons for deferral on a temporary basis include observation of a cast on a broken limb, or information of scheduled surgery, recuperation from surgery, or other instances where the condition will be of limited duration. This deferral will not exceed 90 days. Minor ailments and injuries do not normally defer the individual under this criterion.

i. Where an individual evidences symptoms of alcohol or substance abuse or behavioral problems, referral for social services will be made. If such referral is not accepted or the individual stops participating in the treatment program, participation in other REACH activities will be required, as provided in N.J.A.C. 10:81-14.16(b)1.

2. Caretaker of young child: The parent or other caretaker relative of a child under two years of age who personally provides care for the child with only brief and infrequent absences from the child. For purposes of deferral from REACH participation, absence means that the parent and child are apart, one from the other. Individuals temporarily deferred due to care of a young child will be subject to review at least every three months as part of the case management function to determine if the parent wants to voluntarily participate in REACH before the deferral expires.

i. Absence shall be considered brief and infrequent if the child is routinely absent from the parent for normal activities related to child development or education, such as kindergarten, preschool classes, and so forth. Absences of the parent due to employment shall be considered brief and infrequent.

ii. Absence shall not be considered brief and infrequent if the parent is routinely absent from the child for 12 or more hours per week for activities not related to normal household, child rearing and/or family duties. Absences of the child for more than 12 hours per week due to care of the child by relatives or similar arrangements unrelated to employment or training shall not qualify as brief and infrequent.

3. Pregnancy: A women who is in the sixth month or later of pregnancy.

4. Extreme Hardship: Deferral from participation will not ordinarily be given for circumstances other than those in (c)1 through 3 above. However, if the individual can demonstrate that extreme hardship to the children would result if the individual were required to participate, despite the provision of support services, participation should be temporarily deferred on a case by case basis. Circumstances which would result in extreme hardship if participation was not deferred include but are not limited to the following:

i. Remoteness: When commuting time between home and the site of employment-directed activity by available public or private transportation is not reasonable. Commuting time of one hour each way, exclusive of the time necessary to transport children to and from a child care facility, is considered reasonable;

ii. Another adult relative participates: A temporary deferral may be granted to the parent or other caretaker of a child who is deprived of parental support or care by reasons of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative in the home is a mandatory REACH participant and has not refused to participate in the REACH program or to accept employment without good cause;

iii. Another parent is not exempt (AFDC-F): A temporary deferral may be granted to a parent in the AFDC-F segment (who is not the principal earner) of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner) is not exempt under one of the preceding clauses of this section; or

5. Homelessness: REACH participation shall not be required of any individual who is without a permanent residence; however, such individuals may volunteer to participate in REACH.

6. Participation in a client-selected activity: Individuals who participate in a client-selected program or activity, that is, a training or education program or activity in which the individual has enrolled himself or herself and which has not been authorized or approved

by the county and is not in accordance with N.J.A.C. 10:81-14.14(a) and 10:82-5.6(c), shall be temporarily deferred from participation in REACH.]

(c) Full-time employment: Individuals who are working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days are exempt from participation in other REACH activities, even if there is a temporary break which is expected to last no longer than 10 working days.

1. The agency will endeavor to provide such supportive services as are available under these rules if they are needed to help the participant continue employment. However, to receive supportive services, the individual shall be referred by IM to case management and shall cooperate with applicable REACH requirements to be determined eligible for receipt of any supportive services of the REACH program.

2. The participant may voluntarily participate in other REACH training or education agreed upon by the agency.

(d) Homelessness: The homeless are ordinarily mandatory participants in REACH if they do not satisfy any exemption criteria in N.J.A.C. 10:81-14.3A. Such individuals shall be considered for appropriate REACH activities as determined by the case manager based on the family's circumstances. Such families may be eligible for emergency assistance benefits (see N.J.A.C. 10:82-5.10) regardless of REACH participation because Title IV-A emergency assistance eligibility does not require compliance with AFDC work/training requirements (REACH participation). Other emergency assistance programs may require REACH participation (for example, Rent Subsidy Program). However, based on the circumstances of the family, homelessness may be considered "good cause" for not participating in REACH (see N.J.A.C. 10:81-14.8) as determined by the case manager on a case-by-case basis.

[(d)] **(e)** Excused participation: REACH participants shall be temporarily excused from participation if the component (including social services) for which they are scheduled as set forth in the REACH Agreement is not currently available or if a support service set forth in the REACH Agreement is not available. Excused participation is reviewed once every week up to once every month, depending on the circumstances surrounding the excuse.

1. (No change.)

2. Another REACH activity which is suitable for the participant and for which necessary support services are available may be substituted as an [alternate] **alternative** form of participation.

[(e)] **(f)** (No change in text.)

[(f)] **(g)** REACH participation **requirements**:

1. An individual who is not exempt[, temporarily deferred] or excused from REACH shall participate in REACH activities as follows:

[i. Attendance at all necessary orientation sessions;]

[ii.] **i.** Attendance at [evaluation,] **initial** assessment **of employability (individual evaluation, assessment)**, [diagnosis, testing, and] counselling **and diagnostic** sessions necessary for placement in employment and employment-directed activities;

Recodify iii. and iv. as ii. and iii. (No change in text.)

2. (No change.)

3. "Limited" participation of no more than 20 hours per week in REACH activities by the parent or caretaker relative who personally provides care for a child if the child is at least two years of age but under age six, is allowable unless the custodial parent is under age 20 and has not completed a high school education or its equivalent (see (m)1 and 2 below). Only one parent or other relative in a family is allowed this limited participation level (20 hours) in an activity. Child care shall be guaranteed in accordance with N.J.A.C. 10:81-14.18 to enable the 20-hour participation in REACH.

[(g)] **(h)** (No change in text.)

[(h) Full time employment: Individuals who are working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days are considered to be satisfying the REACH participation requirements, even if there is a temporary break expected to last no longer than 10 working days.

1. The agency will endeavor to provide such support services as are available under these rules if they are needed to help the participant continue employment.

2. The participant may also voluntarily participate in other training or education agreed upon by the agency.]

(i) Client-selected activity: Individuals classified as mandatory participants who are scheduled to begin REACH participation but who are enrolled in a client-selected education or training program or activity shall be treated [in accordance with (i)1 and 2 below] **as follows**:

[1. As part of the individual evaluation, the case manager shall determine whether the client-selected activity is in accordance with N.J.A.C. 10:82-5.6(c).

i. If the case manager determines that the client-selected activity is in accordance with N.J.A.C. 10:82-5.6(c), participation in the activity shall be considered participation in REACH and the activity shall be included in the final REACH Agreement. However, if REACH funds are not available to pay the tuition for the client-selected activity, the individual assumes responsibility for all tuition costs.

ii. If the case manager determines that the client-selected activity is not in accordance with N.J.A.C. 10:82-5.6(c), participation in the activity shall not be considered participation in REACH and the activity shall not be included in the final REACH Agreement. The individual shall be deferred from REACH until the client-selected activity has been completed or until the individual stops participating in that activity.]

1. The individual will complete an initial assessment of employability and develop an employability plan to determine the appropriateness of the client-selected activity to the individual's employment goal. The case manager shall determine if an eligible individual has a reasonable and feasible plan for full-time (as defined by the educational/training institution) vocational/educational training, other than the normal secondary school curriculum, which will lead to gainful employment and which meets the following criteria:

i. The individual has a specific vocational objective and there is a reasonable expectation that employment will be available in the area of the objective in the local job market;

ii. The individual has not left gainful employment solely for the purpose of additional training unless such training is designed to increase his or her earning capacity;

iii. A new applicant who has been self-sustaining has not ceased his or her employment within the past three months for the purpose of going to school and applying for assistance.

2.[An individual who disagrees with the temporary deferral may appeal this determination through the process set forth at N.J.A.C. 10:81-14.7 and 10:81-6.] **If the case manager determines that the client-selected activity meets the criteria in (i)1 above and the individual can demonstrate that he or she is enrolled (in good standing) and making satisfactory progress in the school or course sufficient to receive credit for the program, then participation in the activity shall be considered participation in REACH. The activity shall be included in the final REACH Agreement.**

i. The case manager in making the decision to approve the client-selected activity for REACH participation shall also consider the length of time for completion of the program, within a reasonable time, as defined by the county agency based on average completion time-frames for REACH participants in the county.

ii. The case manager shall inform the individual at the time the approval of the client-selected activity is granted, that the approval is subject to periodic review at the end of each term and at such other times as the agency deems necessary; and that, if necessary, a change could be made in the approval status. The case manager shall periodically review with the participant, his or her employability plan; revisions to the plan based on changed circumstances (for example, improved job market) may alter the approval status of the client-selected activity. In that instance the individual may be required to accept unsubsidized employment (other than OJT or WSP) with the potential of leading to self-sufficiency.

iii. The agency shall not permit other REACH activities to interfere with participation in the approved client-selected activity.

iv. The client-selected activity may be approved as REACH participation, however, if REACH funds are not available to pay the tuition for the client-selected activity, the individual assumes responsibility for all tuition costs. If REACH funds are available, the agency may pay

for costs incurred from the date of approval. Under no circumstances shall REACH pay for costs incurred by the individual for participation in the activity prior to the date of approval.

v. Participants in approved client-selected activities may be eligible for child care and other supportive services as set forth in N.J.A.C. 10:81-14.17, 14.18 and 14.19. Participants in unapproved client-selected activities are ineligible for REACH supportive services.

3. If the case manager determines that the client-selected activity is not in accordance with (i)1 and 2 above, participation in the activity shall not be considered participation in REACH and the activity shall not be included in the final REACH Agreement. The individual shall be required to participate in other REACH activities unless he or she satisfies the exemption criteria in N.J.A.C. 10:81-14.3A.

4. An individual who disagrees with the denial of his or her selected activity may appeal this determination through the process set forth at N.J.A.C. 10:81-14.7 and 10:81-6.

(j) REACH target group populations: As required by the Federal Family Support Act, the REACH program targets services to certain populations for participation in the program.

1. Those target groups are:

i. Long term recipients: Long term recipients include those individuals receiving AFDC for any 36 of the preceding 60 months;

ii. Long term applicants: Individuals who make application or reapplication for AFDC, and have received AFDC for any 36 of the preceding 60 months immediately preceding the most recent month for which application has been made;

iii. Custodial parents under age 24 needing high school: Individuals who are custodial parents under the age of 24 and who have not completed a high school education, are not enrolled in high school nor in a high school equivalency course of instruction (GED);

iv. Custodial parents under age 24 with no work history: Individuals who are custodial parents under age 24 and who have little or no work experience in the preceding year; and

v. Potentially ineligible families: Families whose youngest child is age 16; that is the youngest child is within two years of being ineligible for AFDC because of age (thereby rendering the entire family ineligible for AFDC).

2. Target group status is established no later than the initial assessment of employability. IM determination of target group status during orientation is permissible. If the individual is identified as belonging to one of the above five target groups, that individual shall remain in the target group for the duration of REACH participation, including the 12-month post-AFDC period.

i. Counties have an ongoing responsibility to assign target group status to new AFDC/REACH cases and to correct an inappropriately assigned target group status. Counties shall ensure coordination between IM and case management so that a participant's target group status is accurate.

ii. If an individual is not assigned to one of the above five target groups at the time of initial assessment of employability (that is, the individual was assigned to the FAMIS target group "O", no target group identified) but during REACH participation can be later categorized into one of the above groups, then the individual shall be assigned to the appropriate target group and will remain in that group for the balance of REACH participation through the 12-month post-AFDC period.

(k) Federal participation requirements: Title II of the Family Support Act, the JOB Opportunities and Basic Skills Training (JOBS) program, requires that individuals with certain educational needs or certain family circumstances participate in prescribed employment-directed activities (EDAs) or participate subject to Federal limitations. These requirements are set forth in (l) through (r) below and include:

1. Activities for dependent children age 16 to 18 not attending school;

2. Educational requirements for custodial parents under age 20, including different requirements for parents under age 18 and parents age 18 or 19;

3. Educational requirements for individuals age 20 and older;

4. Participation requirements for AFDC-F segment principal earner;

5. Limited participation for a caretaker of a child age two and older but under age six;

6. Remedial educational activities for individuals without a high school diploma who have not achieved a basic literacy level; and

7. Limited English proficiency education if necessary to achieve the employment goal.

(l) Dependent children age 16 to 18 not attending school: Dependent children between 16 and 18 years of age, who are not parents and who are not attending high school, are mandatory REACH participants. Such individuals should be encouraged and helped to remain in school or to participate in other educational or training activities.

(m) Custodial parents under age 20—educational requirements: Custodial parents under age 20, regardless of the age of the youngest child, who have not completed a high school education or its equivalent (for example, GED), and who are not exempt from participation in REACH, must participate in REACH preparatory educational activities (see N.J.A.C. 10:81-14.15), subject to the provisions below:

1. A custodial parent under age 18 with no high school diploma, regardless of the age of the youngest child, is required to complete a high school education or its equivalent and shall have the choice to return to high school or to enroll in a high school equivalency program as set forth at N.J.A.C. 10:81-14.15. The agency shall not excuse anyone from high school who is subject to the State's compulsory attendance requirement.

i. Attendance must be full-time (as defined by the educational provider) even though the youngest child may be under six years of age, unless good cause is demonstrated or child care is not available to support full-time attendance. Until child care becomes available, participation may be on a part-time basis or the individual may be temporarily excused.

ii. In exceptional circumstances the custodial parent may be excused from the high school attendance requirement provided he or she participates in another REACH preparatory activity (see N.J.A.C. 10:81-14.15(b)) or in skills training combined with education (for example, Job Corps) and:

(1) The individual is beyond New Jersey's compulsory attendance requirement of age 16; and

(2) The determination of participation in the other preparatory activity is not based solely on grade completion but rather is based upon the results of an assessment and the participant's employment goal which indicate education is inappropriate for the individual; or

(3) The participant's local school district legally refuses to admit or readmit the participant and no alternate, appropriate educational components are available; or

(4) The participant has been determined developmentally disabled or in need of special educational programs for the learning disabled.

2. A custodial parent age 18 or 19 with no high school diploma regardless of the age of the youngest child is required to participate in preparatory educational activities and shall attend the program full-time (as defined by the educational provider) even though the youngest child may be under six years of age, unless good cause is shown or child care is unavailable to support full-time attendance. Until child care becomes available, participation may be on a part-time basis or the individual may be temporarily excused.

i. The custodial parent who is age 18 or 19 may be required to participate in training or work activities (subject to the 20-hour limit addressed at N.J.A.C. 10:81-14.3(g) unless the individual volunteers to participate for more than the 20 hours limited participation) instead of educational activities if one of the following conditions is met:

(1) After placement in the educational activity, the custodial parent failed to make good progress in successfully completing educational activities; or

(2) Prior to the assignment of the individual to such educational activities it is determined, based on an educational assessment and the employment goal in the individual's Employability Plan, that participation in educational activities is inappropriate for such parent. The participant must strongly indicate that he or she is not interested in participating in the educational component and one of the following conditions is met:

(A) The participant has a documented history of repeatedly failing to make progress in educational components (indicated by, for example, expulsion from high school, violent or disruptive behavior, threats, excessive absenteeism, failure to complete an alternate education component); or

(B) The initial assessment of employability indicates that: the participant's current literacy level is sufficient to achieve the employment

goal in the REACH Employability Plan; the participant has the basic literacy level; or the employment goal in the REACH Employability Plan does not require a high school diploma or its equivalent.

(n) Individuals age 20 and over—educational requirements: A mandatory REACH participant who has attained the age of 20 years and has not earned a high school diploma (or its equivalent) is required to participate in preparatory educational activities consistent with his or her employment goals as a component of the individual's REACH Employability Plan. Any other REACH services or activities may not be permitted to interfere with participation in preparatory educational activities.

1. Participation in preparatory educational activities is not required if:

i. The individual demonstrates a basic literacy level needed for his or her employment goal; or

ii. The individual's employment goal, as identified on his or her REACH Employability Plan, does not require a high school diploma (or its equivalent).

(o) Participation requirements for AFDC-F segment principal earner: The principal earner in an AFDC-F segment case shall participate for a total of at least 16 hours per week in a REACH work supplementation program (WSP), in a community work experience program (CWEP), or in an on-the-job training (OJT) program (see N.J.A.C. 10:81-14.11, 14.12, and 14.14(b)).

1. If the principal earner is under 25 years of age and has not completed high school (or its equivalent), he or she may participate in preparatory educational services (see N.J.A.C. 10:81-14.15) in lieu of participation in WSP, CWEP or OJT.

i. The individual shall be considered to be meeting the above participation requirement if he or she is making satisfactory progress.

2. The principal earner participating in CWEP shall be considered to have met the 16 hours per week minimum participation requirement if he or she participates for the maximum number of hours of that program (see N.J.A.C. 10:81-14.12).

(p) Caretaker of child age two and older and under six—limited participation: A parent in an AFDC-C segment case and only one parent in an AFDC-F segment case with a child under six years of age cannot be required to participate for more than 20 hours per week in an employment-directed activity, even if child care is provided. However, the individual may volunteer to participate for greater than 20 hours.

1. Exception: The 20 hour rule does not apply to custodial parents under 20 years of age who must participate in educational programs because they do not have a high school diploma (or equivalent) as addressed in (m) above.

(q) Remedial educational activities for individuals without a high school diploma: Basic and remedial educational activities are mandatory REACH activities to help certain individuals achieve a basic literacy level when those individuals do not have a high school diploma or its equivalent and the participant's long-term employment goal does not require a high school education.

1. Basic literacy level means a literacy level in English that allows a person to function at the level of an individual who has proficiency at a grade 8.9 level.

(r) Limited English proficiency education: A mandatory educational component of an individual's participation in REACH shall be limited English proficiency education if such instruction in English as a second language (ESL) is necessary for the participant to achieve his or her long-term employment goal.

1. Limited English proficiency education means instruction which provides the individual with the ability to speak, read, write or understand the English language to function in his or her community.

(s) "Volunteers" in REACH: "volunteers in REACH" are defined as those individuals who meet the REACH exemption criteria at N.J.A.C. 10:81-14.3A and decide to participate in REACH, regardless of the exemption. The IM worker shall inform all exempt AFDC-C, -F , and -N applicants and recipients of their right to voluntarily participate in REACH and of their right to stop participation at any time without loss of assistance payments. During county phase-in to the REACH program, that individual who voluntarily agrees to participate in REACH and who is not a member of a required county phase-in group shall be treated as REACH mandatory, unless the individual satisfies REACH exemption criteria. If that individual is found to be exempt from REACH and decides to participate, then the individual is a "volunteer in REACH".

1. If an exempt individual "volunteers" to participate in REACH, he or she is not subject to sanctioning due to nonparticipation (see N.J.A.C. 10:81-14.8).

i. In determining the priority of participation within the REACH target populations (see N.J.A.C. 10:81-14.3(j)), the agency shall give first consideration to applicants for or recipients of AFDC who are exempt but "volunteer" to participate.

ii. When a "volunteer for REACH" stops participation in REACH without good cause, that individual shall not be given priority to participate again so long as other individuals are actively seeking to participate, unless the individual loses exemption status and becomes REACH mandatory.

(t) Participant (for purposes of determining a State's participation rate for Federal Financial Participation): An AFDC recipient who is assigned to a REACH program component (including educational activities, job skills training, job readiness activities, job search, OJT, WSP, CWEP and post-secondary education) for at least the minimum activity level, is a participant. Minimum activity levels include making satisfactory progress in all educational activities, and participating at least 20 hours per week in the other components noted; except for OJT and WSP, the minimum level is the number of hours defined by the employer as full-time work for that position. For participants in CWEP, the minimum level is the lower of either 20 hours per week or the maximum CWEP hours calculated as allowable for that individual. An individual's hours of participation for the week can be a combination of the hours of participation in more than one activity.

1. An individual active only in assessment, employability development planning or case management is not considered a participant for these purposes.

10:81-14.3A REACH Exemptions

(a) Individuals classified as exempt are not required to participate in employment or in REACH employment-directed activities (see N.J.A.C. 10:81-14.3(b)). The following categories of individuals are exempt from participation in REACH.

1. Children and students: Children under age 16; or between 16 and 18, enrolled or accepted for enrollment as full-time students for the next school term in an elementary, secondary, or vocational or technical school; or under age 19 and attending full-time, a secondary school or the equivalent level of a vocational or technical school, and expected to complete the program of the school before reaching age 19;

2. Persons who are 65 years of age or older;

3. Persons who are incapacitated: When verified that a physical or mental impairment, as determined by a physician or licensed or certified psychologist or by the Disability Review Section, Division of Medical Assistance and Health Services, either by itself or in conjunction with age, prevents the individual from engaging in employment and/or training, and such incapacity is expected to exist for a continuing period of at least three months (see N.J.A.C. 10:81-3.16(g)). Alcohol or drug addiction shall be considered physical impairments if they prevent an individual from engaging in employment or training. Incapacity may include a period of recuperation after childbirth if prescribed by the woman's physician.

i. Uncomplicated pregnancy of itself shall not be considered incapacitating; however, any claim to complications shall be verified in writing by a physician or licensed or certified psychologist by use of Form DRS-1, Examining Physician's Report, for an appropriate period of recuperation prescribed by her physician/psychologist.

ii. If the individual could be served or employed if reasonable accommodation(s) for his or her condition were made, then the possibility of participation in REACH shall be encouraged, rather than exemption of the individual.

iii. When an individual claims exemption under incapacity or illness but further verification is necessary (for example, a medical or psychological examination), the individual's needs may be included in the AFDC-C payment, or the needs of the entire eligible family included in the AFDC-F payment, while the exemption is being verified. Verification of the exemption shall be made as expeditiously as possible, but may not take longer than 30 days. If such verification is not provided within 30 days, the individual shall be required to participate unless

there is a legitimate delay in obtaining a medical appointment. In such instance, the 30 day limit may be extended to 45 days;

4. Persons who are ill or injured: When determined on the basis of medical evidence or on some other sound basis that the illness or injury is serious enough to temporarily prevent participation in employment or training. Reasons for exemption on a temporary basis include observation of a cast on a broken limb, or information of scheduled surgery, recuperation from surgery, or other instances where the condition will be of limited duration. This exemption normally will not exceed 90 days. As part of the case management function, the case shall be reviewed every 30 days to determine changes in circumstances that may render the individual able to participate in REACH. Minor ailments and injuries (for example, colds, broken fingers, rashes, and so forth) do not normally exempt the individual under this criterion.

i. Where an individual evidences symptoms of alcohol or substance abuse or behavioral problems, referral for social services will be made. If such referral is not accepted or the individual stops participating in the treatment program, participation in other REACH activities will be required, as provided in N.J.A.C. 10:81-14.16(b)1;

5. Persons who are required in the home: When verification is obtained that a physical or medical impairment, as determined by a physician or licensed or certified psychologist, of another member of the household requires the individual's presence in the home on a substantially continuous basis, and no other appropriate member of the household is available;

6. Pregnancy: With medical verification of the expected date of delivery, a women is exempt after the first trimester of pregnancy, that is, months four through childbirth;

7. Caretaker of young child: The parent or other caretaker relative of a child under two years of age who personally provides care for the child, subject to the following:

i. Exception: Custodial parents under age 20 must participate in REACH (see participation requirements at N.J.A.C. 10:81-14.3(m)) regardless of the age of the youngest child if the individual does not satisfy any of the other exemption criteria and the individual has not finished high school (or its equivalent) and child care is otherwise available.

ii. Only one parent or other relative in the family may be exempt from REACH participation for the reason of personally providing care to a child under two years of age.

(1) Limited participation of 20 hours in any REACH activity is required for one caretaker relative whose child is two years of age or greater, but less than age six (see N.J.A.C. 10:81-14.3(g)3).

8. Remoteness: Despite the provision of support services, when commuting time between home and the site of the employment-directed activity by available public or private transportation is not reasonable. Commuting time of one hour each way, exclusive of the time necessary to transport children to and from a child care facility, is considered reasonable. However, if normal round trip commuting time in the area is more than two hours, then the round trip commuting time considered reasonable shall be the generally accepted community standards for commuting as determined at the county level.

i. The principal earner in an AFDC-F or -N segment family, if exempt from participation in REACH due to remoteness, shall register with the State Employment Service;

9. Another adult relative participates: An exemption may be granted to the parent or other caretaker of a child who is deprived of parental support or care by reasons of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative in the home is a mandatory REACH participant and has not refused to participate in the REACH program or to accept employment without good cause;

10. Another parent is not exempt (AFDC-F): An exemption may be granted to a parent (who is not the principal earner) in the AFDC-F segment of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner) is not exempt under one of the other paragraphs of this section;

11. The parent who is not the principal earner in the AFDC-N segment;

12. TEEN PROGRESS participation: Individuals who have become part of the TEEN PROGRESS study are subject to the participation requirements of that program (see N.J.A.C. 10:81-12);

13. If the individual is a full-time volunteer serving under the Volunteers in Service to America (VISTA) program pursuant to Title I of the Domestic Volunteer Service Act of 1973, he or she shall be exempt from REACH participation; and

14. A person who is working 30 or more hours a week shall be exempt from REACH participation (see N.J.A.C. 10:81-14.3(c) above).

10:81-14.4 REACH case management

(a) General: Case management is a structured approach to the delivery of multiple and interrelated services to assure that the goals and objectives of REACH are met. **It is essential to maintain an ongoing and accurate exchange of information between case management and income maintenance to ensure that timely and correct action is taken for each participant so that necessary services are provided and participation requirements fulfilled.** Case management functions will ensure that the principles of REACH set forth at N.J.A.C. 10:81-14.1 are applied in the development of the **REACH Employability Plan, the** REACH Agreement, **in** evaluation and monitoring, and during an individual's participation in REACH. Staff included in the case management function are the REACH case manager, supervisory staff, clerical staff, and other support staff. Case management functions include but are not limited to:

1. [Explaining] **Reviewing basic concepts of** the REACH program: concept of mutual obligation; participation requirements; commitment to removing barriers to employment; emphasis on self-sufficiency; options available for training, education, and employment opportunities; client's rights;

2.-4. (No change.)

5. Developing with the participant a **REACH Employability Plan and** REACH Agreement which will outline steps toward self-sufficiency;

6.-11. (No change.)

12. Monitoring continued eligibility and provision of services to post-AFDC participants who receive REACH services of child care and/**or** Medicaid [, where necessary].

(b) Case manager: A REACH case manager will be assigned to coordinate the activities of the REACH program participants. For a participant, the case manager is the integral link among the different service subsystems of income maintenance, employment, training, child support enforcement and support services. Case managers or interpreters fluent in a participant's primary language will be provided when a participant is not fluent in English.

1. Responsibilities of case manager: The case manager is responsible for contact with the participant. Specific responsibilities of the case manager include:

i. (No change.)

ii. Making appropriate referrals **(for example, social services, lead child care entity);**

iii. Developing and signing the **REACH Employability Plan and** REACH Agreement;

iv. (No change.)

v. [Imposing and suspending] **Notifying income maintenance that** a sanction **should be imposed** for noncompliance with REACH participation requirements; [and]

(1) The case manager shall also notify income maintenance not to impose a sanction when an individual complies with REACH participation requirements before the sanction period begins.

vi. Maintaining responsibility for the case record during sanction. After a participant is referred for the imposition of a sanction as set forth in N.J.A.C. 10:81-14.8, the case manager shall retain the original REACH case file and shall have responsibility for making [all] decisions about exemption, [deferrals,] excused participation, placements and modifications to the REACH Agreement, communications with the participant (other than those directly involved with the imposition of the sanction), and overall handling of the REACH case[.];

vii. Maintaining an assigned caseload of participants and coordinating services and activities to ensure a participant's progress, and

reevaluating needs and services necessary for continued participation; and

viii. Arranging and monitoring procedures necessary to ensure payment of post-AFDC child care fees.

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

(f) Case management functions within REACH program client flow: Upon application or redetermination of AFDC eligibility, AFDC clients will proceed through the REACH program client flow. The REACH program client flow begins with an [overview of] **orientation to** REACH by the income maintenance worker and proceeds through case management as set forth below.

1. AFDC eligibility determination: The income maintenance worker at intake or **in the** active case unit will determine eligibility/**continued eligibility** for AFDC. The worker will also provide an [overview of] **orientation to** the REACH program and determine whether the individuals are exempt from participation, in accordance with N.J.A.C. [10:81-14.3(b)] **10:81-14.3A**.

i. (No change.)

ii. All volunteers and individuals who are not exempt will be referred for REACH [orientation] **evaluation**. This referral will initiate assignment of the individual to REACH case management.

[2. REACH orientation: As part of REACH participation, all potential REACH participants will receive orientation to the REACH program. Orientation will include a general description of the REACH program, the employment, training and educational opportunities available, the support services available, and the participation required under the principle of mutual obligation and the REACH Agreement.

i. Orientation is a case management function and may be conducted in a group setting or at an individual interview. Orientation, individual evaluation, and development of the REACH Agreement may take place at one or more interviews.

ii. Support services of child care and payment for transportation are available to a participant during orientation, even though a REACH Agreement has not been signed.

iii. During the orientation process, voluntary participants may decide whether to continue in REACH. All mandatory participants and voluntary participants continuing in REACH will be referred for case management.]

2. Initial assessment of employability: As part of REACH participation, all potential REACH participants shall receive an initial assessment of employability.

i. The initial assessment of employability is based on:

(1) The individual's educational, child care, and other supportive service needs;

(2) The individual's proficiencies, skills deficiencies, and prior work experience;

(3) A review of the family circumstances, which may include the need of any child of the individual; and

(4) Other factors relevant in developing the employability plan set forth in N.J.A.C. 10:81-14.5.

ii. The initial assessment of employability shall consist of the following:

(1) An individual evaluation by the REACH case manager;

(2) A determination of the participant's literacy level if the participant has not completed high school or equivalent; and, as appropriate,

(3) An assessment by a county-selected assessment entity.

3. Individual evaluation: Individual evaluation involves an initial assessment of a REACH participant's existing employment-related skill levels, education level, and similar characteristics related to employability and the job market, and of support service needs. The case manager will meet individually with each participant and conduct an initial evaluation of barriers to job readiness and of the need for social services, such as mental health services, vocational rehabilitation, drug and alcohol treatment programs, and health care.

i. [Temporary deferral: At the individual evaluation, the case manager will determine whether the individual is eligible for temporary deferral under N.J.A.C. 10:81-14.3(c) and will explain the benefits of REACH participation during the period of deferral. (See (1) below for possible waiver of deferral and client flow.)] **If the participant has not completed high school or its equivalent, the case manager shall determine the participant's literacy level based on information provided by the client and, when necessary through further assessment testing by the appropriate county entity.**

(1) If the participant's literacy level cannot be determined at this time, the case manager shall refer the participant to the entity chosen by the county to assess, by use of standardized test, the participant's educational aptitudes.

ii. [Initial] REACH Agreement: As part of the individual evaluation, the case manager and participant will jointly develop the initial REACH Agreement. The initial REACH Agreement will indicate whether the participant has been [temporarily deferred or] referred to social services, REACH job search, or assessment. The initial Agreement will also contain the support services necessary to enable the individual to participate in social sevices, job search or assessment.

(1) If the individual has been referred to REACH job search, the initial Agreement will be the final REACH Agreement. Individuals [temporarily deferred or] referred for social services will have signed only an initial Agreement.

(2) The case manager and participant will also develop the REACH Employability Plan.

[(2)] **(3)** If the individual has been referred for assessment, the initial Agreement will be followed by the **REACH Employability Plan and** final REACH Agreement after assessment (see (f)5 below).

4. Assessment: Participants will be referred to the entity chosen by the county to assess the participant's educational and vocational aptitudes **(including literacy level as necessary)** and interests, or for social services assessment not done by the case manager. The entity will recommend to the case manager whether participants are job ready, in need of preparatory educational services, post-secondary educational services, job skills training, CWEP, or similar services, and will identify potential deliverers of these services where possible.

5. **REACH Employability Plan and** REACH Agreement: The case manager and participant will review the assessments and the initial REACH Agreement and jointly develop the **REACH Employability Plan and** final REACH Agreement (see N.J.A.C. 10:81-14.5).

6. (No change.)

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

(j) Child care during preliminary sessions: A participant will be provided necessary child care, in a manner agreeable to the participant, for all sessions involving [orientation,] evaluation, counselling, assessment, testing, social services and development of the **REACH Employability Plan and** REACH Agreement.

(k) (No change.)

(l) Waiver for the reassignment of case management functions: It is recognized that the phase-in of AFDC families into REACH may result in a high workload for the case management agency, with the possibility that REACH participants may not be served timely. To alleviate this temporary workload and to ensure that all participants receive REACH services timely, the case management agency may request that certain case management functions set forth in the REACH program client flow in [(d)] **(f)** above, be temporarily reassigned to another work unit in that agency. [For example, the orientation and individual evaluation of parents with children under age two who are eligible for temporary deferral of up to 18 months could be performed by the income maintenance unit as part of the AFDC eligibility determination.] To request a waiver of reassignment of case management functions, the case management agency must write to the Director, Division of Economic Assistance, including the following:

1.-5. (No change.)

10:81-14.5 **REACH Employability Plan and** REACH Agreement

(a) REACH Employability Plan: On the basis of the initial assessment of employability, the case manager shall develop a REACH Employability Plan (Form R-14) in consultation with the participant, including a participant in a client-selected activity. The Employability Plan shall take into account available REACH program resources; the participant's supportive services needs, skills level and aptitudes; local employment opportunities; and, to the maximum extent possible, the preferences of the participant.

1. A REACH Employability Plan shall be completed for each REACH participant. The Employability Plan shall be signed by the

case manager and the participant and a copy retained in the participant's case record. The participant shall also receive a copy of the Plan.

2. The REACH Employability Plan is an outline of the REACH activities and services needed by the participant to achieve an employment goal. The REACH Employability Plan shall not be considered a contract.

3. The REACH Employability Plan shall be used in conjunction with the REACH Agreement which provides detailed information concerning the specific REACH activities and support services to be undertaken to achieve the employment goal.

4. Contents of the REACH Employability Plan: The REACH Employability Plan shall contain the following:

i. General case information;

ii. An employment goal for the participant developed in consultation with the client which should reflect availability of jobs in the local and/or relevant market;

iii. A list of the REACH activities that will be undertaken by the participant to achieve the employment goal; the specific details of the REACH activity, such as dates and hours of participation, shall be identified in the REACH Agreement;

iv. The supportive services to be provided to enable REACH participation such as child care, transportation and other supportive services; the specific details concerning services to be provided, such as the name of the provider, dates, time, and so forth, shall be identified in the REACH Agreement;

v. Any other needs of the family, identified during assessment, that might be met by REACH, such as participation by a child in drug education or life skills planning;

vi. The participant's literacy level, including date assessed, and the name of the specific test used to assess the literacy level; and

vii. The participant's education level, that is, highest grade completed.

5. Final approval of the REACH Employability Plan rests with the REACH case manager.

6. Changes to the REACH Employability Plan: The case manager shall make changes to the REACH Employability Plan as follows:

i. Update the literacy level when the participant completes a preparatory educational employment-directed activity, such as GED, ABE or ESL, as appropriate;

ii. Record satisfactory progress in a noneducational employment-directed activity at the time of completion of the activity or every three months, whichever occurs first;

iii. Record satisfactory progress in an educational component on a periodic basis of less than one year, such as a term or quarter, which is consistent with the progress report policies set by the educational institution, program, or the training provider; and

iv. Complete a new REACH Employability Plan when there is a change in the participant's employment goal or to reflect new activities.

[(a)] **(b)** Purpose and scope: The REACH Agreement will set forth provisions for both the REACH participant and the agency to comply with under the principle of mutual obligation. Each REACH participant will sign [a] **an initial** REACH Agreement with the case manager affirming participation, provision of support services (such as child care and transportation) and commitment to self-sufficiency. The **final** REACH Agreement **places the participant in employment or an employment-directed activity, and** will be [tailored] **adapted** to each participant's skills and necessary employment activities. A Spanish language version of the REACH Agreement is available for any participant whose primary language is Spanish.

1.-2. (No change.)

3. Post-AFDC REACH participants: All REACH participants no longer receiving AFDC will be required to complete and sign a REACH Agreement as a condition of receiving post-AFDC child care. All REACH participants receiving post-AFDC Medicaid (see N.J.A.C. 10:81-14.20) should complete and sign a REACH Agreement. [Exceptions may be granted where] **If** the participant would be penalized by the employer for taking time off from work, **the REACH Agreement may be mailed to the participant with the approval of the case management supervisor.** Absence of a REACH Agreement will not relieve the participant of complying with eligibility requirements for extended Medicaid benefits (see N.J.A.C. 10:81-14.20).

[(b)] **(c)** Contents of REACH Agreement: The REACH Agreement will set forth:

1. Participation required by the REACH participant in employment and REACH employment-directed activities, **including the weekly hours of participation in the activity (see N.J.A.C. 10:81-14.3(t)).**

2.-8. (No change.)

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

[(d)] **(e)** Specifications: The REACH Agreement shall conform to the following specifications:

1. Effective date: The REACH Agreement and amendments to the REACH Agreement shall be effective upon signing by the participant and the case manager, subject to [(c)2] **(d)2** above.

2. (No change.)

[(e)] **(f)** Amendments: The REACH Agreement may be amended or updated at any time. Amendments may reflect changes in skills, education levels of the participant and changes in assignment to employment-directed activities, as well as any other agreed change in terms. Whenever the Agreement is amended or updated the case manager shall review the support services to ensure that they will continue to support REACH participation. Amendments shall be effective in accordance with [(d)] **(e)** above.

[(f)] **(g)** REACH Agreement review: A review of the REACH Agreement shall be completed at time of the redetermination of AFDC eligibility. At a minimum, the case manager and the participant shall review compliance with the existing Agreement, discuss changes that may be needed, and make the necessary amendments. The effective date and duration of the amendments to the REACH Agreement shall conform to [(d)] **(e)** above.

10:81-14.6 Income maintenance functions

(a) General: The functions and tasks of [the] income maintenance **(IM) staff** [workers] concerning the REACH program are set forth in this section. **It is essential to maintain an open and accurate exchange of information between income maintenance and case management to ensure that timely and appropriate action is taken for each participant so that necessary services are provided and participation requirements fulfilled.** The functions include but are not limited to:

1. Determination of eligibility for AFDC and computing the AFDC grant amount;

[2. Provide an overview of the REACH program to applicants and recipients, and determine the exempt status of REACH participants;]

2. Providing an orientation of the REACH program to all AFDC applicants and recipients (see (b) below);

3. Determining exempt or mandatory status for REACH participation and identifying participant target group (see N.J.A.C. 10:81-14.3);

Recodify 3. through 9. as **4. through 10.** (No change in text.)

(b) REACH orientation: The county welfare agency (CWA) shall, at time of application or redetermination, provide an orientation to REACH. That is, IM shall inform all AFDC applicants and recipients, in writing or orally as appropriate, of the availability of REACH program activities, the supportive services for which they are eligible, the participation requirements under the principle of mutual obligation, the REACH Employability Plan and the REACH Agreement.

1. The content of information provided in orientation shall include, but not be limited to, the following:

i. Educational, employment and training opportunities available in REACH;

ii. Supportive services, including but not limited to child care, post-AFDC child care, Medicaid Extension, payments for transportation, work-related expenses, car maintenance;

iii. Agency obligations, including provision of program and support services;

iv. Rights, responsibilities, and obligations of participants, including grounds for exemption, consequences of failing or refusing to participate, mandatory and voluntary participation;

v. Information about child care services are as follows:

(1) Availability: Types and locations of child care services reasonably accessible to REACH participants;

(2) Selection: Type of assistance available to help participants select appropriate child care services; and

(3) Obtaining child care: Type of assistance available, on request, to help participants obtain child care services; and

vi. Child support: Responsibility of participant to cooperate in establishing paternity and enforcing child support; responsibility of the CWA to assist individuals in obtaining paternity establishment and child support services for which they may be eligible.

2. Orientation may be conducted in a group setting or at an individual interview, based on county operational procedures.

3. During the orientation process, voluntary participants may decide whether to continue in REACH. All mandatory participants and voluntary participants continuing in REACH will be referred for case management.

4. REACH Orientation for post-AFDC participants: AFDC recipients who have not participated in REACH but who become ineligible for AFDC due to excess income from employment are eligible for post-AFDC REACH benefits. For these individuals, the IM worker should attach to Form R-10, REACH Benefit Letter, a written description of the REACH program that includes at a minimum all items at (b)1 above. For these individuals, Form R-10 and attached written orientation will serve as REACH orientation. If the participant subsequently contacts the case manager for extended child care benefits, an individual evaluation interview must be held at which time the participant may receive a more in-depth orientation.

5. The date of orientation shall be as follows:

i. Applicants and reapplicants: The date of application or reapplication will be the date of REACH orientation.

ii. Redeterminations: The date of redetermination of AFDC eligibility will be the date of orientation.

iii. Post-AFDC participants: The date of Form R-10 will be considered the date of orientation.

6. REACH Addendum: To ensure that Quality Control errors are not incurred, every AFDC applicant and every AFDC recipient at time of redetermination must sign the REACH Addendum to Form PA-1J, indicating enrollment in the REACH program.

Recodify (b) through (d) as (c) through (e) (No change in text.)

10:81-14.7 Hearings and notices

(a) Hearings: The provisions governing fair hearings at N.J.A.C. 10:81-6 shall apply to the REACH program. [REACH participants who are dissatisfied with a determination of participation requirements, exempt, temporarily deferred or excused participation status, support services, sanctions and adverse actions may request a hearing.] The hearing process is maintained by the Office of Administrative Law and is applicable to all REACH participants concerning REACH program requirements which are unrelated to wage and hour statutes. These decisions must be reviewed for final decision by the Director, DEA. It is the right of every REACH participant adversely affected by the agency to request a fair hearing if the individual is dissatisfied with components of REACH participation including, but not limited to:

1. The determination of the individual's participation requirements (for example, computation of hours of CWEP and WSP participation);

2. The determination of the individual's exempt or excused participation status;

3. The supportive services being offered the individual;

4. The sanction or adverse actions being imposed upon the individual; and

[1.] 5. [Elements of the Agreement: The Administrative Law Judge shall determine] The determination of all issues concerning the reasonableness of the elements of the REACH Agreement and [as well as determine] the participant's cooperation and noncooperation with the Agreement in accordance with N.J.A.C. 10:81-14.8.

(b) Notices: Adverse actions taken by the agency are subject to timely and adequate notice provisions. Notices of action taken by the CWA concerning REACH participants are subject to the provisions of N.J.A.C. 10:81-[7]7.1 and N.J.A.C. 10:90-2.5, as appropriate, and shall be provided in a Spanish language version for any participant whose primary language is Spanish.

1. Changes in the manner of payment of supportive services do not require timely notice unless they result in a discontinuation, suspension, reduction or termination of supportive service benefits or they force a change in child care arrangements.

(c) Provisions concerning continuation of REACH child care and supportive service benefits (see N.J.A.C. 10:81-14.18 and 19), pending a hearing, are as follows:

1. If the individual had been receiving REACH child care or transportation benefits and is awaiting a hearing because such benefits were reduced, he or she is not entitled to receive REACH child care or transportation benefits at the prior unreduced level. Benefits shall continue at the determined reduced level pending the hearing.

2. If the individual had not been receiving any child care benefit or a specific REACH supportive service benefit, as delineated at N.J.A.C. 10:81-14.19, for which he or she believes he or she is eligible and is awaiting a hearing due to non-receipt of those benefits, he or she is not entitled to receive that child care benefit or the specific REACH supportive service benefit pending the hearing.

3. If the individual had been receiving REACH child care benefits or transportation benefits and is awaiting a hearing because such benefits were discontinued or terminated, he or she is not entitled to receive those REACH benefits pending the hearing.

4. If the individual is contesting the amount of the REACH child care benefits received and is awaiting a hearing, he or she shall continue to receive REACH child care benefits in the amount previously established by the agency, pending the hearing. Likewise, if the individual is contesting the amount of specific REACH supportive service benefit received, the amount of the benefit shall remain in the amount previously established by the agency, pending the hearing.

(d) Violations of New Jersey wage and hour statutes are appealed through the New Jersey Department of Labor's Division of Workers' Compensation and Workplace Standards. Employees' complaints concerning issues such as work assignments, working conditions, and wage rates of individuals who are employed are handled by those Divisions through existing procedures. (The term "employees" as used in this context refers to OJT/WSP participants as well as other workers hired by the employer (not under REACH contract)).

(AGENCY NOTE: Current text of N.J.A.C. 10:81-14.8 is being repealed and replaced with the following new text:)

10:81-14.8 Noncompliance; good cause; conciliation; sanctions

(a) The REACH principles of self-sufficiency through employment, mutual agency/participant obligation, dignity and self-respect of the individual, and flexible program design, are all directed to encourage participation by the individual. However, it is recognized that situations may occur in which the individual may not comply with the REACH participation requirements. In instances where noncompliance by a mandatory participant is indicated, the case manager may begin a series of procedures called the conciliation process (see (f) below), to resolve disputes involving an individual's participation in REACH. Conciliation is designed to assist the participant in complying with the requirements of REACH and the REACH Agreement in most instances, before a decision is made to impose a sanction for noncompliance. Either the recipient or the case manager can request that the conciliation process be initiated.

1. Voluntary participants: If an individual classified as a voluntary participant (see N.J.A.C. 10:81-14.3(s)) discontinues participation in the REACH program, the individual and the individual's family are not subject to the procedures and sanctions set forth in this section. However, under the principles of the REACH program, the case manager may wish to discuss with the individual the circumstances surrounding the decision not to participate and the benefit of participation.

(b) Situations not considered noncompliance: The following situations are not considered to be noncompliance with REACH program requirements:

1. Supportive services set forth in the REACH Agreement are guaranteed to those in need of such services; however, if resources necessary to provide supportive services to a participant are unavailable to meet that individual's needs, then the individual is temporarily excused from participation in REACH (see N.J.A.C. 10:81-14.3(f)).

2. Volunteers as defined at N.J.A.C. 10:81-3.19(f) and 14.3(s) are not subject to sanctioning due to nonparticipation or noncompliance.

3. If the individual is scheduled to participate in more than one REACH activity and a "conflict in scheduling" of those activities results in the participant not being able to participate in the activity, then, noncompliance does not exist in that circumstance. The individual

shall be excused from participation in the other activity or an alternative activity shall be considered in its place for the individual.

(c) Noncompliance: A participant is deemed to be in noncompliance when he or she refuses a specific referral for initial assessment of employability; a definite offer of training, education or employment; or ceases participation in an assigned REACH activity without good cause. Indications of noncompliance may be reported to the case manager or may become apparent to the case manager during client participation. Indications of noncompliance with REACH program requirements include, but are not limited to, situations in which the participant:

1. Did not attend a REACH evaluation session after one notice has been mailed to the participant and the participant failed to respond without good cause;

2. Did not attend a REACH assessment session after one notice has been mailed to the participant and the participant failed to respond without good cause;

3. Did not cooperate in the development of the REACH Agreement or Employability Plan;

4. Did not sign the REACH Agreement, for circumstances other than those in N.J.A.C. 10:81-14.5(d);

5. Did not make a bona fide application for employment;

6. Did not accept the type of employment agreed upon and specified in the REACH Agreement without good cause;

7. Terminated employment or reduced earnings without good cause;

8. Was discharged from employment for cause; for example, gross misconduct connected with such employment, or failing to meet reasonable job requirements;

9. Did not participate or ceased participation without good cause, in any REACH employment-directed activities;

10. Refused necessary and appropriate supportive services, without good cause, as determined by the agency, which permit participation in REACH activities or employment, without providing alternative arrangements or showing that such refusal will not prevent or interfere with participation;

11. Disrupted a REACH activity or behaved in a manner that constituted a threat or hazard to agency staff or fellow participants; or

12. Failed to appear for a scheduled conciliation conference without good cause, after non-cooperation for any of the above reasons.

(d) Notification to participant for indicated noncompliance: When participant noncompliance for evaluation, assessment or other REACH requirements is indicated, the case manager shall proceed as in (d)1 and 2 below to notify the participant of the indicated noncompliance, the beginning of the conciliation process, and attempt to schedule a conciliation conference in accordance with (f)2.

1. Initial assessment of employability: After failure to appear at a scheduled appointment for any step in the initial assessment of employability, the case manager will send Form R-8, Conference Letter, notifying the participant of noncompliance and of the penalty for refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conciliation conference. In addition, the case manager shall attempt to contact the participant by telephone. If the participant does not contact the case manager within 10 days of the date of the Conference Letter concerning the conciliation conference, then the case manager shall refer the individual for sanctioning.

2. Other activities: In instances of noncompliance set forth in (c)1 through 11 above, the case manager will send Form R-8, Conference Letter, notifying the participant of noncompliance and of the penalty for refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conciliation conference. In addition, the case manager shall attempt to contact the participant by telephone. If the participant does not contact the agency within 10 days of the date of this letter, the case manager will send a second Conference Letter. In addition, the case manager shall attempt to contact the participant by telephone. If after the above attempts to notify the individual for noncompliance, no response is received within 10 days of the date of the second Conference Letter concerning the conciliation conference, then the case manager shall refer the individual for sanctioning.

(e) Good cause for noncompliance: If in any single instance a participant is unable to comply, but good cause exists, he or she shall not be deemed to be willfully refusing to comply with the requirements of REACH or of the REACH Agreement. The participant is responsible for providing the necessary information so that a good cause determination can be made. Good cause for failure to participate in the REACH program, or refusal to accept employment, shall be found if:

1. The individual is the parent or other relative personally providing care for a child under age six and the employment would require such individual to work more than 20 hours per week;

2. The acceptance of the job would result in the family of the participant experiencing a net loss of cash income. Net loss of cash income results if the family's gross income, less necessary actual work-related expenses, is less than the AFDC cash benefit the family would receive at the time the offer of employment is made. Gross income includes, but is not limited to, earnings, unearned income and the AFDC cash benefit as determined in the calculation process delineated at N.J.A.C. 10:81-14.21(e). If payment for the family's child care costs is met by direct payments through REACH to the provider of care, or if child care costs are met through the child care disregard procedure and the agency supplements the cost of care over the disregard limits, then good cause does not exist;

3. The mandatory participant is physically or mentally unable to engage in such education, training or employment;

4. The mandatory participant is unable to get to and from the particular educational facility, training or employment by available transportation;

5. The conditions of education, training or employment are a risk to the individual's health and safety;

6. Conditions violate the rights of the participant or applicable law;

7. Homelessness of the individual's family; or

8. The totality of circumstances surrounding the participant's ability and willingness to comply with the participation requirements prevent or seriously impair participation. Such circumstances beyond the participant's control are often short-term situations such as, but not limited to, inclement weather, breakdown of transportation and/or child care arrangements, short-term illness requiring a doctor's care, a family emergency, temporary loss of driver's license or insurance only when no other transportation is available. These circumstances shall be reviewed on a case by case basis.

(f) Conciliation: In most circumstances, before a decision is made to impose a sanction for noncompliance, a series of remedial procedures, the conciliation process (see N.J.A.C. 10:81-14.5(d)4 for REACH Agreement conciliation) shall be initiated to resolve misunderstandings or disagreements concerning noncompliance situations delineated at (c)1 through 11 above. Either the participant or the case manager can request that conciliation be initiated.

1. Noncompliance is not by itself sufficient reason to impose sanctions but is sufficient for the case manager to initiate the conciliation procedures set forth below:

i. Notifying the participant of the details of the indicated noncompliance in writing and attempting to contact him or her by telephone (see (d) above);

ii. Conducting one or more face-to-face conferences between the individual and the case manager (see (f)2 below);

iii. Reviewing with the individual his or her rights and responsibilities under REACH and informing him or her of the consequences of continued failure to participate;

iv. Deciding whether the participation requirements in the REACH Agreement should be amended, whether a change in the participant's status is warranted, and/or whether changes in support services or participant referral should be made;

v. Making a determination of whether "good cause" for noncompliance exists;

vi. Determining, based upon all available information, whether the individual has "willfully refused" to comply with REACH requirements without good cause, or is likely to do so in the future. The case manager may infer willful refusal and a likelihood that the willful refusal will be repeated in the future from the participant's past conduct and the other facts and circumstances of a case, provided that there is substantial and reasonable basis for such an inference; and

vii. Documenting conciliation efforts in the individual's case record, including copies of all notices.

2. Conciliation conference: Prior to initiating a sanction, the case manager shall attempt to conduct a conference with the REACH par-

ticipant to discuss the participation requirements and circumstances surrounding nonparticipation. If the individual, who has agreed to a conciliation conference after noncooperation for any of the reasons set forth at (c)1 through 11 above, fails to appear for the scheduled conference without good cause, then the individual shall have ten calendar days beyond that previously scheduled date to meet with the case manager or the case manager shall refer the individual for sanctioning.

i. During the conference, the case manager shall make an assessment of the circumstances surrounding the individual's noncompliance, including possible personal problems. Where personal problems, such as substance abuse or behavioral problems are indicated, the case manager shall refer the individual for social services (see N.J.A.C. 10:81-14.4(h) and 14.16).

ii. The case manager shall be alert to possible discontinuities in support services that have led to noncompliance, and shall attempt to remedy the situation and arrange for the needed services. If a needed support service is not available and the participant otherwise indicates willingness to participate, the case manager may excuse the individual from participation in REACH (see N.J.A.C. 10:81-14.3(e)).

iii. The case manager shall review the REACH Agreement and participation requirements with the individual to clarify and reinforce REACH program expectations. The participant shall be given a final opportunity to comply. Compliance is defined as participation in employment or the REACH employment-directed activity as set forth and scheduled in the REACH Agreement, or alternatively, participation in another employment-directed activity specified by the case manager or with other REACH participation requirements (for example, participating in evaluation or assessment).

(g) Decision whether to impose sanction: No participant shall be subjected to a sanction if it appears, through the conciliation process, that he or she is willing to comply with participation requirements. Sanctions shall be imposed only in cases where the case manager finds that there has been a willful refusal without good cause to comply with REACH program requirements or the REACH Agreement.

1. Inference of willful refusal: The case manager may infer willful refusal from the participant's past conduct and the other facts and circumstances of a case, provided that there is substantial and reasonable basis for such an inference.

2. Inability to comply: If in any single instance a participant is unable to comply but good cause exists, he or she shall not be deemed to be willfully refusing to comply with the requirements of REACH or the REACH Agreement.

(h) Imposition of the sanction: Sanctions will be imposed if a mandatory REACH participant has willfully refused to comply with the requirements of REACH or the REACH Agreement. The case manager shall advise the participant at the time of referral for imposition of a sanction, orally if possible, and in writing, as delineated in (d) above that the participant can voluntarily remove the sanction by coming into compliance with requirements of the REACH program and Agreement before the sanction period begins. If a mandatory participant complies with REACH program or Agreement requirements before the sanction period begins (see (h)2i below), any sanction proceedings which had been initiated shall cease.

1. If, after reasonable efforts by the case manager to notify the participant of noncompliance and request for conciliation conference (see (d) above), the individual still does not comply with REACH participation requirements, or if the participant has not contacted the agency within 10 calendar days of the date of the last Conference Letter, and the individual has not been reached by telephone, the case manager may infer this action as willful refusal to comply and shall end the conciliation process. The case manager shall notify the income maintenance worker of noncompliance via Form R-3, REACH Referral Form, or an alternative agency form to initiate sanctioning proceedings. The income maintenance worker shall take immediate action regarding AFDC eligibility and grant amount, subject to timely and adequate notice, and shall inform the case manager of the actions taken.

2. Effective date of sanctions: The sanction periods in (k) below shall become effective on the first day of the first payment month after the month the decision is made to impose the sanction, subject to timely and adequate notice.

i. If a mandatory participant complies with REACH program or Agreement requirements before the sanction period begins, the case manager shall notify the income maintenance unit supervisor via Form R-3, REACH Referral Form, or an alternative agency form, that the individual shall not be sanctioned. IM shall take appropriate action and ensure restoration of correct grant amount, if necessary.

3. Appeals: Any appeals resulting from sanctioning for noncompliance with REACH program requirements will be handled according to established procedures for fair hearings (see N.J.A.C. 10:81-6). Eligibility for continued benefits at an unreduced level shall be determined in accordance with N.J.A.C. 10:81-6.9. Provisions at N.J.A.C. 10:81-14.5(d) and 14.7(a) will also apply. Agency records of all conciliation efforts shall be made available to the Administrative Law Judge should a fair hearing be requested by the participant.

4. A participant who has been sanctioned has the right to review personally, or through a representative, his or her entire file at any time during regular business hours.

(i) Sanctions: The following sanctions shall apply for failure or refusal to comply with REACH requirements (see (k) below for duration of sanction periods):

1. AFDC-C: If the mandatory participant is a caretaker relative receiving AFDC benefits, including a stepparent designated as an essential person, his or her needs shall not be taken into account in determining the family's eligibility or amount of assistance. The AFDC grant shall be provided in the form of protective or vendor payments (see N.J.A.C. 10:81-4.5), except that, if after making all reasonable efforts, the CWA is unable to locate an appropriate individual to whom protective payments can be made, the CWA may continue to make payments on behalf of the remaining members of the eligible family to the sanctioned caretaker relative.

2. AFDC-F: If the mandatory participant is the principal earner (see N.J.A.C. 10:81-3.18(a)), that individual's needs shall not be taken into account in determining the family's eligibility for AFDC and the amount of the assistance payment. The needs of the second parent also shall not be taken into account in determining the family's eligibility for AFDC and the amount of the assistance payment, whether or not he or she would otherwise be exempt, unless that second parent is participating in REACH. This penalty reflects the mutual obligation of both parents to support their dependent children; therefore, if one parent is not participating, the other is obliged to do so. The penalty is not imposed on the dependent children.

3. AFDC-N: Noncompliance with the mandatory participation requirements of REACH by the principal earner will result in both parents being deleted from the eligible family.

4. If the mandatory participant is the only dependent child in the AFDC-C or -F segment, only the needs of the dependent child are removed in the determination of the family's eligibility for AFDC and the amount of the assistance payment; the caretaker relative(s) may continue to receive AFDC-C or -F benefits if otherwise eligible. If the mandatory participant is the only dependent child in the AFDC-N segment, the family becomes ineligible for assistance.

5. If the mandatory participant is one of several dependent children in the AFDC-C, -F, or -N segment, that child's needs shall not be taken into account in determining the AFDC grant of the eligible family.

6. If a sanctioned individual reapplies for AFDC but the sanction period has not expired, the individual will remain ineligible for AFDC for the entire sanction period or until the failure to comply ceases, whichever is longer. In determining entitlement of the remaining eligible family members to assistance, (i)1 through 5 above shall apply.

i. Example: A mandatory participant is sanctioned for six payment months, effective January 1 through June 30. Effective February 1, the remaining AFDC family members become ineligible for assistance due to excess resources. The family spends the excess resources and on April 1 reapplies for AFDC. The sanctioned individual will remain ineligible for AFDC through at least June 30. AFDC entitlement of the remaining family members for April 1 will be determined in accordance with (i)1 through 5 above.

7. If a sanctioned individual satisfies exemption criteria after the sanction period has begun, the individual shall remain in sanction status for the full length of the imposed sanction period. Eligibility for assistance may be reestablished at the end of the sanction period based on the individual's circumstances and willingness to participate with REACH program requirements.

8. Eligibility of sanctioned individuals for Medicaid: An adult individual sanctioned for noncompliance with REACH loses categorical eligibility for Medicaid under Federal JOBS requirements. However, in New Jersey, the individual remains eligible for Medicaid. Children 16 to 18 years old who are sanctioned for noncompliance with REACH will continue to be eligible for Medicaid so long as there are other children in the family eligible for AFDC (all segments).

(j) Sanctions for voluntary cessation of employment, AFDC-N: The following additional sanctions shall apply in AFDC-N segment cases. If financial eligibility is the result of voluntary cessation of employment within 90 days prior to the date of application or at any time during receipt of assistance, the following shall apply:

1. Applicants: If financial eligibility is the result of voluntary cessation of employment (including cessation of employment due to inappropriate work habits) by either of the applicant parents, regardless of reason, within 90 days prior to the date of application, neither of the parents shall be included in the eligible family. This penalty shall extend for a period of 90 days beginning with the date of the termination of employment. However, eligibility shall be considered for the children.

i. At the end of the penalty period, the parents may be granted assistance so long as eligibility continues to exist.

2. Recipients: If an employed principal wage earner voluntarily ceases employment for whatever reason without good cause, both parents' needs shall be deleted in the determination of eligibility and in the calculation of the assistance payment under AFDC-N. Refusal of an unemployed principal wage earner to accept a job or training, without good cause, will likewise result in both parents being deleted from the eligible family in accordance with the work/training sanction periods at (k) below.

3. The parent, determined to be the principal wage earner for the family as delineated in N.J.A.C. 10:81-3.18(a), shall be promptly referred to the State Employment Service, New Jersey Department of Labor.

(k) Sanction periods: The following sanction periods shall apply for noncompliance with the REACH program requirements or the REACH Agreement (or TEEN PROGRESS, if applicable) without good cause:

1. For the first instance of willful refusal to comply with REACH program requirements, the sanction period shall continue for one payment month or until the failure to comply ceases, whichever is longer.

2. For the second instance of willful refusal to comply with REACH program requirements, the sanction period shall continue for three payment months or until the failure to comply ceases, whichever is longer.

3. For the third and subsequent instances of willful refusal to comply with REACH program requirements, the sanction period shall continue for six payment months or until the failure to comply ceases, whichever is longer.

4. Continued noncompliance with REACH program requirements or the REACH Agreement after expiration of the sanction period will result in continued sanction.

(l) Renewed participation after the sanction period: Individuals who are sanctioned may again participate in REACH (or TEEN PROGRESS) after the expiration of the sanction period, upon application and indication to the REACH case manager of willingness to participate.

1. For the first occurrence, such individuals may again participate after one payment month has elapsed since the effective date of the sanction.

2. For the second occurrence, such individuals may again participate after three payment months have elapsed since the effective date of the sanction.

3. For the third and subsequent occurrences, such individuals shall be reaccepted into the REACH program when satisfactory evidence of willingness to participate is given, and six payment months have elapsed since the effective date of the latest sanction.

(m) Determining when failure to comply ceases: The individual may again participate after completion of the respective sanction period in accordance with (l) above. The case manager shall determine the date that failure to comply ceases, based on a demonstrated willingness by the individual to participate in the REACH program after the applicable sanction period has ended. The date that failure to comply ceases is determined as follows:

1. The individual shall agree to comply with either the activity in which he or she previously was engaged or another activity which is determined appropriate for the individual. In order to demonstrate willingness to comply, the individual shall participate for a period of up to two weeks as determined by the case manager, based on the particular requirement to be satisfied and individual case circumstances.

i. If the individual successfully participates in the activity for the period of time required to satisfy the REACH requirement, the sanction shall cease as of the day the individual agrees to participate.

(1) Example: If a sanctioned individual agrees on February 3 to participate by attending a scheduled REACH evaluation session and successfully completes the activity by attending that session, the individual's sanction will end as of February 3, the date the individual agrees to participate, and therefore the date the noncompliance ceased.

(2) Example: A sanctioned individual agrees on April 6 to participate by attending group job search. During that week and the following week, the individual attends the group on the required days of participation. Since the participant demonstrates a willingness to comply, the sanction shall end as of April 6, the date the individual agrees to participate and therefore the date the noncompliance ceased.

ii. If no activity is available for the individual, the sanction shall cease on the day he or she agrees to participate.

iii. If the individual fails to participate during the trial period, the sanction will continue until such time as he or she successfully demonstrates a willingness to participate with REACH requirements and ceases the noncompliance.

2. The portion of the assistance payment for the individual shall be calculated for the month of reinstatement back to the date the individual agrees to participate and therefore the date the noncompliance ceased based on the procedures set forth at N.J.A.C. 10:82-2.2(a)1.

3. During the trial period of participation, the individual shall be eligible for child care and supportive services which the case manager determines are necessary for participation.

(n) The agency will remind, in writing, any individual whose failure or refusal to participate in REACH has continued for three months of the individual's option to end the sanction. The notice shall advise that:

1. The individual may immediately terminate the first or second sanction by participating in the program or accepting employment; and

2. The individual may terminate any subsequent sanction after six months have elapsed by participating in the program or accepting employment.

(o) The IM worker shall advise the IV-D unit when a REACH sanction is imposed or lifted to avoid communicating the wrong case status information to the family, to ensure that no conflict exists with a possible concurrent IV-D sanction concerning family members.

1. If a family member is sanctioned for IV-A or IV-D related reasons, then that individual cannot participate in REACH activities for the duration of the sanction period.

10:81-14.10 REACH job search

(a) Purpose and scope: The purpose of REACH job search is to reduce welfare dependency by assisting individuals in obtaining regular unsubsidized full-time employment of not less than 30 hours per week. The REACH job search program may include different job search activities or impose different participation requirements based on an individual's characteristics and local job availability conditions.

[1. Allowable costs to operate REACH job search are matched by the Federal government at the AFDC administrative match level.]

[2.] 1. The Department of Human Services, Division of Economic Assistance, the agency designated in the State Plan for Title IV-A to [administer] supervise the AFDC program, shall [administer] supervise the REACH job search program.

2. Job search is an employment-directed activity (EDA) in which mandatory and voluntary participants engage in activities with the immediate goal of obtaining full-time employment. It is geared to the individual participant's needs and local job market conditions and may serve participants in either group or individual job-seeking activities, or in a combination of both methods. Group job search shall be used as much as possible over individual job-seeking/job search activities.

3. Job search activities include referrals to potential employers, the provision of employment counseling, information dissemination and moral support. Group job search is a group setting where participants are taught job-seeking skills, and which may include a phone bank from which participants contact potential employers.

(b) Eligibility: [Mandatory and voluntary] **All** REACH participants may participate in REACH job search. Participation in REACH job search may be postponed while an individual is participating in another REACH employment-directed activity, including a social service[s] component (see N.J.A.C. 10:81-14.4[(g)]) **or educational component of REACH.**

1. Job search is an appropriate activity for job ready individuals who have basic workplace skills and experience applicable to the labor market. Job search for those who are skills deficient shall be coupled with other educational and training activities based on the needs of the individual.

[(c) REACH job search program: The REACH job search program may consist of one or more of the following:

1. Early intervention individual job search for applicants, which requires job search from the point of application for AFDC and may continue after the individual becomes a recipient;

2. Individual self-directed job search for AFDC recipients; and

3. Group job search and/or job club.]

(c) Job search participation: Participation in job search is subject to the following requirements and limitations:

1. Job search requires that an individual participate for an equivalent of at least 20 hours per week for Federal participation purposes.

2. The individual may participate in job search as a component of REACH for participation purposes, for a period of eight weeks in any period of 12 consecutive months.

3. Participation in job search beyond the eight week participation period is permissible. However, participation in job search beyond this compulsory timeframe is an unmatchable REACH activity for FFP purposes. In order to claim FFP, the individual must participate in another REACH component (such as education or training) and the job search activity becomes part of that other REACH component. FFP is available for administrative and supportive service costs of the job search-related portion of the other approved REACH component.

4. Should an individual leave AFDC, upon filing a new application (re-opened case), he or she becomes eligible for a new eight week job search participation period.

(d) Assignment to job search activities and the duration of the activities will be based on individual employability potential and geographic location. [Minimum] **The minimum** requirement[s] for participation in REACH job search [are: an average of three employer contacts per week for early intervention job search and individual self-directed job search, and attendance at all classes and sessions for group job search] **is at least 20 hours per week.**

(e) Additional job search requirements: The following additional requirements apply to participation in REACH job search activities.

[1. Early intervention individual job search: Determining compliance with early intervention individual job search, including the requirement of an average of three employer contacts per week, must not delay processing of an application for AFDC.]

[2.] **1.** Job contacts: [For early intervention job search and individual self-directed job search, a]**A** job contact is defined as a contact with a prospective employer. The county selected entity may assist the participant by providing a list of employers. The following apply to job contacts:

i.-iv. (No change.)

v. Reporting job contacts: The participant will be required to report the result of all job contacts to the county selected entity at a prescheduled time. The time may vary with the job search participation requirements set forth in the REACH Agreement[, but must be at least once every four weeks].

(l) (No change.)

vi. County selected entity review of job contacts: The county selected entity shall review the participant's job contacts [at least once every four weeks] and determine if the participant has completed the assigned number of job contacts, as set forth in the REACH Agreement. [If the participant missed any contacts or if any of the reported contacts are disallowed (for reasons such as suitability or manner of contact), the participant shall have one additional week for every four weeks of scheduled job search activity to complete any missed or disallowed contacts.]

vii. (No change.)

[3.] **2.** (No change in text.)

[4.] **3.** Review of job search: [At least once every four weeks the] **The** county selected entity shall review the individual's participation in job search, and determine if participation in job search should continue or if assignment to another REACH employment-directed activity is appropriate. If reassignment is appropriate, the county selected entity must notify the case manager so that the REACH Agreement may be updated.

(f) (No change.)

10:81-14.11 REACH Work Supplementation Program

(a) Purpose and scope: Under the REACH Work Supplementation Program (WSP), AFDC funds are used to develop and subsidize employment for REACH participants [in employment-directed activities, such as on-the-job-training (OJT),] as an alternative to aid provided to AFDC recipients.

1. Under [REACH WSP] **WSP, REACH** participants may choose, on a voluntary basis, to accept an offer to work to the extent such jobs are made available **through the REACH program.**

(b) (No change.)

(c) Eligibility: Mandatory and voluntary REACH participants are eligible to participate in the WSP if they are eligible for AFDC. **Placement in WSP is defined as the date on which the agency and the employer agree on the terms of the placement and on the specific individual to participate.**

1. (No change.)

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

(f) Conditions of employment: The following provisions apply to conditions of employment under REACH WSP:

1. (No change.)

2. The county selected entity is not required to [provide] **ensure** that eligible individuals filling job positions provided by other entities under WSP be [provided] **granted** employee status by such entity during the first 13 weeks during which they fill such position. **Employee status confers on the individual the benefits available to regular employees of that employer (for example, insurance coverage and vacation leave).**

3. (No change.)

4. No WSP participant can be assigned to fill any established, unfilled position vacancies at the site of employment.

(g) Application of AFDC earned income disregards under WSP: The application of earned income disregards as set forth at N.J.A.C. 10:82-4.4 [differs for] **pertains to** WSP participants. (See N.J.A.C. 10:81-14.21(d) for calculation of AFDC grant under WSP.) **A WSP case with earned income is computed the same as any other AFDC case with earnings.**

1. The [$75.00] **$90.00** work expense disregard shall apply to earned income of WSP participants.

[2. The child care disregard is not applied to WSP earned income. Payment for child care will be made directly to the provider as a vendor payment as set forth at N.J.A.C. 10:81-14.18.]

Recodify 3. and 4. as **2. and 3.** (No change in text.)

4. The child care disregard is not applied to WSP earned income. Payment for child care will be made directly to the provider as a vendor payment as set forth at N.J.A.C. 10:81-14.18.

(h) Explanation of WSP: Individuals may remain in REACH WSP for up to a lifetime participation limit of nine cumulative months. While in WSP status, the participant is in a subsidized job as an alternative to AFDC. During WSP participation the calculated grant received by the individual, if any, is termed a residual grant. The residual grant is determined at the time of placement in the supplemented job. The residual grant (AFDC) grant monies for the family size minus earnings and other countable income) is recalculated on a monthly basis based on information supplied by the individual on the monthly status report.

1. If the individual becomes otherwise ineligible for AFDC benefits (such as youngest dependent child reaching the AFDC age limits), the individual shall continue in the WSP job until the WSP contract expires. All monies from the AFDC grant for those individuals are diverted

to the WSP wage pool. Becuase of contractual arrangements with the employer, changes which render an individual ineligible for AFDC, such as a change in family composition, do not render them ineligible to continue in WSP.

2. If more than one individual in the family unit is participating in WSP, the amount of the Federal reimbursement to the State will not exceed the AFDC standard allowance for that family (see N.J.A.C. 10:82-1).

3. A REACH participant shall not simultaneously participate in WSP and in OJT. No one is allowed to be in both components at the same time.

4. A WSP participant is eligible for supportive services as a participant in REACH. Since the participant is working, he or she is treated as any AFDC individual who finds employment. The individual may be eligible for the JOB and CAR allowances as set forth at N.J.A.C. 10:81-14.19. Transportation costs are covered through the $90.00 work expense disregard. Child care payments for necessary child care services will be made directly to the child care provider as set forth at N.J.A.C. 10:81-14.18.

5. Medicaid coverage is provided for the duration of the WSP contract to the participant and family members so long as the family remains eligible for AFDC. If the family loses eligibility for AFDC, the family may be eligible for extended Medicaid benefits as set forth at N.J.A.C. 10:81-14.20.

6. If the family loses AFDC eligibility during the WSP contract, the individual would continue participating in REACH; however, child care payments after loss of AFDC eligibility shall be treated as post-AFDC child care benefits if the individual meets those requirements set forth in N.J.A.C. 10:81-14.18. After fulfilling the WSP contract, the individual shall be eligible for post-AFDC child care benefits for the number of months remaining in the 12-month post-AFDC period.

[(h)] **(i)** (No change in text.)

10:81-14.12 REACH Community Work Experience Program

(a) Purpose and scope: The purpose of the REACH Community Work Experience Program (CWEP) is to provide work experience for AFDC recipients when and to the extent that such experience is necessary to enable them to adjust to and learn how to function in an employment setting. A participant shall not be placed in a CWEP position simply to give him or her employment when the participant is fully qualified and able to engage in unsubsidized employment but is [barred from doing] **unable to do** so because of the absence of available jobs. The REACH CWEP will operate community work experience programs which serve a useful public purpose.

1.-2. (No change.)

3. Allowable costs to operate REACH CWEP are matched by the Federal government [at the AFDC administrative match level].

(b) (No change.)

(c) Participation services and reimbursement: The services of child care and transportation that are necessary to CWEP participation will be provided as part of the REACH Agreement. In cases where the county selected entity is unable to provide these necessary services, the county selected entity must provide reimbursement for necessary transportation and child care costs that are incurred by the recipient and directly related to participation in CWEP.

1. (No change.)

2. Child care costs: Participants shall be reimbursed for child care costs in such amounts as are determined by the CWA to be reasonable, necessary, and cost-effective. Rates are determined on a Statewide basis through analysis of costs incurred for special needs care, full day care, before and after school care and summer rates for programs for school-age children as set forth at N.J.A.C. 10:81-14.18. However, in no event shall the reimbursement using CWEP funds exceed [$160.00 per month per child for full-time participation or $110.00 per month for part-time participation (see N.J.A.C. 10:82-2.8(a)2)] **the earned income child care disregard limits set forth at N.J.A.C. 10:82-4.4 for full- and part-time participation in CWEP.**

3.-4. (No change.)

(d) (No change.)

(e) Participation requirements: The following additional participation requirements shall apply to CWEP:

1. (No change.)

2. Maximum monthly participation: No eligible family may be required to participate in CWEP **(as employment or training or both)** more than the number of hours which would result from dividing the family's monthly grant amount by the Federal minimum wage. **The child support collection assigned to the CWA minus the $50.00 pass-through, which represents a portion of the recipient's assistance payment, is deducted from the standard allowance (see N.J.A.C. 10:82-1) before computation of the maximum number of hours that the individual is required to participate in CWEP.**

3. Coordination of CWEP with other activities: The county must have procedures under which there is coordination among CWEP, the job search program and other REACH employment-directed activities, to ensure that job placement will have top priority **over participation in CWEP, and that individuals eligible to participate in more than one program under REACH are not denied AFDC on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another.**

4. Nothing in this section shall be construed as authorizing the payment of AFDC as compensation for work performed **nor shall a participant be entitled to a salary or to any work or training expenses provided under any other provision of law by reason of the individual's participation in a CWEP program.**

5.-6. (No change.)

7. Reevaluation of CWEP participation: Participation in CWEP shall be reevaluated at least once every three months **and at the conclusion of each CWEP assignment** by the case manager to determine if CWEP and the specific worksite are still appropriate for that individual. **The agency shall provide a reassessment and revision, as appropriate, of the individual's employability plan.**

(f) (No change.)

(g) Project requirements: REACH CWEP projects must satisfy all of the following requirements:

1. Serve a useful **public** purpose **in fields such as health and social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety and day care;**

2.-5. (No change.)

(h) Project assignment criteria: Assignment of participants to REACH CWEP projects must conform to the following:

1. Assignments to REACH CWEP projects will take into consideration to the extent possible the prior training, proficiency, experience and skills of a participant; [and]

2. Participants will not be assigned without their consent to projects which require that they travel unreasonable distances from their homes or remain away from their homes overnight[.]; **and**

3. After an individual has been assigned to a CWEP position for a total of nine months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the Federal minimum wage, or the rate of pay for individuals employed in the same or similar occupations by the same employer at the same site, whichever is higher.

i. The portion of a recipient's aid for which the State is reimbursed by child support collection (minus the $50.00 pass-through) shall be excluded in determining the number of hours that such individual may be required to work.

10:81-14.13 Vocational assessment and counselling

(a) (No change.)

(b) Parent with a child under age two: A special vocational assessment and counselling component may be required for any parent [whose full] **who is exempt from** participation in REACH [is temporarily deferred] due to care of his or her child under age two. The REACH orientation may be used to satisfy this requirement.

1. [Temporarily deferred] **Exempt** REACH participants will be encouraged to participate in employment and/or employment-directed activities and to develop individual plans for economic self-sufficiency. REACH Agreements developed under this component will conform to N.J.A.C. 10:81-14.4.

2. (No change.)

10:81-14.14 REACH employment and training services

(a) (No change.)

(b) On-the-job training: REACH on-the-job training (OJT) is an employment opportunity which includes training. Under this component, a REACH participant is hired by a private or public employer and provided training which is subsidized under agreement between the employer and the county-designated provider agency. **At the end of the OJT as established in contracts between the IV-A agency and the employer, the participant shall be retained by the employer as a regular employee if the individual has made satisfactory progress during the OJT contract period.**

1. Employers will provide increased supervision and training through agreements with the provider agency, pursuant to which the provider agency will reimburse the employer for the extraordinary costs of such training and supervision. **The agency shall monitor the satisfactory progress of the individual in the OJT assignment for an increase in a participant's skills and competencies.**

i. Payments to an employer for on-the-job training shall not exceed 50 percent of the wages paid by the employer to the participant during the period of such training.

2. (No change.)

3. A participant in OJT shall be compensated by the employer at the same rates, including benefits and periodic increases, as similarly situated employees or trainees and in accordance with applicable law but in no event less than the Federal minimum wage.

4. Wages paid to participants in OJT are considered to be earned income for purposes of these provisions.

5. If a participant in OJT becomes ineligible for AFDC pursuant to the rules applicable to earned income or pursuant to the 100-hour rule in the case of a principal earner in an AFDC-F case, he or she shall remain a REACH participant for the duration of the OJT contract.

i. If the family loses AFDC eligibility, they may be eligible for appropriate supportive services available to individuals with earned income (including the JOB and CAR allowances). Transportation costs shall be paid from the $90.00 work expense disregard.

ii. Child care benefits may continue to the end of the OJT contract period. If the family loses AFDC eligibility while participating in OJT; the individual would continue participating in the OJT, however, child care payments after loss of AFDC eligibility shall be treated as post-AFDC child care benefits if the individual meets those requirements set forth in N.J.A.C. 10:81-14.18. After fulfilling the OJT contract, the family shall be eligible for post-AFDC child care benefits for the number of months remaining in the 12-month post-AFDC child care period.

iii. When the family loses eligibility for AFDC, they may be eligible for extended Medicaid. Post-AFDC Medicaid coverage shall begin with the first month subsequent to the loss of AFDC eligibility subject to timely and adequate notice requirements. Individuals participating in OJT are eligible for Medicaid so long as the individual remains eligible for AFDC.

[3.] **6.** (No change in text.)

[4. The funding source for REACH OJT will be the WSP resources, to the maximum extent feasible.]

(c) (No change.)

10:81-14.15 REACH educational services

(a) (No change.)

(b) The following educational services are available through the REACH program:

1. Preparatory educational services: Preparatory educational services are those designed to remedy educational deficiencies and to provide a REACH participant with the basic skills for entry to the labor market. A high school diploma, ability to speak and understand the English language, literacy, and miniumum competency in basic mathematics and writing skills are desirable for increasing employability potential. Preparatory educational services include the following:

i.-ii. (No change.)

iii. Adult Basic Education (ABE) programs for individuals who lack basic competency in reading, writing and mathematics necessary for **achieving the basic literacy level or** obtaining employment.

(c) (No change.)

10:81-14.17 REACH [support] **supportive** services: general provisions

(a) Purpose and scope: **The agency shall pay for or reimburse the costs of transportation and other work/training-related supportive services through REACH, if the case manager determines that such services are not provided through existing resources and those services are necessary for an individual to participate in REACH. REACH supportive services are intended to supplement, not supplant, existing programs and resources available to the REACH participant.** The services set forth at N.J.A.C. 10:81-14.18 through 14.20 are available to support REACH participation in employment and employment-directed activities **(including the initial assessment of employability)** under the principle of mutual obligation. [REACH support services are intended to supplement, not supplant, existing programs and resources available to the REACH participant.]

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

10:81-14.18 REACH support services: child care

(a) [The case manager, the participant, and the lead child care entity will mutually arrange for child care for the REACH participant's child(ren) while the individual is employed or participating in an employment-directed activity, as set forth in the REACH Agreement. Child care arrangements shall be in the best interests of the child. Additional responsibilities of the case manager and lead child care entity are set forth in (h) and (i) below.] **General provisions: The general provisions in this subsection apply to all child care benefits available through the REACH program, including post-AFDC child care benefits.**

1. [Child care arrangements shall be located within reasonable commuting distance from the participant's home, place of employment or site of employment-directed activity. The hours provided must be sufficient to accommodate the hours required by the employer or employment-directed activity. The arrangements, including the site must be agreeable to the participant, but any objections must be held in good faith.] **Availability of REACH child care benefits and post-AFDC child care benefits: To the extent that such child care is necessary to permit an AFDC eligible family member to accept employment, to remain employed, to particpate in a REACH employment-directed activity (including job search by an AFDC applicant) or to complete the initial assessment of employability, REACH child care is available.**

i. REACH child care benefits and post-AFDC child care benefits are guaranteed for the following:

(1) A child who is under age 13; or is physically or mentally incapable of caring for himself or herself, as verified by the county or county welfare agency based on a determination by a physician or a licensed or certified psychologist; and who would be a dependent child, if needy; and

(2) A child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under Title XVI or foster care under Title IV-E.

ii. Payments through the REACH program for child care shall not be made for care provided by parents, legal guardians, or members of the AFDC family unit (including essential persons).

2. Child care arrangements: The case manager, the participant, and the lead child care entity will mutually arrange for child care for the REACH participant's child(ren) while the individual is employed or participating in an employment-directed activity, as set forth in the REACH Agreement. Additional responsibilities of the case manager and lead child care entity are set forth in (h) and (i) below.

i. Child care arrangements shall be in the best interests of the child 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.

ii. Child care arrangements shall be located within reasonable commuting distance from the participant's home, place of employment or site of employment-directed activity. The hours provided shall be sufficient to accommodate the hours required by the employer or employ-

ment-directed activity. The arrangements, including the site, must be agreeable to the participant.

iii. The entity providing child care shall allow parental access.

iv. Child care arrangements shall meet applicable standards of State and local law.

3. County responsibilities: Each county, as delegated to the case manager or lead child care entity, shall:

i. Inform families requesting REACH child care benefits of their rights and responsibilities;

ii. Respond to a request for REACH child care benefits within a reasonable period of time; and

iii. Provide the caretaker relative the opportunity to choose the type of child care arrangement from among all those arrangements authorized for payment through the REACH program, including those other programs for which the caretaker relative or child may be eligible under (a)4 below.

4. Required coordination: Each county shall coordinate REACH child care activities and post-AFDC child care with 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 (P.L. 97-35), school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); and with Federal and/or State demonstration programs, such as the Urban Prekindergarten Pilot program, the Child Care Plus Demonstration program, and the Mini Child Care Center program.

5. Hearings and notices: AFDC applicants and recipients are entitled to hearings and notices under the provisions at N.J.A.C. 10:81-6, 10:81-7, 10:81-14.7 and 10:90-2.5 on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce REACH child care benefits.

i. Changes in the manner of payment are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction or termination of benefits, or they force a change in child care arrangements.

ii. The provisions of N.J.A.C. 10:81-6.9 regarding aid paid pending a hearing do not apply. Therefore, if the individual had been receiving REACH child care benefits and is awaiting a hearing concerning those benefits because such benefits were reduced, he or she is not entitled to receive REACH 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 REACH child care benefits pending the hearing.

6. Refusal of REACH child care and post AFDC child care benefits: A mandatory REACH participant may refuse available appropriate REACH child care or post-AFDC child care benefits, if the participant can arrange other child care or can show that such refusal will not prevent or interfere with participation in REACH or employment.

i. Inference of refusal of REACH child care benefits: Refusal of REACH child care benefits may be inferred if the participant does not select a child care provider within one month of the date the participant and the case manager or lead child care entity, as appropriate, evaluate the participant's child care needs and preference of providers and made referral(s) to appropriate child care provider(s).

ii. Inference of refusal of post-AFDC child care: Refusal of post-AFDC child care may be inferred if the participant does not request post-AFDC child care benefits, that is, fails to respond to Form R-10, REACH Benefit Letter; does not provide the information necessary for determining eligibility and fee amount, including verification of earnings; does not sign a REACH Agreement for the period of post-AFDC child care; or, does not report participation in post-AFDC REACH activities.

iii. Documentation: Refusal of REACH child care benefits and post-AFDC child care benefits shall be documented in the case record.

iv. In instances where refusal of child care is disputed, it is the responsibility of the lead child care entity or case manager, as appropriate, 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 (see N.J.A.C. 10:81-14.18A and 18B).

7. The county shall take reasonable precautions to guard against fraud and abuse in the funding and provision of REACH child care benefits, including following the provisions of N.J.A.C. 10:81-7.40.

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

(d) Duration of payment: REACH child care benefits are routinely available to participants for [one year of] participation in a REACH employment-directed activity **for a limited time to bridge the period between participation in REACH employment-directed activities or between a REACH 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, 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 fee.

[1. The one year period of participation in a REACH employment-directed activity will start with the first week in which an individual participates in any employment-directed activity set forth at N.J.A.C. 10:81-14.2. Participation in orientation, individual evaluation, assessment and employment while receiving AFDC do not count toward this one year period. One year is defined as 52 consecutive weeks.]

Recodify 2. and 3. as **1. and 2.** (No change in text.)

3. Bridge child care payments: For a participant who is waiting to enter a REACH employment-directed activity or to start employment, REACH child care benefits are available to bridge the period between REACH activities:

i. For a period not to exceed two weeks; or

ii. For a period not to exceed one month where child care arrangements would otherwise be lost and the subsequent activity is scheduled to begin within that period.

4. (No change.)

[5. Exceptions and waiver: Exceptions to the one year limit on REACH child care payments for participation in a REACH employment-directed activity may be allowed in exceptional circumstances and must be approved through waiver procedures determined by the Department of Human Services.

i. At the end of the first year of REACH participation in an employment-directed activity, the case manager shall complete an evaluation of participation and support services to determine if the activity will continue and if the participant's child care benefits should be continued to support participation in that activity. If extended child care payments appear to be needed, the case manager may initiate the waiver process.

ii. Waiver: The case manager must secure supervisory approval to initiate the waiver process. Once approved, the case manager will prepare a written waiver. The waiver will list the activity, child care needed, the expected duration of both the activity and extended child care payments, and will contain an evaluation by the case manager of the circumstances warranting the extended child care payments.

iii. Case manager responsibilities upon disposition of waiver: If the waiver is approved, child care payments shall be issued as authorized in the waiver. The case manager shall review and evaluate the participant's progress and circumstances at three month intervals to determine the appropriateness of continued child care benefits. If the waiver is not approved, the case manager will advise the participant and make any adjustments or changes to participation and the REACH Agreement.]

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

(g) Payment methods: The two methods in the REACH program for issuing payments for child care are vendor payments to the provider and direct payments to the participant.

1. **Vendor payments:** Vendor payments to providers are the primary method for issuing child care payments in REACH. Under this method, a voucher is issued to the child care provider. The provider completes the voucher, lists the hours of care and payment required, and returns it to the agency responsible for issuing payment. Upon verification of the information, the agency issues a REACH child care payment to the provider.

[i. To be eligible for vendor payments, each participant scheduled to participate in training or an educational activity shall complete a Form PA-59A, request for Voluntary Restricted Payment, authorizing the case management agency to make payment directly to the provider.]

2. Direct payment to participant: **In exceptional or emergency situations,** [Payment] **payment** for child care provided may be made directly to the participant [when the provider of child care is an unregistered household member]. As with the child care voucher, payment is issued upon verification of attendance and care provided.

3. (No change.)

4. [Special requirements for employed] **Employed** participants **receiving AFDC**: [The Social Security Act requires that for any employed AFDC recipient,] **For an employed REACH participant receiving AFDC**, the actual cost of child care up to and including $175.00 per month per child age two or older and $200.00 per month per child under age two shall be disregarded from the participant's earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first $175.00 or $200.00 in child care directly to the provider. The amount in excess of $175.00 or $200.00 shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider [or as a direct payment to the participant], in accordance with (g)[1 and 2] above. [However, any amount in excess of $175.00 or $200.00 per month per child that is paid directly to the participant is income to the AFDC family and shall be used to compute the AFDC grant.]

i.-ii. (No change).

iii. The income maintenance worker shall inform the case manager verbally and in writing via Form R-3 REACH Referral Form, or a similar agency developed form, of the participant's eligibility status. The worker shall file a copy of the R-3 (or agency form) in the AFDC case record and forward two copies to REACH case management for filing in the REACH case record and distribution to the lead child care entity. The income maintenance worker, case manager, and lead child care entity must work together to ensure timely receipt by the provider, of the REACH post-employment child care payment.

iv. If the family is prospectively ineligible for AFDC due to the earnings from employment, the AFDC case will be closed and the participant referred for post-AFDC child care benefits in accordance with (e) above.

(1) The period of eligibility for post-AFDC child care is set forth in (e)4, 5 and 6 above.

(2) The income maintenance worker shall notify orally, as appropriate, and in writing, all families whose AFDC eligibility has been or will be terminated for the above reason, of their potential eligibility for post-AFDC child care benefits via Form R-10, REACH Benefit Letter, or a similar locally-developed letter (subject to DEA approval). A copy of the R-10 or similar letter shall be sent to case management as verification that the potential participant has been notified of the post-AFDC benefits and for the possible initiation of the post-AFDC REACH benefits (see (e)2 above for procedures to be followed in such instances).

(3) The IM worker shall code FAMIS with the correct reason code for case closing due to earnings.

(4) Voluntary case closings at the request of the participant shall be explored by the IM worker for the true reason of closing to determine if employment is a possible reason for the voluntary termination of assistance benefits. The IM worker shall contact the participant by phone (if possible) and by sending Form R-10 or a similar locally-developed letter. A copy of the letter shall be sent to case management for possible initiation of the post-AFDC REACH benefits.

(5) As soon as case management receives the Form R-10, the case manager shall contact the participant to advise of available post-AFDC REACH benefits and to ascertain whether the participant needs child care. The case manager shall advise the participant of the need to sign a REACH agreement and provide verification of earnings for extended child care benefits.

v. If an employed participant receiving AFDC pays for child care not approved by the REACH program, the actual expenditures for unauthorized child care shall not exceed the child care disregard limits set forth at N.J.A.C. 10:82-4.4 in the determination of eligibility and in the calculation of benefits. In such circumstances, no supplemental payments for child care are provided through REACH in excess of the disregards.

5. Payments for employed participants receiving AFDC-N: Payments of REACH child care benefits for AFDC-N participants shall be by vendor payment to the provider of service from State REACH funds for actual costs of care up to the maximum rates established by DHS.

(h) Case manager responsibilities: The case manager shall be responsible for assessing and determining the need for child care and authorizing issuance of REACH child care payments. [Since the REACH program will be the payor of last resort, before payments may be issued, a REACH participant shall be required to certify that no other acceptable family members or other resources for child care that are in the best interest of the child are available. The case manager shall document this certification in the REACH case record.] The welfare of the children and the quality of their care shall be considered.

1. (No change.)

(i)-(j) (No change.)

10:81-14.19 Reach [support] **supportive** services: **participant allowances (PALs) for** transportation and **work/training-**related expenses

[(a) In determining the need for transportation to and from the site of employment or employment-directed activity, the participant will be encouraged to make use of his or her available transportation resources.

(b) Transportation: Reimbursement for costs of transportation that are reasonably necessary for attendance at orientation and assessment, participation in REACH job search and community work experience programs shall be provided for the duration of participation in such activities and programs. The $75.00 work expense disregard of earnings in work supplementation covers the cost of transportation in WSP.

(c) Training-related expenses: An allowance for expenses related to training and education shall be provided to REACH participants for the duration of their participation in REACH training programs or education services (see N.J.A.C. 10:81-14.14 and 14.15). Allowable expenses include transportation to and from the training or education site, cost of meals, uniforms, materials and similar expenses.

(d) Amounts of allowances: The allowance for expenses related to training and transportation is $6.00 per day of participation in a REACH activity.

1. If actual transportation costs or training-related expenses exceed the limits in (d)1i and ii below, a higher amount to cover actual costs may be provided. Such amounts shall be approved by the supervisor of the case manager and documented in the REACH case record.

i. If actual costs of transportation for orientation or assessment exceed $6.00 per day, or for job search or community work experience programs exceed $30.00 in a week, a higher amount may be provided to cover actual expenses for transportation by the most reasonably available means. In determining reasonably available means, the case manager shall consider the accessibility of available public and private transportation to the participant's home and site of the orientation and assessment.

ii. If actual training-related expenses exceed $30.00 in a week, a higher amount to cover actual costs may be provided, but only if expenses are required for training, for example, a uniform required by an employer as a condition of accepting an on-the-job training position.

2. Amounts paid to REACH participants for training-related expenses are excluded as income for purposes of the Food Stamp program.

(e) Vendor payments for transportation and training-related expenses: If a county has arranged for transportation for REACH participants by means other than established public transportation, the participant may request a voluntary restricted payment by signing Form PA 59A, Request for Voluntary Restricted Payment, to use this source of transportation and direct that his or her transportation or training-related expense allowance be paid directly to the county

or provider of transportation as a vendor payment. The participant may discontinue the voluntary restricted payment by signing Form PA-59B, Request to Discontinue Voluntary Restricted Payment (see N.J.A.C. 10:81-4.5).

1. Example: A rural county with minimum public transportation has contracted with a vendor to provide transportation in a specific geographic area for REACH participants from their homes to training and job search sites. To offset the cost of this transportation and to ensure availability of transportation, the participant would request a voluntary restricted transportation/TRE payment, so that the $6.00 per day transportation allowance would be paid directly to this vendor. Once the participant completed the activity in the geographic area served by this vendor, he or she would discontinue the voluntary restricted payment.]

(a) REACH participant allowances (PALs) shall be paid or reimbursed to the participant for costs of transportation and other work/training-related supportive services if the case manager determines that such services are not provided through existing resources and those services are necessary for an individual to participate in REACH. The PALs are allowances to cover expenses incidental to REACH participation or employment. Transportation-related expenses (TREs), allowances for employment-directed activities (EDAs), expenses required to accept or maintain employment (JOBs), REACH cumulative payments for automobile-related expenses (CARs) and the CWEP allowance are the various types of participant allowances, and are detailed as follows.

(b) Transportation-related expenses (TREs): The agency shall provide payment or reimbursement for transportation costs (which includes meals) for participation in training as approved by the case manager, when determined necessary to enable participation in REACH, under conditions specified below. The participant shall be encouraged to make use of his or her available transportation resources.

1. Transportation costs shall be provided for the following:

i. REACH preparation activities: REACH applicants and recipients, in preparation activities such as evaluation, assessment, and REACH Agreement conferences, for the duration of participation in such activities, for costs of transportation that are reasonably necessary for attendance;

ii. Employment-directed activities (EDAs): EDAs include educational and non-educational activities;

(1) Educational activities—training programs or education services: Participants in approved education and training courses preparatory to employment, such as General Education Development (GED), English as a Second Language (ESL), and Adult Basic Education (ABE), job skills training and job readiness activities, for the duration of their participation in such educational programs/services;

(2) Non-educational employment-directed activities: Approved REACH non-educational employment-directed activities, including but not limited to, Job Search and Community Work Experience Programs (CWEP) (see N.J.A.C. 10:81-14.10 and 14.12);

(A) Transportation costs for participation in Work Supplementation (WSP) and REACH On-the-Job Training (OJT) are not covered under this section as those costs are accounted for through the $90.00 work expense disregard of earnings (see N.J.A.C. 10:81-14.11(g) and 14.14(b));

iii. Employment: Payments for transportation for employed individuals are issued only in instances when a participant is starting employment. For such participants, transportation payments may be issued until the first paycheck is received to ease the transition into employment. Those payments shall not exceed one month.

(1) Transportation costs for regularly employed individuals shall not be covered under this section as those costs are accounted for through the $90.00 work expense disregard of earnings (see N.J.A.C. 10:82-2.3(a)2, 2.8(a), and 4.4).

2. Transportation allowances are utilized when such costs are not available from or paid by any other existing funding source and it is determined that a need to help defray such costs exists. REACH remains the payor of last resort, outside of any REACH contractual agreements.

i. In determining necessary transportation expenses, the case manager shall consider the most available and economical means of transportation based on the accessibility of private and public transportation from the individual's home to the site of the activity.

ii. Transportation allowances shall be provided to the REACH participant during the period of need which may begin with participation in the first REACH activity following orientation by income maintenance, and may end with the receipt of the first paycheck from employment. However, payment for transportation is based on the actual length of the participation period for the specific activity.

3. Transportation allowance: An allowance of up to $6.00 per day ($30.00 per week) may be paid for transportation needs (including meals as determined necessary for attendance in training). However, payment shall be the actual cost of transportation/meals incurred by the participant. If actual transportation costs exceed the above limit, a higher amount to cover actual costs may be provided up to a maximum of $15.00 per day (up to a maximum of $60.00 per week) with the approval of the case management supervisor provided that:

i. The actual cost of the transportation exceeds $6.00 per day;

ii. The transportation to be used is the lowest priced transportation reasonably available and accessible to the participant;

iii. The activity or service needed by the participant is not available in the vicinity of the participant's home or at a location accessible to the participant by less expensive means of transportation; and

iv. The county has documented the circumstances, including costs of transportation, surrounding the need for the higher TRE in the REACH case record and approval has been given by the supervisor of the case manager.

4. Increased transportation allowance for extraordinary situations: Allowances in excess of $15.00 per day (capped, up to a maximum of $60.00 per week) may be provided in extraordinary situations determined on a case-by-case basis by the case manager. Before a county issues allowances in excess of the $15.00 maximum standard, the county must have obtained written approval from DEA.

5. Method of payment: Transportation costs are usually direct reimbursement payments made retrospectively to participants. Transportation costs, however, shall be paid prospectively for sessions involving evaluation and assessment, development of the REACH Agreement, or for the initial two weeks of an activity if the individual is unable to participate without the payment, or requires the payment to cover the expense of New Jersey Transit vouchers for the purchase of discounted monthly passes on bus and rail routes. However, if a county has arranged for transportation for participants by means other than established transportation (through the contracting process) then the participant may request to use that source of transportation and direct that his or her transportation allowance be paid directly to the county or the provider of the transportation as a vendor payment.

i. Example: A rural county with minimum public transportation has contracted with a vendor to provide transportation in a specific geographic area for REACH participants from their homes to training and job search sites. To offset the cost of this transportation and to ensure availability of transportation, the participant would request that the $6.00 per day transportation allowance would be paid directly to this vendor. Once the participant completed the activity in the geographic area served by this vendor, he or she would discontinue the arrangement.

6. Amounts paid to REACH participants for transportation related expenses incident to participation in REACH activities are excluded as income for purposes of the Food Stamp Program.

7. Transportation-related expenses (TREs) shall be paid through OMEGA.

(c) Transportation costs for transporting children to child care facilities (TCCs)—Non-REACH, Title IV-A funds: In addition to the standard transportation allowances for participation in REACH as delineated in (b) above, a Title IV-A transportation allowance may be made for actual costs up to the rate of $10.00 per week maximum per child, for the cost of transportation of a REACH participant's child(ren) to and from a licensed child care center or day camp (see N.J.A.C. 10:82-5.2(e)1). The payment for the cost of transporting a "special needs" child of a REACH participant to and from the child care site may be authorized through Title IV-A funds for actual costs as set forth at N.J.A.C. 10:82-5.2(e)2. Amounts paid for such transportation costs are excluded as income for purposes of the Food Stamp Program. Such payments are made through FAMIS.

(d) $100.00 cumulative allowance for participation in REACH employment-directed activities (EDAs): Allowance payments based on need up to a maximum cumulative total of $100.00 per eligibility

participation period (see (g) below) are provided for necessary expenditures to permit participation in approved REACH employment-directed activities (EDAs) during the participation period, including training programs and educational services. Such payments shall be made in preparation of and during participation in the specific activity. EDA allowances are not an entitlement and are issued based on need only.

1. Employment-directed activities: Approved REACH employment-directed activities, include, but are not limited to, Job Search and CWEP (see N.J.A.C. 10:81-14.10 and 14.12). Other employment directed activities not eligible for $100.00 cumulative EDA allowance payments are WSP and OJT programs (see N.J.A.C. 10:81-14.11 and 14.14(b)).

2. Allowable expenditures include, but are not limited to, the following: books; supplies; equipment; uniforms; tools for a particular training or employment-directed activity; licensing fees; testing fees; clothing (that is, special shoes or boots, protective devices such as safety glasses, gloves and helmets or other clothing necessary or within reason for a participant to attend training); and other materials required for participation in REACH EDA activities. Payment for regular clothing items is not permitted. Items purchased become the property of the participant.

3. The case manager shall determine that the costs of participation are not available or paid by any other funding source (for example, JTPA). REACH remains the payor of last resort, outside of any REACH contractual agreements.

4. Each eligibility participation period covered by the cumulative $100.00 EDA fund begins with enrollment in the first REACH employment-directed activity (the effective date of the activity as indicated on the OMEGA System) and ends with the last day of participation in the final employment-directed activity in the eligibility participation period (see (g) below for further clarification of eligibility periods).

5. The $100.00 cumulative total EDA fund shall cover needed payments made for expenditures for combined participation in all REACH activities during the eligibility participation period.

6. In extraordinary circumstances, determined on a case-by-case basis by the case manager, EDA payments exceeding the $100.00 maximum in the eligibility participation period may be made. Written approval from the DEA shall be obtained before the payment can be issued. The case manager shall document the particular circumstances surrounding the payment in the case record.

7. EDA payments are excluded as income for purposes of the Food Stamp Program.

(e) $100.00 cumulative allowance to accept or maintain employment (JOB): Allowance payments (JOBs) based on need, up to a maximum cumulative total of $100.00 per eligibility participation period (see (g) below), are provided for actual expenses necessary to permit an individual to accept or maintain employment. Such payments shall be issued in preparation for and during the course of employment. JOB payments are not an entitlement and are issued based on need only for actual expenses incurred.

1. Participants in WSP and OJT programs (see N.J.A.C. 10:81-14.11 and 14.14(b)) are eligible for the $100.00 cumulative JOB allowance payments.

2. Allowable expenditures include, but are not limited to, the following: clothing (that is, special shoes or boots, protective devices such as safety glasses, gloves and helmets, waterproof garments, uniforms or other clothing necessary or within reason for a participant to attend work); tools and equipment for a particular type of employment (for example, welder's torch and supplies); union dues (see (e)2i below); books; and other items needed for employment that are not available from an employer or other funding source (for example, JTPA). As in (d) above, payment for regular clothing items is not permitted. If other sources of funding are available to pay such costs, then JOBs payments are not available to the individual.

i. Union dues are paid on an initial, one-time basis where such membership is a prerequisite to employment including initiation fees. Documentation from the employer concerning the fact that union membership is mandatory is required before the JOB payment can be issued. If initial union dues are automatically deducted from the participant's paycheck, the participant may be reimbursed for those costs.

3. The case manager shall determine that JOB expenditures are necessary and not available from, or paid by, any other funding source. REACH remains the payor of last resort, outside of any REACH contractual agreements.

4. AFDC-C, -F, and -N recipients, who become ineligible for assistance due to income from employment and who were not participating in REACH, may be eligible for JOB allowance payments provided the individual complies with REACH requirements for such payments, including signing a REACH Agreement. In those circumstances, the JOB allowance may be an incentive for the individual to remain employed. The county shall advise the individual that he or she may only be eligible for the remaining balance of the JOB cumulative total of $100.00 should the individual return to AFDC within a two-year period from the date of termination of AFDC (see (g) below for further clarification of eligibility participation periods).

5. Each eligibility participation period covered by the cumulative $100.00 JOB fund begins with the first day the participant receives a firm job offer and accepts the position (the effective date of employment indicated on the OMEGA System) and ends with the date of termination of all extended REACH benefits (transitional child care and extended Medicaid benefits for one year post-assistance). The eligibility participation period for WSP and OJT participants begins with the effective date of the activity, as indicated on the OMEGA System, and ends with the date of termination of all extended REACH benefits.

6. In extraordinary circumstances, determined on a case-by-case basis by the case manager, JOB payments may exceed the $100.00 maximum limit in the eligibility participation period. Payments over the $100.00 limit may be made with the written approval of DEA. That approval shall be obtained before the payment can be issued.

7. Amounts paid as JOB allowances are excluded as income for purposes of the Food Stamp Program.

(f) REACH $500.00 cumulative motor vehicle related (CAR) expense allowance: Allowance payments based on need, up to a maximum cumulative total of $500.00 per eligibility participation period (see (g) below), are available for REACH participants who own motor vehicles to make those vehicles operational to transport the REACH participant to REACH activities or employment. CAR allowances are not an entitlement and are issued based on need, only for actual expenses incurred. CAR allowance payments are available beginning with participation in the first REACH activity (the effective date of the activity as indicated on the OMEGA System) and ending with the termination date of all extended REACH benefits.

1. Allowable expenditures include: motor vehicle servicing and repairs, including necessary tune-ups and tires if needed to make the vehicle operable, roadworthy or as required in order to pass the State safety inspection; payment of motor vehicle insurance (including mandatory surcharges by the insurer due to the participant's past driving record) or other costs clearly related to the participant's use of his or her own automobile. CAR allowance payments shall not be used to purchase or rebuild a motor vehicle, pay for its licensing or registration, for routine maintenance, or for radio and air conditioning repairs.

2. Payments from the $500.00 cumulative CAR allowance may be issued provided that the following circumstances are considered first:

i. No less expensive alternative means of transportation is available to the participant;

ii. The motor vehicle under consideration for a CAR expenditure is owned by the participant or a member of his or her immediate family living in the same home who is eligible for AFDC as a member of the same filing unit or as an essential person, and the vehicle will be at the participant's disposal for traveling to and from REACH activities or a job;

iii. The actual repair or service expenditure cannot be met through the regular transportation cost (TRE) process even at maximum funding (of up to $15.00/day but no more than $60.00/week);

iv. The participant has documented the need for necessary motor vehicle repairs or service with a written estimate from a bona fide auto mechanic;

v. The general overall condition of the vehicle justifies the cost of repairs (as determined by a bona fide auto mechanic);

vi. The repairs (including towing and road service) or part replacements are necessary to make the vehicle operable, roadworthy or are required for it to pass the State safety inspection;

vii. The REACH activity or service needed by the participant is not available in the vicinity of the participant's home or at a location accessible to the participant by less costly means of transportation; and

viii. The county has provided all REACH activities or services needed by the participant (especially individual evaluation and assessment) thus far through its resources through a site visit either to the participant's home or to a location in the vicinity of the participant's home and the participant is in need of activities/services beyond the scope of those activities already provided.

3. The county welfare agency may develop a list of "REACH-approved mechanics" to perform CAR repairs; however, any mechanic whose rates and services meet the requirements of this section and are otherwise competitive for repair/service costs shall not be excluded when his or her service can be rendered in these situations.

4. CAR allowance payments for insurance purposes are limited to the quarterly premium for the private vehicle. Payment may include mandatory surcharges by the insurer due to the participant's past driving record.

i. The participant shall be financially able to continue to pay insurance costs after the quarterly premium is paid.

ii. If the participant cancels the insurance policy after the quarterly premium has been paid via a CAR allowance payment and receives reimbursement of the premium, that reimbursement is an overpayment subject to recovery (see N.J.A.C. 10:81-14.24).

5. The $500.00 cumulative total CAR fund may not exceed the $500.00 limit for a participant except in extraordinary circumstances, determined on a case-by-case basis by the case manager. Payments in excess of the $500.00 limit may be issued only after obtaining the written approval by DEA.

6. CAR allowance payments are excluded as income for purposes of the Food Stamp Program.

(g) Determining the eligibility participation period for full EDA, JOB and CAR allowances: An eligibility participation period is that period of time during which expenditures from the EDA, JOB and CAR funds up to their respective maximum cumulative totals ($100.00, $100.00 and $500.00) are made. A participant shall have been off assistance (including post-AFDC extended benefits) for at least one full year (12 consecutive months) to be once again entitled to a new eligibility participation period with full maximum EDA, JOB and CAR allowances upon resumption of AFDC/REACH. Interrupted participation in AFDC shall result in the following EDA, JOB, and CAR allowance amounts:

1. If a REACH participant receiving AFDC leaves AFDC, does not receive post-AFDC benefits for one year or more and then returns to AFDC and REACH:

i. The participant begins an eligibility participation period and will be allowed the full EDA, JOB, and CAR allowances.

2. If a REACH participant leaves AFDC and remains off AFDC for less than one year and then returns to AFDC and REACH:

i. The participant will be eligible for the balance remaining in his or her EDA, JOB, and CAR allowances ($100.00, $100.00 and $500.00 less expenditures made) for the resumed period of participation; therefore, the previous eligibility period continues.

3. If a post-AFDC REACH participant receives such post-AFDC benefits, stops REACH participation by stopping REACH post-AFDC benefits, remains off AFDC for one year or more, and then returns to AFDC and REACH:

i. The participant will begin another eligibility participation period and will be allowed the full EDA, JOB, and CAR allowance ($100.00, $100.00 and $500.00 respectively) for this new period of participation.

4. If a post-AFDC REACH participant stops extended REACH benefits, remains off AFDC for less than one year and then returns to AFDC and REACH:

i. The participant will be allowed only the balance remaining in his or her EDA, JOB and CAR allowance ($100.00, $100.00 and $500.00 respectively less expenditures already made) for the resumed period of participation.

(h) Payment procedures for allowance: EDA, JOB and CAR allowances are to be issued as follows:

1. Allowances are on a cumulative account basis. The participant is eligible to receive up to the maximum amount of the allowance during the relevant participation period (see (g) above).

2. Payments are to be issued to cover actual expenses, either as a one-time lump sum payment, or in a number of smaller payments during the course of the eligibility period.

3. Payments may be issued retrospectively as reimbursements or prospectively if needed, on or after the OMEGA effective date of the REACH activities.

i. Payments are to be issued as vendor payments when possible.

ii. Payments may be issued directly to the REACH participant as a reimbursement of expenditures already made.

iii. Payments shall be issued as "lump sum" payments.

(i) Administration of TRE, EDA, JOB, CAR, TCC, and CWEP funds: The county shall be responsible, to the greatest extent possible, for ensuring the prudent administration of the TRE, EDA, JOB, CAR, TCC, and CWEP funds by:

1. Providing REACH activities or services on site, when possible, at participants' homes or at locations which are accessible to participants by less expensive means of transportation. This may be applicable to groups of participants living in the same general area and to homeless participants living in the same shelter accommodations;

2. Scheduling participants to complete more than one REACH activity on the same day when possible; and

3. Enrolling participants in equivalent non-REACH contracted activities or services provided in the vicinity of their homes (for example, GED programs are offered at most local high schools).

(j) Additional $10.00 CWEP reimbursement: The CWA shall provide reimbursement for costs which are determined necessary and are directly related to participation in CWEP. Such costs incurred by the CWEP participant include clothing and personal care items, materials and supplies and similar expenses related to applying for or accepting employment through CWEP. This amount shall not exceed $10.00 per month per participant.

10:81-14.20 REACH support services: medical assistance

(a) Post-assistance Medicaid coverage: When an AFDC-C, -F or -N family[, residing in a county participating in the REACH program,] becomes ineligible for AFDC (including families deemed to be recipients of AFDC) for any of the reasons listed in (b) below, the members of the family shall continue to receive Medicaid for a period of 12 months.

(b) (No change.)

(c) Additional requirements: The following additional requirements apply to the 12-month Medicaid extension:

1. [Except as specified in 1i below, the] **The** family must have received AFDC in the month preceding the month in which the family became ineligible for AFDC.

[i. For families who became eligible for AFDC prior to the enactment of P.L. 1987, c.283 on October 8, 1987, the family must have received AFDC (or were deemed to have been in receipt of AFDC) in any three or more months during the six-month period immediately preceding the month in which the family became ineligible for AFDC.]

2.-4. (No change.)

(d) (No change.)

(e) Any family **prior to April 1, 1990** formerly receiving AFDC-C or -F qualifying for this 12-month extension because of the loss of the $30.00 or one-third disregards (see (b)1 above) shall receive an additional three months of Medicaid extension if, at the expiration of the 12-month extension, the family would be eligible for AFDC if the $30.00 and one-third disregards still applied. To receive this additional three months of Medicaid extension, the family must demonstrate to the satisfaction of the CWA that, had the $30.00 and one-third disregard of earned income not been time-limited, the family would have been continuously eligible for AFDC from the time it became ineligible for AFDC.

10:81-14.21 Need and amount of assistance in REACH

(a) (No change.)

(b) Income earned by AFDC parents serving as child care providers (**600 Child Care Provider Slots**): Income earned by AFDC parents from providing child care for children of REACH participants and other AFDC recipients shall be considered income from self-employment, and shall be treated in accordance with 1 through 4 below.

1. Maximum income eligibility: In determining gross earned income for purposes of the maximum income level at N.J.A.C. 10:82-1.2(d), an amount equal to one-half (50 percent) of the total income earned from providing child care shall be disregarded. **The remaining income is compared to the maximum income limits table at N.J.A.C. 10:82-1.2(d) based on the eligible family size.**

2. Prospective needs test [and calculation of AFDC grant]: In determining prospective need [and computing the amount of the AFDC grant,] an amount equal to one-half (50 percent) of the total income earned from providing child care shall be disregarded. **The remaining income is then compared to the allowance standard at N.J.A.C. 10:82-1.2(c) for the eligible family size to determine if the family is prospectively eligible.**

3. Determination of calculated earned income—AFDC-C and -F: In determining the calculated earned income for the AFDC-C and -F segments, from the total gross earnings from providing child care, deduct an amount equal to one-half (50 percent). The remaining income shall be counted in [determining eligibility under the prospective needs test and] computing the AFDC grant. No additional deductions shall be made for expenses of producing self-employment income set forth at N.J.A.C. 10:82-4.3, for the [$75.00] **$90.00** work expense deduction at N.J.A.C. 10:82-2.8(a)1, or for the first $30.00 and one-third of the remainder of the earnings from providing child care for children of other REACH participants (see N.J.A.C. 10:82-2.8[(a)3] **(a)2**).

4. (No change.)

(c) (No change.)

(d) Disregard of earned income in REACH Work Supplementation Program: In determining the calculated earned income for a WSP participant, from the total gross earnings deduct the WSP disregards as set forth at N.J.A.C. 10:81-14.11.

1. The CWA shall disregard from the earned income of the WSP participant the first [$75.00] **$90.00** of such earnings.

2.-3. (No change.)

(e) Calculation of net loss of cash income through employment as good cause for nonacceptance of the job (-C and -F segments): Individuals shall have good cause for refusing a specific employment opportunity, as set forth at N.J.A.C. 10:81-14.8(e)2, if accepting that job would result in a net loss of disposable cash income for the family of the participant. This calculation shall ensure that the family of a participant is not penalized by having less disposable income after employment than would be available to the family while receiving assistance. The calculation is a manual process which is done on a case-by-case basis at the time of the offer of employment. If the agency makes direct payments for the actual costs of child care up to the maximum limits established by DHS (see N.J.A.C. 10:82-5.3(g)) or makes a supplemental payment for child care costs over the disregard limits, then good cause for net loss of cash income does not exist. Any child care supplemental payment shall be computed monthly on a case-by-case basis.

1. Net loss of cash income means that actual work-related expenses which would otherwise not be incurred shall be subtracted from the family's gross income to determine whether the resulting disposable income is at least equal to the AFDC cash assistance benefit which would be received at the time employment is offered. The cash assistance payment is equal to the flat grant amount (Needs Allowance Standard) less any unearned income.

i. Gross income includes, but is not limited to, earnings from the offered job, any unearned income the family receives, and the adjusted grant determined based on the income at the time the employment is offered, including the application of the appropriate earned income disregards.

ii. The determination of net loss of cash income is a comparison of actual expenses incurred from the job versus the applicable earned income disregards.

iii. The net loss of cash income is a manual calculation which shall be computed on a case-by-case basis at the time the participant gains employment.

iv. The value of the family's food stamp allotment is not included in the calculation.

v. Actual work-related expenses due to that specific job shall be used in the computation.

vi. The calculation is a simultaneous, two-step process: Step I is the determination of the adjusted grant through the application of applicable earned income disregards; Step II is the determination of the net loss of income determined by subtracting the actual work expenses incurred from the gross income (including the adjusted grant from Step I when the grant is $10.00 or more) and then making a comparison to the cash assistance payment that would be received by the family if they did not accept the offer of employment.

2. In Step I, subtract from the gross earned income, the $90.00 work expense disregard; the $30.00 and one-third disregards (if applicable) and the disregard of child care/incapacitated care (if applicable). Next, add any unearned income. The resulting available income is subtracted from the needs allowance standard for the family size; the resulting adjusted grant shall be used in Step II if the grant is $10.00 or greater. If the resulting adjusted grant is less than $10.00, then there is no adjusted grant to be carried over for the computation in Step II.

3. In Step II, subtract from the gross earned income, the actual work expenses and actual child care costs; add the adjusted grant from Step I (if greater than $10.00).

4. Determine the difference between the resulting income figure from Step II and the cash assistance payment (that is, the flat grant less any unearned income) for the family.

5. The resulting difference is the net loss of cash income.

6. The following examples (Examples I and II) illustrate the calculation process.

EXAMPLE I: Calculating Net Cash Loss

Case demographics: Client + 2 children (AFDC-C); flat grant amount of $424.00; unearned income of $112.00; secures employment at $5.50/hr., 40-hour week; 1 child needs child care at a cost of $75.00/wk; $176.00 actual work expenses (FICA, taxes, etc.) per month.

Step I
Calculation of Adjusted Grant

$880.00	Gross monthly earned income
-90.00	Work expense disregard
$790.00	
-30.00	Disregard
$760.00	
-253.33	1/3 disregard
506.67	
-200.00	Child care disregard
306.67	Calculated earned income (CEI)
+112.00	Unearned income
$418.67	Available income
$424.00	Flat grant
-418.67	Available income
$ 5.33	Adjusted grant

No grant is used for Step II since it is under $10.00

STEP II
Determination of Net Loss of Cash Income

$880.00	
-176.00	Actual work expenses
$704.00	
-300.00	Actual child care costs
$404.00	Income
+ 0.00	Adjusted grant from Step I (deficit)
$404.00	Total income from job
$424.00	Flat grant
-112.00	Unearned income
$312.00	*Cash assistance payment
$404.00	Available income from job

**No net loss of cash income exists

**No net loss of cash income exists as the income available from the job is greater than the cash assistance payment.

*Cash assistance payment is equal to the flat grant amount less any unearned income.

EXAMPLE II: Calculating Net Cash Loss

Case demographics: Client + 2 children (AFDC-C); flat grant amount of $424.00; secures employment at $5.50/hr., 40-hour week; 1 child needs child care at a cost of $390.00/month; $200.00 actual work expenses (FICA, taxes, union initiation fees) for month.

Step I
Calculation of Adjusted Grant

$880.00	Gross monthly earned income
-90.00	Work expense disregard
$790.00	
-30.00	Disregard
$760.00	
-253.33	1/3 disregard
$506.67	
-200.00	Child care disregard
306.67	Calculated earned income (CEI)
+ 0.00	Unearned income
$306.67	Available income
$424.00	Flat grant
-306.67	Available income
$117.33	Adjusted grant
$117.00	Adjusted grant

STEP II
Determination of Net Loss of Cash Income

$880.00	
-200.00	Actual work expenses
$680.00	
-390.00	Actual child care costs
$290.00	
$290.00	Income
+117.00	Adjusted grant from Step I (deficit)
$407.00	Total income from job
$424.00	Flat grant
- 0.00	Unearned income
$424.00	Cash assistance payment
-407.00	Available income from job
$ 17.00	Net cash loss

10:81-14.22 Child support enforcement

(a) General: In addition to the activities set forth in N.J.A.C. 10:81-11, the following activities related to child support endorsement shall be conducted by the State and CWAs on behalf of REACH program participants:

1.-3. (No change.)

4. REACH participants who have signed the Final REACH Agreement should be referred to the CWA's IV-D unit by case management for prioritization and upward modification of support orders. The referral shall be made via Form R-3, REACH Referral, or a locally developed form, on the day the REACH participant enters the identified case activity type. The referral shall include: the AFDC case number; the participant's name, the departmental client number (DCN) or date of birth or Social Security Number (SSN), and the date entering the case activity type.

10:81-14.24 Overpayments and underpayments of supportive services: child care and transportation

(a) This section applies to overpayments and underpayments of supportive services, including REACH child care benefits and post-AFDC child care benefits at N.J.A.C. 10:81-14.18, and payments for transportation and related costs at N.J.A.C. 10:81-14.19.

1. Definition of overpayment: An overpayment is a payment which exceeds the amount of REACH child care benefits, post-AFDC child care benefits or REACH transportation and related payments for which the participant or service provider was eligible.

2. Amount of overpayment: The amount of the overpayment subject to recovery is the difference between the amount actually paid to the REACH participant or service provider and the amount for which the participant or service provider was eligible.

i. If the participant was ineligible for the benefits for the period for which the service was provided, the entire amount paid is an overpayment.

ii. If the service provider was not approved by the REACH program, the entire amount paid is an overpayment.

(b) Requirement to recover overpayments: The county shall take all reasonable steps necessary to promptly correct any overpayment of REACH child care benefits, post-AFDC child care benefits and REACH transportation and related payments made to a REACH participant or service provider. Recovery shall be attempted in the following circumstances:

1. In all cases of fraud;

2. In all cases involving current recipients; and

3. In all cases where the overpayment amount would equal or exceed the costs of recovery.

(c) Method of recovery: An overpayment to a family or provider currently receiving child care or supportive service benefits shall be recovered through repayment (in part or in full) by the family or provider responsible for the overpayment, or by recovering the overpayment through a benefit reduction in the amount payable to the family or provider.

1. In recovering overpayments from an AFDC family, the family shall be permitted to retain, for any month, a reasonable amount of funds.

2. Overpayments to individuals may be recovered as follows:

i. From the family unit which was overpaid;

ii. From individuals who were members of the family when it was overpaid; or

iii. From families which include members of a previously overpaid family.

3. In cases of former recipients or recipients who refuse to repay, recovery shall be made by appropriate action under State law against the income and resources of the overpaid individual or family.

4. Recovery from benefits: Recovery of child care benefits may be made only from child care benefits, and recovery of transportation and related payments may only be made from those REACH benefits.

5. Recovery from AFDC grant: Any recoveries of overpayments of child care or transportation and related benefits may be made from the AFDC grant only upon a voluntary request of the recipient family.

(d) Offset: Underpayments and overpayments may be offset against each other in correcting incorrect payments.

(e) Recovery not required: The Department of Human Services may provide that a county need not attempt recovery of overpayments from providers if obligated to make the full payment under the contract. However, Federal financial participation may not be claimed for such overpayments.

(f) Recordkeeping requirements: Counties shall collect and maintain information on the collection of overpayments.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook

Family Support Act Requirements for Job Opportunities and Basic Skills (JOBS) Training Program and Related Title IV-A (AFDC) Provisions

Proposed Amendments: N.J.A.C. 10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, and 5.3

Proposed Repeals: N.J.A.C. 10:82-5.6, 5.8 and 5.9

Proposed Repeal and New Rule: N.J.A.C. 10:82-5.7

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

Authority: N.J.S.A. 44:10-1 et seq.; and 44:10-3; Family Support Act of 1988 (P.L. 100-485); Section 402(a)(8)(A)(ii) of the Social Security Act; and 54 FR 42146.

Proposal Number: PRN 1990-440.

Submit comments by September 19, 1990, to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Title II of the Family Support Act of 1988 (FSA), Public Law 100-485, enacted on October 13, 1988, established the Job Opportunities and Basic Skills (JOBS) program under Title IV-F of the Social Security Act for recipients of Aid to Families with Dependent Children (AFDC). The Federal JOBS program is designed to assist AFDC families in becoming self-sufficient by assuring that needy families with children are provided with employment-directed activities, including education and training, as well as necessary support services, such as child care and continued medical coverage, that will help them avoid long-term welfare dependence.

At the time of enactment of the Family Support Act, New Jersey had already established its own welfare reform program, Realizing Economic Achievement (REACH), which focused on the same goals as the FSA and made available post-assistance benefits of child care and extended Medicaid coverage. The proposed amendments to N.J.A.C. 10:82 align current rules with the existing REACH program and encompass additional requirements contained in the FSA provisions.

Public Law 100-485 also contains provisions which amended Title IV-A of the Social Security Act concerning AFDC financial eligibility determinations and assistance payment calculations. Specifically, FSA amendments provide for enhanced earned income disregards consistent with the JOBS program objective of increasing available family income. Section 402(b) of the FSA amended Section 402(a)(8)(A)(ii) of the Social Security Act to increase the standard work expense and child care disregards and reordered the sequence of application of all earned income deductions. The standard work expense disregard for each employed individual in the federally funded AFDC-C and -F segments has been increased from $75.00 to $90.00. The child care and care of an incapacitated adult disregard limits were increased as follows: from $160.00 to $175.00 per month per child, age two years or older or incapacitated adult, for full-time employment, and $200.00 per month, per child under age two, for full-time employment; $135.00 per month per child, age two years or older or incapacitated adult, for part-time employment, and $150.00 per month per child under age two for part-time employment. Proposed amendments at N.J.A.C. 10:82-2.3(a)2, 2.8(a)1 and 4.4(a) reflect the changes to the standard work expense and child care disregards.

Conforming amendments increasing the standard work expense disregard form $75.00 to $90.00 are also being proposed at N.J.A.C. 10:82-2.9 concerning the deeming of income from a stepparent, and at N.J.A.C. 10:82-3.14 for situations of deemed income of a parent or guardian to a parent minor. In both circumstances, income is deemed or considered available to the AFDC applicant/recipient family and is used to determine AFDC eligibility and the amount of the assistance payment. Both deeming calculations allow for the deduction of standard disregards from the gross earnings of the adult. In such computations, the first deduction applied is the standard work expense disregard which was increased by Section 402(b) of the FSA which amended Section 402(a)(8)(A)(ii) of the Social Security Act. This modification standardizes the $90.00 work expense disregard throughout computations which affect the eligibility and assistance payment levels of AFDC-C and -F segment families.

The proposed amendments to N.J.A.C. 10:82-2.8(a)2, 3 and 4 and 4.4(b), (c) and (d) revise the order of the application of income disregards used in computing the AFDC assistance payment. Previously, the work expense disregard as applied first; the child care disregard, second; and the $30.00 and one-third disregard of remaining earned income, last. The proposed amendments change the order of application of disregards as follows: first, the work expense disregard; second, the $30.00 and one-third disregard of earned income; and, third, actual costs of child care or care of an incapacitated adult up to the maximum amounts described above. The adjustment of the order of application of the disregards results in greater income available for use by employed AFDC recipients.

N.J.A.C. 10:82-3.2(b) is being amended in accordance with 54 FR 42146, to exempt from resources and income, when determining AFDC eligibility and benefit levels, payments for supportive services such as transportation and child care not available from other sources, and necessary for participation in the REACH program authorized under N.J.A.C. 10:81-14.18 and 14.19. Also exempt are child care payments and

the cost of transportation to and from the child care site for "special circumstance" children (for example, children with serious physical, emotional, mental or cognitive conditions).

The proposed amendments at N.J.A.C. 10:82-4.1(c) and 4.14(b) provide that the earned income credit (EIC) is no longer a countable income source in the calcuation of AFDC-C, -F, and -N segment assistance payments, as mandated by P.L. 100-485.

Language is added at N.J.A.C. 10:82-4.8 to reference special budgeting procedures set forth at N.J.A.C. 10:82-14.21(b) concerning REACH clients (AFDC-C and-F segments only) who are State registered family day care providers.

The proposed amendment at N.J.A.C. 10:82-5.2 revises language for purposes of clarification concerning "special circumstance" child care payments through social services Language has been relocated from N.J.A.C. 10:82-5.3(b) and expanded to specify the situations and conditions under which "special circumstance" child care payments may be provided through Title IV-A (AFDC).

The proposed amendment at N.J.A.C. 10:82-5.3 deletes obsolete rules and expand language concerning payment of child care, to provide a current description of child care arrangements and authorization criteria for payment of child care through title IV-A and to align language with existing REACH child care provisions at N.J.A.C. 10:81-14.18.

N.J.A.C. 10:82-5.3(a) reaffirms that payment of child care for various provider arrangements cannot exceed the maximum rates established by the Department of Human Services.

Language at N.J.A.C. 10:82-5.3(b) is deleted and relocated to N.J.A.C. 10:82-5.2 because previously, authorized payments, when the parent or parent-person normally caring for the child was in training for employment, were designated as special needs child care payments through Title IV-A. N.J.A.C. 10:82-5.3(b) is amended to provide that payments for child care in such instances shall now be designated through Title IV-A funding specifically related to Title IV-F activities for participation in REACH rather than as special needs payments, as mandated by the FSA. Such payments for child care are also available for the individual who is eligible for post-employment child care, including post-assistance benefits.

The proposed amendment at N.J.A.C. 10:82-5.3(b)2 specifies the procedures to be used for payment of child care expenses for employed AFDC-C and -F segment REACH participants through the child care disregard, with supplemental REACH child care payments, if necessary. A clarification concerning AFDC-N segment child care payments as vendor payments for actual costs of care is proposed at N.J.A.C 10:82-5.3(b)3. Obsolete language is deleted at N.J.A.C. 10:82-5.3(b)5 and revised to specify that authorizations for payment of child care costs are limited to providers at N.J.A.C. 10:82-5.3(c) through (f).

The proposed amendments at N.J.A.C. 10:82-5.3(c), (d), (e) and (f) align the various child care arrangement rules with REACH and the Office of Child Care Development, Department of Human Services' requirements concerning child care centers, registered homes, approved homes, in-home care and day camps. The proposed amendment at N.J.A.C. 10:82-5.3(c)3 increases the allowance for the cost of transporting a child to and from licensed child care centers from $8.00 to $10.00 per week. This allowance is provided when transportation or costs of transportation are not available from any other source.

N.J.A.C. 10:82-5.3(g) specifies the Statewide maximum child care payment rates established by the Department of Human Services based upon the age or special circumstances of the child, the hours of care provided and the type of child care arrangement. The maximum child care rates in Table I are applicable for licensed child care centers, school-age programs, registered family day care homes and day camps. Language is added to clarify existing procedures pertaining to the office within the Division of Youth and Family Services (DYFS) responsible for licensing and DYFS' rules for public school system sites. Table II provides rates set at 60 percent of the Statewide maximum rates set forth in Table I which are applicable for approved homes and for in-home care providers.

The rules at N.J.A.C. 10:82-5.6, 5.8 and 5.9 are being repealed as those rules are obsolete in light of the amendments proposed. N.J.A.C. 10:82-5.7 is proposed for repeal and replacement with a new rule to revise language pertaining to allowances for expenses incident to training, addressed through the REACH program rules at N.J.A.C. 10:82-14.19.

Also included in the proposed amendments are technical revisions which delete obsolete language; relocate under more appropriate categories and/or revise current language with minor amendments for clarification; recodify sections where necessary; and add or correct cross-refereneces.

For purposes of clarification, N.J.A.C. 10:82-1.5(c), concerning eligibility of a child while in vocational training at a Residential Job Corps Center, is being recodified to N.J.A.C. 10:82-1.7(d) with a minor revision.

Clarification is provided at N.J.A.C. 10:82-1.7(c) to specify that a student receiving financial aid is not entitled to any allowances for expenses incident to training when such expenses are already provided through receipt of financial aid. The rule is further amended to explain that any allowances for expenses not covered by financial aid must be provided in accordance with REACH provisions at N.J.A.C. 10:82-14.19.

N.J.A.C. 10:82-1.8 is amended to clarify that when a parent of an eligible child is a student regularly attending school, that parent is considered a REACH participant and is eligible for REACH benefits including child care, unless such care is provided through the educational institution.

The proposed amendment at N.J.A.C. 10:82-2.19(e) adds a reference to N.J.A.C. 10:82-14 (REACH) for rules concerning overpayments and underpayments in supportive services.

Due to the close-out of the Work Incentive (WIN) program and the creation of the Federal JOBS program, obsolete language pertaining to the WIN program is deleted at N.J.A.C. 10:82-2.10, 3.2(b)6iv and 5.3(b)1.

Social Impact

The proposed amendments should have a beneficial social impact on AFDC families. The proposed amendments which provide for increased earned income (work expense and child care) disregards, the change in the order of the application of those disregards, and the elimination of EIC as countable income in the determination of AFDC benefit level will result in greater earned income being retained by employed AFDC families. As a result of the change in this calculation, dependent upon individual family circumstances, those families may also receive some increase in the family's assistance payment.

The proposed amendments which provide that supportive service payments, such as those for transportation and child care, be excluded from income and resources for AFDC purposes, ensure that AFDC families receive the necessary supportive services to maximize their participation in the REACH program and to help move those families toward the ultimate goal of unsubsidized employment.

Such provisions are consistent with the Federal JOBS program objectives directed at increasing family income in order to assist AFDC families in becoming self-sufficient.

The proposed amendment at N.J.A.C. 10:82-5.3, which eliminates special needs child care when a parent is in training for employment, has no negative social impact as payments for child care in this situation are currently provided for through REACH participation.

The proposed amendments at N.J.A.C. 10:82-5.3(c), (d), (e), (f) and (g), the repeal of N.J.A.C. 10:82-5.6, 5.8, and 5.9, and the repeal and new rule at N.J.A.C. 10:82-5.7 delete obsolete rules and revise language concerning child care authorization criteria to align with rules located at N.J.A.C. 10:82-14.18. These proposed amendments serve to clarify rules pertaining to child care and should improve program administration.

The proposed amendment at N.J.A.C. 10:82-5.3(g) specifies the Statewide maximum child care rates, established by the Department of Human Services, applicable to the various types of child care arrangements. Inclusion of these rates and deletion of those that are obsolete will provide clarification for the administration of such payments.

Overall, the proposed amendments will clarify rules and facilitate administration of the program.

Economic Impact

Increases in the earned income disregards, the change in the order of application of those disregards and changes in income exclusions will result in a positive economic impact for AFDC families. These proposed amendments provide for more earned income being retained by employed AFDC families and some increase in assistance payments contingent upon individual family circumstances.

The Department estimates that approximately 4,200 AFDC families with earned income will be affected by the increase in the earned income disregards and the reordering of the application of those disregards to earned income. The total projected increase in assistance payments over a 12-month period is estimated at $3.9 million. Fifty percent of that increase ($1.9 million) is the Federal share. The increase in the State and county shares are $1.5 million and $0.5 million, respectively.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments

impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

10:82-1.6 Eligible person temporarily in an institution [or JOB Corps Center]

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

[(c) When a child receives vocational training at a Residential Job Corps Center which permits him/her to return home for weekends, the child shall be considered temporarily absent and regarded as an eligible member of the family unit. (A child receiving training at one of the three National Job Corps Centers located in Kentucky, Indiana and Utah is to be considered permanently absent and shall not be considered a member of the eligible unit.)]

10:82-1.7 Eligible AFDC child regularly attending school **or in vocational training at a Residential Job Corps Center**

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

(c) During any period for which a child receives a grant, scholarship or student loan under a Federal, State or other public or private program, [he/she] **he or she** shall not be entitled to [an allowance] **any allowances** for expenses incident to training **which are otherwise provided for through student financial aid**. In [all] other situations, [such an allowance] **allowances** shall be provided in accordance with the provisions of N.J.A.C. [10:82-5.6 through 5.9] **10:81-14.19**.

(d) When a child receives vocational training at a Residential Job Corps Center which permits him or her to return home for weekends, the child shall be considered temporarily absent and regarded as an eligible member of the family unit. (A child receiving training at one of the three National Job Corps Centers located in Kentucky, Indiana, and Utah is to be considered permanently absent and shall not be considered a member of the eligible family for AFDC eligibility.)

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

10:82-1.8 Parent regularly attending school (all segments)

(a) When a parent of an eligible child is a student regularly attending school as defined in N.J.A.C. 10:82-1.9, the provisions of N.J.A.C. 10:82-1.7(b) and (c) shall apply [(see N.J.A.C. 10:81-3.18(b)2ii(6))]. **The parent shall be considered a REACH participant subject to the rules set forth at N.J.A.C. 10:81-14.**

1. Payment for child care shall be provided where necessary to enable a parent to attend school so long as the parent can demonstrate that his or her scholarship(s), grant(s), student loan or other financial aid does not provide moneys which [can] **are to** be utilized for such care, and child care is not provided **from or through the educational institution or** through any other source **(see N.J.A.C. 10:82-5.3 and 10:81-1.10 and 14.18)**.

10:82-2.1 Form PA-3A or Form 105

(a) (No change.)

(b) Form PA-3A shall be completed in the following order:

1.-3. (No change.)

4. Part II: The amount of the regular monthly grant is determined in Part II, Amount of Allowance. Make the appropriate entries according to key numbers indicated on the form as follows:

i. Key numbers:

(1)-(2) (No change.)

(3) Enter any other income actually available to the eligible unit, identifying the source in the space provided, such as contributions from LRRs, pensions other than Social Security, and so forth (see N.J.A.C. 10:82-4.10 through 4.12 on unearned income), and adjustment for eligible member temporarily out of the home (N.J.A.C. 10:82-1.6(b) and 1.7[(d)] **(e)**);

(4-(8) (No change.)

ii. (No change.)

5.-6. (No change.)

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) Family groups living together: For purposes of AFDC, in family groups living together, income of the spouse is considered available for the other spouse and income of a parent (natural or adoptive) is considered available for children under 18. If the spouse or parent is living with his or her spouse or children, respectively, income is considered available regardless of whether the spouse or natural or adoptive parent is noneligible or sanctioned. However, if a spouse or parent is receiving SSI benefits, including mandatory or optional State supplementary payments, then for the period for which such benefits are received, his or her income and resources shall not be counted as income and resources available to the eligible family.

1. (No change.)

2. For earned income, the net amount to be considered available to the eligible [unit] **family** shall be determined by deducting only the first [$75.00] **$90.00** of such income **for each employed individual in the AFDC-C and -F segments to cover work-related expenses, including, but not limited to, transportation and mandatory payroll deductions** and the actual expenses of child care or care for an incapacitated individual **in the household (when applicable as set forth in N.J.A.C. 10:82-2.8 and 4.4)** that [does] **do** not exceeed [$160.00 ($110.00 for part-time employment) per child or individual.] **the following rates:**

i. $175.00 per month, per child age two or older, or incapacitated adult, for full-time employment;

ii. $200.00 per month, per child under age two, for full-time employment;

iii. $135.00 per month, per child age two or older, or incapacitated adult, for part-time employment;

iv. $150.00 per month, per child under age two, for part-time employment.

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

10:82-2.8 Determination of calculated earned income; AFDC-C and -F procedures

(a) From the total gross earnings of each person in the AFDC-C and -F segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3) and proceed as follows:

1. From gross earnings deduct the first [$75.00] **$90.00** of such earnings for each employed individual in the eligible [unit] **family, to cover work-related expenses, including, but not limited to, transportation and mandatory payroll deductions.**

[2. Deduct an amount equal to the expenditures for child care or for care of an incapacitated individual living in the same home as the AFDC-C or -F eligible unit. In no event shall this deduction exceed the limits provided for in N.J.A.C. 10:82-5.3 or $160.00 ($110.00 for part-time employment) per month for each AFDC recipient requiring such care.]

Recodify existing 3 and 4 as **2 and 3** (No change in text.)

4. Deduct an amount equal to the actual expenditures for child care or for care of an incapacitated individual living in the same home as the AFDC-C or -F eligible family. In no event shall this deduction exceed the limits as follows:

i. $175.00 per month, per child age two or older, or incapacitated adult, for full-time employment;

ii. $200.00 per month, per child under age two, for full-time employment;

iii. $135.00 per month, per child age two or older, or incapacitated adult, for part-time employment;

iv. $150.00 per month, per child under age two, for part-time employment.

5. (No change.)

10:82-2.9 Stepparents; AFDC-C procedures

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

(d) When a stepparent of eligible AFDC-C children lives in the same home as the children and is not included as a member of the eligible family, his or her income shall be considered available to the eligible family in accordance with the following procedures:

1. Reduce the stepparent's gross earned income (and net income from self-employment) by [$75.00] **$90.00**.

2.-6. (No change.)

10:82-2.10 Medicaid eligibility; AFDC-C and -F procedures

(a) AFDC-C and -F parents **(including parent-minors)** who refuse to [register] **participate** or accept employment under the [WIN] **REACH or TEEN PROGRESS** programs are not entitled to **categorically-related** Medicaid.

(b) Children 16 to 18 years old who would be eligible for AFDC-C or -F except that they are not attending school and are not exempt from [WIN] **REACH**, but who refuse to [register] **participate** or accept employment under the [WIN] **REACH** program, will continue to be eligible for Medicaid so long as there are other children in the family eligible for AFDC-C or -F **(see (d) below)**. [Such 16 to 18 year olds are not included in the eligible unit and will be listed as "Categorically Related" on Form PA-3A.]

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

10:82-2.19 Overpayments and underpayments

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

(e) Overpayment and underpayment procedures in supportive services are delineated at N.J.A.C. 10:81-14.24.

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-5. (No change.)

6. Resources designated for special purposes as follows:

i.-iii. (No change.)

iv. In AFDC, [incentive payments from] **payments for** participation in [certain training programs:] **the REACH program, including payments for transportation and related expenses set forth at N.J.A.C. 10:81-14.19 and payments for child care at N.J.A.C. 10:81-14.18.**

[(1) A monthly incentive payment of an amount not to exceed $30.00 and work related training expenses paid to recipients of AFDC who are participants in WIN training programs, by the New Jersey Department of Labor and Industry, Division of Employment Security;]

[(2)](**1**) (No change in text.)

v. Child care payments for "special circumstance" children (see N.J.A.C. 10:82-5.2) and transportation or the cost of transportation, which is not available from any other source, to transport the "special circumstance" child to and from the child care site when it is essential for the child's physical health and safety. The payment for the cost of transporting a "special circumstance" child to and from the child care site may be authorized under Title IV-A funds through FAMIS.

Recodify v. through vii. as **vi. through viii.** (No change in text.)

7.-11. (No change.)

10:82-3.14 Deeming income of parents and guardians of adolescent parents

(a) (No change.)

(b) When an adolescent parent lives in the same home as his or her own parent(s) or legal guardian(s), the income of such parent(s) or legal guardian(s) shall be considered available to the eligible family in accordance with the following procedures. These rules do not apply if the parent(s) or guardian(s) receive(s) SSI or AFDC or if the adolescent parent is categorically eligible for the -N segment only. For the purposes of this section, the term parent shall include legal guardian.

1. Reduce the gross earned income (and net income from self-employment) of each employed parent by [$75.00] **$90.00**.

2.-6. (No change.)

(c) (No change.)

10:82-4.1 General provisions

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

(c) Earned income shall **not** include the amount of Earned Income Credit payment which an individual receives.

[1. If an individual applying for or receiving AFDC has on file with his or her employer an Earned Income Advance Payment Certificate (Form W-5) for the current tax year, and is in fact receiving the advance payment, the CWA shall include the amount as earned income of the individual in the month received.

2. At the end of the tax year, if the amount of the advance payments counted by the CWA exceed the amount of the allowable credit, the CWA shall adjust the benefits of an indivdual who is a current recipient to provide payment equal to the amount of assistance lost. No such payments shall be made to individuals who are not currently in receipt of AFDC.

3. In any case where the amount of the advance payments counted by the CWA is less than the allowable credit, the CWA shall count as earned income in the month received any earned income credit payment received by the individual at the end of the tax year to the extent it exceeds the amount counted as advance payments.]

10:82-4.4 Disregard of earned income in AFDC-C and -F segments

(a) The CWA shall disregard from the earned income of each employed individual, the first [$75.00] **$90.00** of such earnings.

[(b) The CWA shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual. The amount of the disregard shall not exceed the limits provided in N.J.A.C. 10:82-5.3 or $160.00 ($110.00 for part-time employment) per month for each such AFDC recipient requiring care.]

[(c)](**b**) The CWA shall disregard from the total earned income not already disregarded, the first $30.00 and one-third of the remainder for each employed individual.

1. This disregard shall apply to the earned income of a person for a period of four consecutive months. Once this disregard has applied for a four consecutive month period, it shall not again be applied on behalf of that individual as long as he[/] **or** she continues to receive AFDC-C or -F. If after receiving this disregard for a four consecutive month period, the individual becomes ineligible for AFDC-C or -F, this disregard shall not be applied to his[/] **or** her income unless the individual has remained ineligible **for AFDC** for a period of 12 consecutive months.

2. The $30.00 and one-third disregard is to be applied only when an amount of earned income remains, after application of the disregards in (a) [and (b)] above, to permit application of this disregard.

i. (No change.)

3. (No change.)

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

(d) The CWA shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual in the same home as an AFDC-C or -F eligible family. The amount of the disregard shall not exceed the limits as follows:

1. $175.00 per month, per child age two or older, or incapacitated adult, for full-time employment;

2. $200.00 per month, per child under age two, for full-time employment;

3. $135.00 per month, per child age two or older, or incapacitated adult, for part-time employment;

4. $150.00 per month, per child under age two, for part-time employment.

(e) (No change.)

10:82-4.8 Income from family day care

(a) Payments by individuals or agencies for children placed in an eligible family's home for Family Day Care shall be considered as gross earned income from self-employment. Earned income procedures for self-employment are discussed at N.J.A.C. 10:82-4.3.

1. (No change.)

2. The exception to this procedure concerns the State registered family day care providers participating in the special REACH initiative which has designated 600 child care provider slots Statewide as a REACH activity for REACH participants. The self-employment income earned by those REACH clients (AFDC-C and -F segment cases only) participating in that initiative is budgeted according to procedures set forth at N.J.A.C. 10:81-14.21(b). Those budgeting procedures are limited to the 600 cases allocated among the counties and the allocation is based on the county's proportionate share of the AFDC population.

10:82-4.14 Exempt income

(a) (No change.)

(b) Exempt income is as follows:

1. (No change.)

2. Income tax refunds, [(except the] **including** earned income credit (EIC) **refunds;** [portion), but the actual amount of the refund] **how-**

ever, any portion of the actual refund remaining in the month following the month of receipt shall be considered as [resources] **a resource** in that following month.

i. The EIC is not considered a countable income source in the calculation of AFDC benefits (for all segments -C, -F, -N).

ii. Any lump sum refund of income for EIC made to a family receiving AFDC after October 1, 1989 is not counted as earned income in the calculation of the assistance payment. Any remaining monies from such refund shall be considered a resource in the month subsequent to receipt.

10:82-5.1 General provisions

Payments for the specific classes of services identified in N.J.A.C. 10:82-5.2 and 5.4, [for expenses of training as authorized in N.J.A.C. 10:82-5.6 and 5.9,] and for emergency assistance as defined in N.J.A.C. 10:82-5.10 are not part of the public assistance allowance and shall not be included in the regular monthly grant.

10:82-5.2 [Child care and certain other service payments generally] **Payment for child care and other services in special circumstances through social services**

(a) Definitions, standards and regulations [regarding] **for payment of** child care **and other services as "special circumstance" payments** [and other social services] are promulgated by **the** [Division of Youth and Family Services and, under] **Department of Human Services. "Special circumstance" payments are authorized by social service workers through the** county welfare agencies[, are administered by social service workers]. **Payments for special circumstances are authorized from Title IV-A, and are payable from the administrative assistance account through the FAMIS system.**

(b) (No change.)

(c) "Special circumstance" child care payments may be provided through Title IV-A when payment for such care is not available through other resources (see N.J.A.C. 10:81-1.10) and the county welfare agency determines that such care is essential because of any one or more of the following:

1. Serious physical, emotional, mental or cognitive conditions, requiring child care as part of the treatment plan;

2. When illness, death and/or other disruption in family living has created problems, and on the basis of social and/or medical diagnosis, child care is necessary; or

3. The parent, parent-person or parent-minor who normally cares for the child, is in a program of vocational rehabilitation that is not considered REACH participation.

(d) Payment for child care special circumstances shall not exceed the maximum rates established by the Department of Human Services in N.J.A.C. 10:82-5.3(g). Authorizations for payment of "special circumstance" child care costs are limited to providers of child care who satisfy the criteria in N.J.A.C. 10:82-5.3(c) through (f).

(e) Transportation costs for special circumstance child care services may be provided as follows:

1. When transportation to and from licensed child care center or day camp, approved by the Department of Health, is not available from any other source, payment for such transportation as a special circumstance may be made for actual cost up to a maximum of $10.00 per week per child.

2. When transportation or the cost of transportation of children with special needs (that is, serious physical, emotional, mental or cognitive conditions as defined at N.J.A.C. 10:81-14.18(c)1) to and from child care arrangements is not available from any other source, payment for such transportation may be made for actual cost as a special circumstance payment.

(f) Payment policies that govern child care in the REACH program shall be applied to child care for special circumstances to the extent practicable (see N.J.A.C. 10:81-14.18(c)). Payment for child care for REACH participation is set forth at N.J.A.C. 10:81-14.18.

10:82-5.3 **Payment for** [Child] **child** care

(a) "Child care" for the purposes of this section means arrangements for care of a child in a [day] **child** care center, **with** family day care [home,] **providers (including registered family day care homes and approved homes), with providers of** in-home care, **after school care** or **in** day camps. **For individuals participating in the REACH program, including individuals eligible or post-AFDC REACH benefits, the provisions of N.J.A.C. 10:81-14.18 shall apply.** With the exception of (h) below **concerning care in approved maternity homes,** no child care payment shall be authorized which [exceed] **exceeds** [160.00 per month per child] **the maximum rates established by the Department of Human Services (see (g) below). Actual costs per child per week cannot exceed those rates. If a child is placed in the care of more than one child care provider in any single week, the total cost of care distributed among providers shall not exceed the weekly full-time established rates per child based on the child care arrangements, and the age or special circumstance status of the child.**

[(b) Child care may be provided when the county welfare agency determines that such care is essential because of any one or more of the following:

1. The parent, parent-person or parent-minor who normally cares for the child, is in training for employment, or is in a program of vocational rehabilitation;

2. Illness, death and/or other disruption in family living has created problems, and on the basis of social and/or medical diagnosis, child care is necessary.]

[(c)]**(b)** Further provisions related to child care expenses are:

1. Expenses of child care may be paid when the parent, parent-person or parent minor who normally cares for the child, is participating in employment-directed activities through REACH or is eligible for post employment child care, including post-assistance benefits (through REACH).

[1.] **2.** [Expenses of child care incident to employment may not be paid pursuant to this section for the AFDC-C and -F segments. Such expenses must be met by the eligible unit and be recognized as an income disregard in determining calculated earned income, unless such cost is otherwise provided for under a separate program such as WIN, and so forth.] **Child care expenses for employed AFDC-C and -F segment families shall be met by the eligible family through the child care disregard process set forth at N.J.A.C. 10:82-2.8(a)4 and 4.4(d). If the parent, parent-person or parent-minor is a REACH participant, REACH funds may be used to supplement the cost of post-employment child care up to the maximum rates established by the Department of Human Services (see (g) below), in any month in which the cost of such child care exceeds the child care disregard limits. At the time a participant gains employment, during the transition of a REACH participant to work, child care may be paid by the agency as a bridge payment through REACH up to the receipt of the first pay check or for a period not to exceed one month (see N.J.A.C. 10:81-14.18(d)4). Those costs paid through a bridge payment shall not be disregarded in the calculation of the family's assistance payment. The child care disregard is applied to that budget month in which the participant begins payment for child care costs.** No payments are authorized for child care expenses incident to the employment of a non-needy caretaker relative.

[2.] **3.** Expenses of child care incident to employment in the AFDC-N segment shall be provided, when necessary, as [an additional payment to be paid from the assistance account] **a vendor payment of actual costs of care to the provider of care in accordance with N.J.A.C. 10:81-14.18. No child care payment shall be authorized which exceeds the maximum rates established by the Department of Human Services.**

[3.] **4.** Child care as an expense incident to training for employment or incident to a program of vocational rehabilitation may be provided as an additional payment if not available through a special training program or agency. Such payment can be made directly to the client or as a vendor payment from the [assistance] **Title IV-A administrative** account.

[4. When the CWA has approved arrangements for in-home care, payment shall be claimed by and paid to the client who has been authorized to purchase such services him/herself, and such payments shall also be made from the assistance account.]

5. [Authorization for child care are limited to day care centers and day camps which have been approved by the Division of Youth and Family Services and to family day care homes and in-home care arrangements approved by the Division of Youth and Family Services or the county welfare agency.] **Authorizations for payment of**

child care costs are limited to providers of child care who satisfy the criteria delineated in (c) through (f) below.

[6. Any AFDC child care payments authorized under this section, if not a whole dollar amount, shall be rounded down to the next lower whole dollar with the exception of vendor payments which shall be issued in the full amount authorized.]

[(d)] (c) [Day] **Child** care center rules are:

1. ["Day] **"Child** care center" means group care for children, usually two to five years old, which includes supervised educational work and play experiences under the direction of a trained teacher**, including Head Start programs**. [Day] **Child** care centers, which provide care, for a fee, to more than five children [between the ages of two to five,] **up to and including age five,** are required by law to be licensed and approved by the Division of Youth and Family Services**, Bureau of Licensing; or must have a letter of exemption from the Bureau of Licensing; or must be operated under the auspices of the public school system**. No payments are authorized to or for any [day] **child** care center which is subject to the Division of Youth and Family Services license but lacks such a license **(see N.J.A.C. 10:81-14.18(e)1)**.

2. The maximum allowable rate for care in a licensed [(if required) day] **child** care center, regardless of the source or sources of payment, shall be [the rate established by the Division of Youth and Family Services for that center for the class of service provided. If no such rate has been established, the CWA will notify the Division of Youth and Family Services of the need for an established rate. In this event, until a rate is established, the CWA maximum rate per child, regardless of the source or sources of payment, shall be the least of the following, not to exceed the limit at (a) above of $160.00 per month per child:] **the maximum rates established by the Department of Human Services (see (g) below).**

[i. The amount actually charged;

ii. The lowest amount charged by the center for any child for the same class of service;

iii. $10.50 per day for full day care, prorated for less than a full day.]

3. In addition to [(d)] (c)2 above, when transportation or the cost of transportation **to and from the licensed child care center** is not available from any other source, the CWA may allow the actual cost up to [$8.00] **$10.00** per week maximum, per child. **Actual costs of transporting a special needs child, if transportation is not available through any other source, may be authorized through Title IV-A funds (see N.J.A.C. 10:82-5.2(e)2).**

4. Child care programs for school-age children shall meet local occupancy, building and fire codes, and have satisfactory completed an inspection using the DYFS "Checklist of Standards for School-Age Child Care Programs" (see N.J.A.C. 10:81, Appendix A); or be operated under the auspices of the public school system.

[(e)] (d) Family day care **provider** rules are:

1. "Family day care **provider**" means care for any age child, by a day care [mother] **provider** in his or her own home; family day care may also be a home for after school care. The suitability of any family home for use as a family day care **provider** home [should] **shall** be evaluated and approved [by the county welfare agency or the Division of Youth and Family Services] **as delineated in (d)2 and 3 below.**

[2. The authorized rates for family day care shall not exceed the following, as applicable, except in situations where it can be established by the worker, in cooperation with the parent, that appropriate care can only be obtained in that geographic area at a higher rate, but the authorized rates shall not exceed the limit at (a) above of $160.00 per month per child:

i. $4.40 per day per child (one day of care shall be interpreted to mean a minimum of six hours of care);

ii. $22.00 per child per week (one week of care shall be interpreted to mean a minimum of 30 hours of care); add $1.65 per week if a second meal is provided daily;

iii. $95.00 per child per month (one month of care shall be interpreted to mean a minimum of 130 hours of care); add $7.15 per month if a second meal is provided daily.]

2. Family day care providers who serve three or more non-sibling children shall be registered pursuant to the Family Day Care Provider Registration Act (N.J.S.A. 30:5B-16 et seq.—Public Law 1987, Chapter 27) to qualify for up to the full maximum payment rates set forth in (g) below. Such family day care providers are registered home providers. Family day care providers of one or two children may choose to register under the above Act or to provide family day care as an approved home (see 3 below).

i. Payment is made to registered home providers who secure a registration certificate or a temporary registration certificate as defined in the above Act. Certificates are obtained from sponsoring organizations in the counties approved and regulated by DYFS, Bureau of Licensing. A family day care provider will receive a registration certificate after the home has been inspected and approved by the sponsoring agency on the "Family Day Care Registration Home Inspection Checklist" (see N.J.A.C. 10:81, Appendix A).

ii. REACH participants serving as family day care providers and referred for registration by the county lead child agency or the county welfare agency to provide day care for child(ren) of other REACH participants may have the Certificate of Registration fee paid through REACH funds.

3. Family day care providers who are not registered under the Family Day Care Provider Registration Act and who provide care to one or two children or to the sibling children of an individual, are approved for payment following the completion of a standard evaluation process developed by DHS/DEA, the "REACH Home Approval Checklist" (see N.J.A.C. 10:81, Appendix A). Approved homes are reimbursed for services up to a rate which is 60 percent of the State maximum rate set for centers and registered homes (see (g) below) if the home has received approval since September 5, 1988. Homes approved prior to September 5, 1988 are paid at prior approved rates.

[3.] **4.** [The authorized payment for family day care shall be deemed to be the full cost for all services provided by the family day care home. No additional allowances or costs shall be recognized except that when] **When** it is essential for physical health and safety, the cost of transporting a handicapped child to and from the family day care home may be authorized **(see N.J.A.C. 10:82-5.2(e)2).**

[(f)] (e) In-home care rules are:

1. "In-home care" means care for [any age] **a** child in the child's usual home **and may be used when this is the child care preferred by the participant.**

[2. Payment for in-home care is authorized only when there is no one available who will perform the service without cost and this care is essential because one or more of the following is existent:

i. A day care center or family day care home is not available; or

ii. The child is too young to attend a day care center or family day care home; or

iii. There are verified medical and/or social reasons which demonstrate that care in a day care center and/or family day care home would not be in the best interests of the child.]

2. The "REACH Home Approval Checklist" (see N.J.A.C. 10:81, Appendix A) shall be used to evaluate the in-home care for payment through REACH funds for REACH participants utilizing in-home care arrangements.

3. The authorized rate for in-home care shall be deemed to be for all services and superivsion pertaining to the care of the children and is not for the performance of household tasks unrelated to child care. Payment shall not be authorized for services provided by a **non-needy caretaker** relative who resides in the same home as the child when that relative is legally responsible for any member of the eligible [unit] **family or is a member of the AFDC assistance unit.**

4. Payment for in-home care shall be the actual cost, but shall not exceed [$1.25 per hour for all children in the home requiring this care, except in situations where it can be established by the worker, in cooperation with the parent, that appropriate care can only be obtained in that geographic area at a higher rate] **the 60 percent rates established by the Department of Human Services as set forth in Table II of (g) below for each child in the home requiring this care. The authorized payment for in-home care shall be deemed to be the full cost for such services and no additional amounts shall be recognized.** [The employer's share of Social Security taxes, if applicable, shall be recognized, when due, as a vendor payment.]

[5. The authorized payment for in-home care shall be deemed to be the full cost for such services and no additional amounts shall

be recognized. The authorized payment shall not exceed the limit at (a) above of $160.00 per month per child.]

[(g)] **(f)** Day camp rules are:

1. "Day camp" is construed to mean either the operation of [day] **child** care center services in an outdoor rather than an indoor setting, or other supervised group care for children with a planned recreational and educational program in an outdoor setting.

2. (No change.)

3. The maximum allowable rate for care in a day camp, regardless of the source or sources of such payment, shall not exceed the [applicable rate for the particular facility and class of service as determined by the Division of Youth and Family Services] **maximum rates established by the Department of Human Services (see (g) below).** [This rate shall be inclusive of all transportation costs, except that when it is essential for physical health and safety, the costs of transporting a handicapped child to and from day camp may be authorized.]

4. Payment for child care in a camp program may be authorized if the camp has been inspected and is in good standing with the New Jersey Department of Health (DOH) and appears on the DOH certified listing obtainable from the DOH, Environmental Services; or possesses a valid provisional or certified certificate from DOH.

(g) Statewide maximum child care payment rates are based upon either the age or special circumstance status of the child and on the number of hours of care provided in the various types of child care arrangements. Included in the types of arrangements are registered homes, approved homes, in-home care, child care centers and day camps, and the hours of care provided (that is, full and part-time day care and care before and after school).

1. "Special circumstances" or "special needs" children as defined in N.J.A.C. 10:82-5.2 shall be eligible for the appropriate "special circumstance" child care rate (see Table I below). Appropriate authorization shall be obtained from DEA before placement of the child in care and issuance of payment.

2. Full-time care is defined as care of a child for 30 hours per week or more. Full-time care for school-age children, age five and older, means care for that child during school breaks and summer vacation.

3. Before and after school care for school-age children, age five and older, shall be actual costs up to the maximum rate set forth in Tables I and II below.

4. Authorization of provider payments for child care is limited to such providers satisfying requirements set forth in (c) through (f) above when child care expenses are not otherwise provided through other resources (see N.J.A.C. 10:81-1.10).

5. The maximum authorized rates for child care are set forth in Tables I and II below, as determined by the type of child care arrangements, and based upon either the age or special circumstance status of the child and the hours of care provided. Actual costs per child cannot exceed the maximum weekly full-time care rate per child based on the child care arrangements and the age or special circumstance status of that child. If more than one provider is involved, the actual expenditures of IV-A funds cannot exceed that full-time care rate per child.

Table I

These rates shall be utilized for licensed child care centers, school-age programs, registered family day care homes and day camps.

MAXIMUM CHILD CARE PAYMENT RATES

HOURS OF CARE PROVIDED

CHILD(REN) SERVICED	FULL-TIME (30 hrs/week or more; 6 hrs or more per day)	THREE-QUARTER TIME (16 to 29 hrs/wk; less than 6 hrs/day but more than 3 hrs/day)	ONE-HALF TIME (7 to 15 hrs/wk)	ONE-QUARTER TIME (6 hrs/wk or less)
Infants/Toddlers (0 up to 2.5 yrs)	$89/wk based on rate $18/day	$67/wk based on rate $13/day	$45/wk based on rate $9/day	$22/wk based on rate $4/day
Pre-schoolers (2.5 up to 5 yrs)	$68/wk based on rate $14/day	$51/wk based on rate $10/day	$34/wk based on rate $7/day	$17/wk based on rate $3/day
School-agers (5 yrs-13 yrs)	$68/wk based on rate $14/day	$51/wk based on rate $10/day	$34/wk based on rate $7/day	$17/wk based on rate $3/day
*Special Circumstance Infants/Toddlers (0 up to 2.5 yrs)	$110/wk based on rate $22/day	$83/wk based on rate $17/day	$56/wk based on rate $11/day	$27/wk based on rate $5/day
*Special Circumstance Child(ren) (2.5 yrs and up)	$89/wk based on rate $18/day	$67/wk based on rate $13/day	$45/wk based on rate $9/day	$22/wk based on rate $4/day

Table II

These rates shall be utilized for Approved Home and in-home care providers. Reimbursement for services shall be at a rate of 60 percent of the Statewide maximum rates set forth in Table I.

60 PERCENT MAXIMUM CHILD CARE PAYMENT RATES— APPROVED HOMES/IN-HOME CARE PROVIDERS

HOURS OF CARE PROVIDED

CHILD(REN) SERVICED	FULL-TIME (30 hrs/week or more; 6 hrs or more per day)	THREE-QUARTER TIME (16 to 29 hrs/wk; less than 6 hrs/day but more than 3 hrs/day)	ONE-HALF TIME (7 to 15 hrs/wk)	ONE-QUARTER TIME (6 hrs/wk or less)
Infants/Toddlers (0 up to 2.5 yrs)	$53/wk based on rate $11/day	$40/wk based on rate $8/day	$27/wk based on rate $5/day	$13/wk based on rate $3/day
Pre-schoolers (2.5 up to 5 yrs)	$41/wk based on rate $8/day	$31/wk based on rate $6/day	$20/wk based on rate $4/day	$10/wk based on rate $2/day
School-agers (5 yrs-13 yrs)	$41/wk based on rate $8/day	$31/wk based on rate $6/day	$20/wk based on rate $4/day	$10/wk based on rate $2/day
*Special Circumstance Infants/Toddlers (0 up to 2.5 yrs)	$66/wk based on rate $13/day	$50/wk based on rate $10/day	$34/wk based on rate $7/day	$16/wk based on rate $3/day
*Special Circumstance Child(ren) (2.5 yrs and up)	$53/wk based on rate $11/day	$40/wk based on rate $8/day	$27/wk based on rate $5/day	$13/wk based on rate $3/day

(h) Homes for unwed mothers: When an eligible child who is an expectant mother is receiving care in an approved maternity home, the maximum rate for such care shall be the applicable rate for that facility as determined by the Division of Youth and Family Services. The CWA may obtain current rate information by communicating with the [Division of Public Welfare, Bureau of Local Operations] **Division of Ecomonic Assistance, Office of County and Municipal Operation**. Such rate shall include all maintenance and care except medical services and shall be made as a vendor payment from the assistant account.

1. (No change.)

10:82-5.6 [Expenses incident to training] **(Reserved)**

[(a) An allowance for expenses incident to training shall be provided to the following persons, except when section 7 of this subchapter applies:

(b) An eligible child is a student regularly attending a full-time college or university, regardless of the type of program; regularly attending a course of vocational training other than the normal secondary school curriculum; or is participating in a work experience training program. See also N.J.A.C. 10:82-1.7 and 1.9.

(c) An eligible parent has a reasonable and feasible plan for full-time (as defined by the institution client is attending) vocational/educational training, other than the normal secondary school curriculum, which will lead to gainful employment and which meets the following criteria:

1. The individual has a specific vocational objective and there is a reasonable expectation that jobs will be available in the area of the objective;

2. The plan is reevaluated at the end of each term and at such other time(s) as the agency deems necessary;

3. The individual maintains the passing grades necessary to receive credit at the institution he/she is attending;

4. The individual has not left gainful employment solely for the purpose of additional training unless such training is designed to increase his/her earning capacity;

5. A new applicant who has been self-sustaining has not ceased his/her employment within the past months for the purpose of going to school and applying for assistance.]

10:82-5.7 [Disallowances; expenses incident to training] **Work/training allowances through REACH**

[(a) An allowance for expenses incident to training shall not be provided when:

1. An individual is employed and expenses of employment are being deducted from his/her earnings;

2. An individual is receiving an allowance or payment of any kind through the CETA program (see N.J.A.C. 10:82-4.6) or is receiving payment for training expenses through some other program, such as vocational rehabilitation;

3. An individual is participating in the WIN program;

4. An individual who is attending school is receiving a grant, scholarship or student loan under a Federal, State or other public or private program. (See N.J.A.C. 10:82-1.7.)]

Work/training allowances for expenses incident to REACH participation in work/training activities are set forth at N.J.A.C. 10:81-14.19. No other work/training allowances may be authorized. Those allowances shall be for expenses not otherwise provided through other resources (see N.J.A.C. 10:81-1.10.). The work/training allowance shall be paid by separate check to the assistance payee or authorized vendor. Payment shall be from the administrative account, Title IV-F.

10:82-5.8 [Monthly allowance; expenses incident to training] **(Reserved)**

[(a) The monthly allowance for expenses incident to training shall not exceed $50.00. This allowance shall be for all expenses not other-

wise provided through other resources, except that it shall not cover lunches or other food since these are included in the regular assistance grant.

(b) The training allowance shall be paid by separate check to the assistance payee. Payment shall be from the assistance account.]

10:82-5.9 [Child care payments] **(Reserved)**

[When the county welfare agency has determined that expenses for training are appropriate in accordance with N.J.A.C. 10:82-5.6(c), payment for child care shall be provided where necessary. (See N.J.A.C. 10:82-1.8(a)1 and sections 2 through 4 of this subchapter for regulations governing child care allowances.)]

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Temporary Certificate of Authority

Proposed New Rules: N.J.A.C. 11:1-29

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:33B-29.
Proposal Number: PRN 1990-429.

Submit comments by September 19, 1990 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

P.L. 1990, c.8 (N.J.S.A. 17:33B-1 et seq.) (enacted March 12, 1990) revises and supplements existing statutory law to reform the motor vehicle insurance system in this State. N.J.S.A. 17:33B-29 provides that the Commissioner of Insurance (Commissioner) may issue a temporary certificate of authority which authorizes an insurer to transact private passenger automobile insurance in this State to any insurer which: (a) is organized as a stock or mutual company; (b) is currently authorized and licensed to issue private passenger automobile insurance policies or make contracts of private passenger automobile insurance in one or more states of the United States; (c) meets the current capital or asset requirements of N.J.S.A. 17:17-1 et seq. for capital stock or mutual companies which insure private passenger automobiles; and (d) has complied with the deposit requirements pursuant to N.J.S.A. 17:20-1 et seq. N.J.S.A. 17:33B-29 additionally provides that a temporary certificate of authority shall be effective for a period of one year and may be renewed for only one additional year. It further provides that no temporary certificate of authority shall be issued or renewed on or after January 1, 1993. The statute thus creates a framework by which an insurer may be authorized to transact private passenger automobile insurance in this State while its application for formal admission pursuant to N.J.A.C. 11:1-10 is pending or upon certification by the insurer that it intends to file such an application within 180 days. Application for a temporary certificate of authority is not intended to be a means by which an insurer may circumvent formal admission requirements.

In order to implement this statute, the Department of Insurance (Department) proposes these new rules. These proposed new rules set forth the information that an applicant must submit to the Commissioner so that he or she may ascertain whether the applicant meets the requirements for the issuance of a temporary certificate of authority pursuant to N.J.S.A. 17:33B-29.

Since a temporary certificate of authority authorizes an insurer to transact private passenger automobile insurance while its formal application for admission is pending or upon certification by the insurer that it intends to file such an application within 180 days, the proposed rules provide that if an insurer fails to apply for a certificate of authority pursuant to N.J.A.C. 11:1-10 or meet the requirements contained therein, prior to the expiration of its temporary certificate of authority, an insurer applying for renewal is subject to additional requirements and restrictions. Specifically, such an insurer must submit a detailed statement explaining the reasons why it failed to apply for a formal certificate of authority or, if denied a formal certificate of authority, what actions it has taken and is taking to cure the deficiencies that resulted in denial. Pending the determination of such an insurer's application for renewal, the Commissioner may allow the insurer to continue to service existing business pursuant to terms and conditions he or she may establish. In addition, if the Commissioner approves such an insurer's application for renewal, he or she may impose additional terms and conditions to be met within specified time periods. Failure to meet any term or condition within the time prescribed may result in the revocation of the temporary certificate of authority.

The proposed rules further provide that if an insurer has not been issued a formal certificate of authority, the insurer shall submit a plan of orderly withdrawal pursuant to N.J.S.A. 17:33B-30 not later than 90 days prior to the expiration of a renewed temporary certificate of authority or the expiration of any temporary certificate of authority issued on or after January 1, 1992.

The Department believes that these restrictions and requirements are necessary to reduce the extent of market disruptions that may occur from an insurer's cessation of transacting private passenger automobile insurance in this State due to the expiration of its temporary certificate of authority and its failure to obtain a "formal" certificate of authority.

Proposed N.J.A.C. 11:1-29.1 and 29.2 set forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-29.3 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:1-29.4 provides the filing requirements for the issuance of a temporary certificate of authority.

Proposed N.J.A.C. 11:1-29.5 provides the requirements for the renewal of a temporary certificate of authority.

Proposed N.J.A.C. 11:1-29.6 provides that all insurers transacting business pursuant to a temporary certificate of authority are subject to all applicable insurance laws and regulations of this State.

Proposed N.J.A.C. 11:1-29.7 provides the penalties for violations of this subchapter.

Proposed N.J.A.C. 11:1-29.8 provides that the sections of this subchapter are severable.

Social Impact

The filing requirements contained in these proposed rules impose no undue burden on insurers seeking to obtain a temporary certificate of authority in that the information required is readily available.

In addition, insurers will benefit in that these new rules provide a mechanism by which an insurer may obtain authorization to transact private passenger automobile insurance in this State while its application for a "formal" certificate of authority is pending or upon certification by the insurer that it intends to file such an application within 180 days.

Finally, the public is expected to benefit from any expansion of the private passenger automobile insurance market that may occur as a result of the authorization of private passenger automobile insurers while applications for formal admission are pending or upon certification by the insurer that it intends to file such an application within 180 days.

Economic Impact

Since the information required is readily available, the filing requirements contained in these proposed rules impose no undue economic burden on insurers seeking to obtain a temporary certificate of authority.

Additionally, since a temporary certificate of authority is a means by which an insurer may be authorized to transact private passenger automobile insurance while its application for formal admission is pending or upon certification that such an application will be filed within 180 days, the requirement that insurers apply for a certificate of authority pursuant to N.J.A.C. 11:1-10 and meet the admission requirements contained therein imposes no additional economic burden on such insurers.

Furthermore, insurers and the public are expected to benefit from any expansion of the private passenger automobile market as a result of insurers being authorized to transact private passenger automobile insurance while applications for formal admission are pending.

Finally, the proposed rules may impose an additional economic burden on the Department in that Department personnel will be required to review the data submitted for action by the Commissioner.

Regulatory Flexibility Statement

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

Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed rules apply to foreign and alien insurers only, and thus do not apply to businesses resident in this State.

Full text of the proposal follows:

SUBCHAPTER 29. TEMPORARY CERTIFICATE OF AUTHORITY

11:1-29.1 Purpose

This subchapter sets forth the filing requirements for an insurer to obtain a temporary certificate of authority which authorizes an insurer to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:33B-29 while its application for a formal certificate of authority pursuant to N.J.A.C. 11:1-10 is pending or upon certification by the insurer that it intends to file such an application within 180 days of the date of its application for a temporary certificate of authority.

11:1-29.2 Scope

This subchapter applies to all insurers seeking to obtain a temporary certificate of authority to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:33B-29.

11:1-29.3 Definitions

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

"Actuary" means a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Annual Statement" means the form of statement that is described in N.J.S.A. 17:23-1.

"Applicant" means an insurer, presently authorized to transact private passenger automobile insurance in another state, which is applying for a temporary certificate of authority to transact private passenger automobile insurance in this State while its application for a "formal" certificate of authority pursuant to N.J.A.C. 11:1-10 is pending or upon certification that it intends to file such an application within 180 days of the date of its application for a temporary certificate of authority.

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

"Formal certificate of authority" means a certificate of authority issued pursuant to N.J.S.A. 17:32-1 et seq. and N.J.A.C. 11:1-10.

"NAIC" means the National Association of Insurance Commissioners.

"Private passenger automobile insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2.

"Temporary certificate of authority" means a certificate issued by the Commissioner pursuant to N.J.S.A. 17:33B-29 and this subchapter which authorizes an insurer to transact the business of private passenger automobile insurance in this State.

11:1-29.4 Temporary certificate of authority; issuance

(a) The Commissioner may issue a temporary certificate of authority which authorizes an insurer to transact the business of private passenger automobile insurance in this State to any insurer which:

1. Is organized as a stock or mutual company;

2. Is currently authorized and licensed to issue private passenger automobile insurance policies or make contracts of private passenger automobile insurance in one or more states of the United States;

3. Meets the current capital or asset requirements of N.J.S.A. 17:17-1 et seq. for capital stock or mutual companies which insure private passenger automobiles. The Department shall make an adjustment of surplus regarding all applicants as follows:

i. There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

ii. All applicants shall include in their Annual Statement a provision for unauthorized reinsurance pursuant to the calculation required in page 3 of the Annual Statement blank for Liabilities, Surplus and Other Funds in connection with the reinsurance in all companies not authorized to transact business in New Jersey. Where the liability is based on the calculation for some other state, the Commissioner may accept an amount of these items slightly larger than that required for New Jersey. This penalty may be adjusted for subsequent legal action regarding the license status of reinsurers in the State of New Jersey or in other jurisdictions; and

4. Has complied with the deposit requirements pursuant to N.J.S.A. 17:20-1 et seq.

(b) Any insurer applying for a temporary certificate of authority shall submit the following to the Commissioner:

1. A completed admission application form on a form provided by the Commissioner;

2. A certified copy of the applicant's certificate of incorporation;

3. Certified copies of the applicant's certificate of authority and certificate of good standing from the applicant's state of domicile;

4. A certified copy of the applicant's most recent Annual Statement;

5. A statement of opinion, by a qualified actuary, relating to the applicant's loss and loss adjustment expense reserves for all lines of business written by such applicant, containing the information required by N.J.A.C. 11:1-21 or a certified copy of the applicant's most recent loss reserve opinion statement required by the applicant's state of domicile;

6. An annual audited financial report conforming to the requirements of N.J.A.C. 11:2-26 or a certified copy of the applicant's most recent audited financial report required by the applicant's state of domicile which is substantially similar to the report required by N.J.A.C. 11:2-26;

7. A certified copy of the applicant's certificate of deposit which shall show that such applicant has complied with the deposit requirements in N.J.S.A. 17:20-1 et seq.;

8. A certified copy of a report of the most recent examination of the applicant's affairs by the department of insurance or its equivalent, of the applicant's state of domicile;

9. An appointment, by the applicant, of the Commissioner as attorney for service of process on a form provided by the Commissioner;

10. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as the Commissioner may require;

11. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the applicant's state of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

12. Modified NAIC biographical affidavits to be completed by all directors and senior officers of the applicant on a form prescribed and provided by the Department;

13. A listing of all administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates or any of its directors or principal officers have been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony or its equivalent in a jurisdiction which does not use this designation of a crime, such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings and determinations related thereto;

14. A corporate plan of operation, including, but not limited to, a summary of the applicant's reinsurance program on assumed and ceded business, indicating the names of the reinsurers, retentions, maximum risks, types of contracts (such as pro rata), excess of loss and any other information which may be relevant to this part of the applicant's operation. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant; and

15. A statement certified by an officer of the applicant that:

i. The applicant has filed, or intends to file within 180 days of the date of its application for a temporary certificate of authority, an application for formal admission pursuant to N.J.A.C. 11:1-10; and

ii. The applicant is familiar with the requirements for formal admission set forth in N.J.A.C. 11:1-10 and believes that it meets or will meet these requirements. The statement shall also indicate any waiver the applicant intends to request pursuant to N.J.A.C. 11:1-10.4(a)5iii.

(c) Any application for a temporary certificate of authority shall be deemed approved if not disapproved by the Commissioner within 30 days from the receipt of an application which, in the opinion of the Commissioner, contains all of the information required by (b) above.

11:1-29.5 Temporary certificate of authority; renewal

(a) A temporary certificate of authority shall be effective for a period of one year and may be renewed for only one additional year. No temporary certificate of authority shall be issued or renewed on or after January 1, 1993.

(b) If the temporary certificate of authority will expire prior to the issuance of a formal certificate of authority, the insurer shall apply for renewal of its temporary certificate of authority by filing an application containing the information specified in N.J.A.C. 11:1-29.4(b)3, 4, 5, 6, 7, 8 and 10, and any changes or amendments to the other information submitted for the initial application. Applications for renewal must be submitted not earlier than 60 days nor later than 30 days prior to the expiration of the temporary certificate of authority.

(c) If the Commissioner finds that the insurer has failed to apply for a formal certificate of authority, has failed to actively pursue gaining formal admission or has been denied a formal certificate of authority, prior to the expiration of its temporary certificate of authority, such insurer may apply to renew its temporary certificate of authority as provided in (b) above.

1. The insurer shall also submit a detailed statement explaining why it has failed to apply for a formal certificate of authority, has failed to actively pursue gaining formal admission or, if denied a formal certificate of authority, what actions it has taken and is taking to cure the deficiencies that resulted in denial.

2. Pending a determination of such insurer's application for renewal, the Commissioner may permit the insurer to continue to service existing business pursuant to terms and conditions he or she may impose.

3. Any temporary certificate of authority renewed pursuant to this subsection may be subject to terms and conditions to be met within specified periods of time as determined by the Commissioner. Failure to meet any term or condition within the time prescribed may result in the revocation of the insurer's temporary certificate of authority.

(d) If an insurer has not been issued a formal certificate of authority, the insurer shall submit a plan of orderly withdrawal pursuant to N.J.S.A. 17:33B-30 containing information that the Commissioner may prescribe not later than 90 days prior to the expiration of the renewed temporary certificate of authority or the expiration of a temporary certificate of authority issued on or after January 1, 1992. Upon review and approval of the plan of orderly withdrawal, the Commissioner may extend the duration of the temporary certificate of authority for the time deemed necessary to effectuate the approved plan.

11:1-29.6 Applicability of insurance laws

All insurers authorized to transact business pursuant to a temporary certificate of authority are subject to all applicable laws in Subtitle 3 of Title 17 of the Revised Statutes and all applicable regulations in Title 11 of the New Jersey Administrative Code.

11:1-29.7 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

11:1-29.8 Severability

If any section of this subchapter is held to be invalid, the remaining parts of this subchapter are not to be affected.

(a)

DIVISION OF FRAUD

Towing and Storage Fee Schedule for Private Passenger Automobiles Damaged or Stolen

Proposed New Rules: N.J.A.C. 11:3-38

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: P.L. 1990, c.8, section 60 (N.J.S.A. 17:33B-47).

Proposal Number: PRN 1990-428.

Submit comments by September 19, 1990 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Fair Automobile Insurance Reform Act of 1990, ("FAIR Act") section 60 of P.L. 1990, c.8 (N.J.S.A. 17:33B-47) directs the Commissioner of Insurance ("Commissioner") to promulgate towing and storage fee schedules on a regional basis for the reimbursement of towing charges and storage charges for private passenger automobiles that are damaged in accidents or recovered after being stolen. The towing and storage fee schedules set forth in these proposed new rules represent the initial effort of the Department of Insurance ("Department") to develop fee schedules and implement the new law.

The Department surveyed insurance carriers in New Jersey regarding their reimbursement costs as a result of having an insured's automobile towed or stored after it has been stolen or damaged in an accident. The Department further collected data relating to storage and towing fees from storage facilities and towing operators. The proposed new rules reflect the results of the Department's analysis of this information.

The proposed new rules provide towing fee schedule rates for services that include a basic fee plus a mileage charge. These rules provide a higher basic fee for towing services provided during the night, weekends or State holidays.

The storage fee schedule provides a daily fee based upon the type of storage facility, depending on whether it is an inside storage facility, a secured outside facility or an unsecured outside facility. The schedule sets forth different rates for each type of storage facility based on its automobile storage capacity.

In analyzing the amount of towing and storage fees actually paid by insurers, the Department noted that towing and storage fees were generally higher in the northern region of the State than they were for similar services offered in the southern region of the State. The Department's fee schedule establishes two regions which sets forth different rates for counties in the two regions.

A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:3-38.1 states the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-38.2 provides the definitions for terms that are used in the proposed new rules.

N.J.A.C. 11:3-38.3 provides the list of counties that are in regions 1 and 2.

N.J.A.C. 11:3-38.4 sets forth specific rules for the application of the schedules.

N.J.A.C. 11:3-38.5 consists of the towing and storage fee schedules.

Social Impact

The proposed new rules will affect automobile insurers and those who provide towing services and storage services. The proposed new rules will have a positive social affect in carrying out the legislative policy to control the cost to insurers for the reimbursement of towing and storage charges for private passenger automobiles that are damaged in accidents or are recovered after being stolen. The rules provide maximum towing and storage fee limits for which a person may be liable to those providing these services for a private passenger automobile which was damaged in an accident or recovered after being reported stolen.

Economic Impact

The proposed new rules are expected to reduce or contain the amount of towing and storage expenses paid by insurers, which are reflected in

the rates paid by purchasers of automobile insurance policies. The Department acknowledges that some towing services and storage facilities may experience a reduction in the revenue that they were receiving for providing towing and storage services for the automobiles damaged in an accident or stolen. The purpose of these rules is to establish a reasonable schedule in accordance with the FAIR Act in order to contain these costs.

Regulatory Flexibility Analysis

These proposed rules may apply to "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses are providers of automobile towing and storage services.

These proposed new rules implement N.J.S.A. 17:33B-47 which requires the Commissioner to promulgate a towing and storage fee schedule. The towing and storage fee schedule contained in the rules sets forth the maximum amount a provider of these services may charge for the towing and storage of private passenger automobiles damaged in an accident or recovered after being reported stolen. No record keeping or reporting requirements are mandated; rather, the rules simply limit what may be charged. No professional or other services are required in order to comply.

The towing and storage fee schedule set forth in these proposed rules applies equally to all businesses covered by its terms. There is no statutory basis for different treatment of small businesses. Different treatment of small businesses may, in fact, be contrary to the intent of the statute.

Full text of the proposal follows:

SUBCHAPTER 38. TOWING AND STORAGE FEE SCHEDULE

11:3-38.1 Purpose and scope

(a) The purpose of this subchapter is to establish towing and storage fee schedules on a regional basis pursuant to N.J.S.A. 17:33B-47 for the reimbursement of towing charges and storage charges for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State and to all persons who provide towing and storage services in this State for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

11:3-38.2 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; and a motor vehicle with a pickup body, or 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 meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Commissioner" means the New Jersey Commissioner of Insurance.

"Department" means the New Jersey Department of Insurance.

"Inside building" means a vehicle storage facility that is completely indoors having one or more openings in the walls for storage and removal of vehicles and that is secured by a locking device on each opening.

"Motor vehicle accident" means an occurrence in which a private passenger automobile comes in contact with any other object for which the private passenger automobile must be towed or removed for placement in a storage facility.

"Tow vehicle's base of service" means the towing operator's principal place of business where the tow vehicle is stationed when not in use.

"Outside secured" means an automobile storage facility that is not completely indoors and that is secured by a fence, wall or other man-made barrier that is at least six feet high and is installed with a passive alarm system or a similar on-site security measure is employed. The facility is to be lighted at night.

"Outside unsecured" means an automobile storage facility that is not indoors and is not secured by a fence, wall or other man-made barrier, and all other storage facilities not defined above as inside building or outside secured.

"Storage charges per 24 hour period" means the maximum allowable amount to be charged by a storage facility for a 24 hour period or fraction thereof. A new 24 hour period begins at 12:01 A.M.

"Tow vehicle" means only those vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or under-reach equipment specifically designed by its manufacturer for the removal or transport of private passenger automobiles.

11:3-38.3 Regions

(a) Region I, as used in this subchapter, consists of the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem.

(b) Region II, as used in this subchapter, consists of the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren.

11:3-38.4 Application for storage and towing fee schedule

(a) No person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being reported stolen for any fees in excess of those permitted by the towing and storage fee schedules established in this subchapter.

(b) The region used to determine the proper fee set forth on the schedules shall be determined by the region in which the services are rendered or the equipment is provided.

1. For towing services, the fee shall be based on the region in which the tow vehicle's base of service is located.

2. For storage services, the fee shall be based on the region in which the facility is located.

(c) The fee schedules shall be reviewed by the Commissioner on an annual basis and may be revised if necessary.

(d) The fees set forth on the schedule for towing rates are the maximum charges that shall apply to a private passenger automobile towed by a tow vehicle as a result of an accident or theft recovery.

1. The towing rates shall be calculated based on the total distance travelled from the tow vehicle's base of service to the job site and return, by way of the shortest available route. Fractions shall be rounded up to the nearest whole mile.

2. Tow vehicles transporting multiple passenger cars at one time shall receive the applicable fees for each vehicle transported.

3. When towing services are required at the scene of an automobile accident, the Day rate shall apply when the time of the accident is between 8:00 A.M. and 4:30 P.M., Monday through Friday, except New Jersey State holidays. The Night, Weekend and Holiday rate shall otherwise apply.

4. When towing services are otherwise required, the Day rate shall apply when the vehicle is transported (pickup to delivery) entirely between the hours of 8:00 A.M. and 6:00 P.M., Monday through Friday, except New Jersey State holidays. The Night, Weekend and Holiday rate shall otherwise apply.

(e) The fees set forth on the schedule for storage fees are the maximum storage charges per 24 hour period that shall apply to a private passenger automobile that is stored by a person as a result of an accident or theft recovery.

11:3-38.5 Towing and storage fee schedules

(a) The following is the fee schedule for towing services:

Days	Region 1	2
First mile or less	$35.00	$40.00
Each additional mile	$ 1.75	$ 1.75
Nights, Weekends and New Jersey State Holidays		
First mile or less	$45.00	$50.00
Each additional mile	$ 1.75	$ 1.75

(b) The following is the fee schedule for storage services:

Inside Building: Storage Facility Capacity	Region 1	2
21 or more spaces	$13.00	$15.00
10-20 spaces	$18.00	$20.00
Less than 10 spaces	$22.00	$25.00
Outside Secured: Storage Facility Capacity	Region 1	2
21 or more spaces	$ 9.00	$10.00
10-20 spaces	$11.00	$12.00
Less than 10 spaces	$13.00	$15.00
Outside Unsecured: Storage Facility Capacity	Region 1	2
21 or more spaces	$ 7.00	$ 8.00
10-20 spaces	$ 9.00	$10.00
Less than 10 spaces	$10.00	$12.00

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Automobile Insurance

Appeals from Denial of Automobile Insurance and Insurance Producer Solicitation Under the "Fair Automobile Insurance Reform Act of 1990"

Proposed Amendment: 11:17A-1.2

Proposed New Rules: 11:17A-1.7 and 11:3-33

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: P.L. 1990, c.8; N.J.S.A. 17:1C-6(e).

Proposal Number: PRN 1990-430.

Submit comments by September 5, 1990 to:

Verice M. Mason
Assistant Commissioner
Department of Insurance
Division of Legislative and Regulatory Affairs
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment and new rules implement provisions of the "Fair Automobile Insurance Reform Act of 1990" (P.L. 1990, c.8, hereinafter "Act") (N.J.S.A. 17:33B-1 et seq.) relating to insurance producers and insurers with respect to the declination and solicitation of automobile insurance. Specifically, the proposal implements N.J.S.A. 17:33B-13 through 18 and 17:33B-21 by:

1. Proposing rules concerning an insurance producer's duty to assist in providing automobile insurance for all eligible persons; and

2. Proposing rules concerning complaint procedures for persons who believe that they have been improperly denied automobile insurance in the voluntary market.

Concerning item 1 above, in addition to codifying relevant statutory provisions for organizational and informational purposes, the rules require insurance producers to provide applicants with premium quotations for the forms or types of coverage which are offered by all insurers represented by the agent or broker with whom he places risks, BEFORE application for coverage with an insurer is made. This requirement clarifies the statutory language. The proposed rules also require that an insurance producer must advise an applicant, in writing, within 10 days of receiving a declination of coverage from an insurer when written application is made. The 10-day period also applies to cases under the Act where an applicant requests an insurance producer to provide him with a written declination where the application or request for coverage was made orally. The rules clarify that in addition to revocation of licensure, the Commissioner may impose upon an insurance producer a civil penalty of up to $2,000 for the first violation and of up to $5,000 for the second and each subsequent violation. Finally, consistent with the Act, the rules provide that insurance producers cannot bind coverage for new policies or provide a renewal of auto physical damage coverage without an inspection of the vehicle, when required by law.

The proposed new rules also establish a complaint procedure for persons who believe that they have been improperly denied automobile insurance in the voluntary market, in implementation of N.J.S.A. 17:33B-17d. The following provisions apply:

1. Appeals from a denial of automobile insurance in the voluntary market must be made within 90 days of the date of a written declination by an insurer or insurance agent on a form prescribed by the Department of Insurance.

2. The above-noted form requests a copy of the written declination and a statement from the person denied coverage in the voluntary market indicating the reasons why the denial is incorrect.

3. Upon receipt of the form by the Department, the Department will provide the insurer or agent with a copy and request a response within 30 days.

4. After receipt of the insurer's or agent's response, the Commissioner will issue a written decision "on the papers".

5. Appeals from decisions of the Commissioner will be heard as contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

It should be noted that these proposed rules establish processes and procedures, not substantive rights to automobile insurance coverage. Therefore, these proposed rules include a special provision regarding compliance, N.J.A.C. 11:3-33.9, which cross-references the statutory provision concerning these substantive rights, N.J.S.A. 39:6A-3 and N.J.S.A. 17:33B-15.

Social Impact

The proposed new rules fulfill several of the Department's implementing obligations under the "Fair Automobile Insurance Reform Act of 1990."

Insurance producers and insurers are provided with clarification as to their obligations under the relevant sections of the Act, concerning declination of coverage and attendant complaint procedures.

The consumer is provided with a clear and simple complaint mechanism by which he can appeal a denial of insurance coverage in the voluntary market. Consumers will also benefit from the time requirements imposed on insurance producers and insurers to provide a written declination.

Economic Impact

As distinct from the underlying statutory provisions which they implement, the proposed rules do not themselves impose any appreciable economic impact on insurers or insurance producers. The 10-day requirement for providing applicants with written declinations should not impose an economic burden on insurers or agents, nor should the 30-day response provision concerning appeals from a denial of insurance in the voluntary market. Insurance producers and insurers will be required to expend resources and time to provide written declinations and to respond to consumer complaints. Insurance producers and insurers will also be required to provide to persons denied insurance in the voluntary market an appeal form and cover letter prescribed by the Department.

The Department of Insurance will incur costs associated with the preparation and review of complaint forms and with the decisional process.

Regulatory Flexibility Statement

The proposed new rules will affect insurers authorized to write automobile insurance in New Jersey and insurance producers who service such policies (insurance agents and insurance brokers who have a brokerage relationship with an insurer). While few, if any insurers, are "small businesses" as defined at N.J.S.A. 52:14B-16 et seq., most insurance producers are "small businesses".

The compliance requirements imposed by the new rules are largely a function of the underlying statutory mandate and are clearly expressed in the rules themselves. Specific compliance requirements imposed by these rules include the requirement that declinations be issued to consumers within 10 days and that insurers and insurance producers file a written response to an appeal from a declination denying auto insurance in the voluntary market within 30 days. Insurers and insurance producers will also be required to supply persons who have been denied insurance with a form for appeal to the Department. The rules do not impose reporting or recordkeeping requirements on insurers or insurance producers. As noted above, insureds and prospective insureds are required by the rules to appeal a denial of automobile insurance in the voluntary market on a form provided by the Department and to file same with the Department within 90 days of the date of the denial. Since the underlying statutory authority does not allow for disparate treatment for "small businesses," the rules apply equally to all insurers and insurance producers affected by their provisions.

Initial and annual capital costs of compliance will vary depending upon the number of appeals from denials of coverage in the voluntary market. Accordingly, some costs may be controlled by the insurer and insurance producer.

The Department believes that the rules will not require insurers or insurance producers to hire additional professional or non-professional staff. However, this too will depend upon the number of appeals that are made.

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

11:17A-1.2 Definitions

. . .

"Declination" means:

1. Refusal by an insurance agent to submit an application on behalf of an applicant to any of the insurers represented by the agent;

2. Refusal by an insurer to issue an automobile insurance policy to an eligible person upon receipt of an application for automobile insurance;

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an eligible person, including the refusal to make requested changes to an existing policy and the offer to insure or renew at a less favorable rate level which is unacceptable to an insured or prospective insured;

4. The refusal by an insurer or agent to provide, upon the request of an eligible person, an application form or other means of making an application or request for automobile insurance coverage;

5. The refusal by an insurer to renew a policy of automobile insurance; or

6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium.

"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.

. . .

11:17A-1.7 Private passenger automobile insurance solicitation

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

1. Not engage in any activity which may be construed as an attempt to channel an eligible person away from an insurer or insurance coverage so as to avoid the agent's or broker's obligation to submit an application or an insurer's obligation to accept an eligible person;

2. Provide each eligible person seeking automobile insurance with premium quotations for the forms or types of coverage which are offered by all insurers represented by the agent or broker with whom the agent or broker places risks. The agent or broker shall provide quotations to the eligible person, orally if the request was oral or in writing if the request was written, before application for coverage with an insurer is made;

3. Upon request, submit an application of an eligible person for automobile insurance to the insurer selected by the eligible person;

4. Within 10 days after receiving a declination (see N.J.A.C. 11:3-33) from an insurer to which a written application has been submitted, so advise the applicant in writing. Further, where no written application has been made prior to declination, the agent or broker shall, if so requested by the applicant within 90 days, provide the applicant with a written explanation of the declination within 10 days of the request. Such communication shall, when applicable, include the reasons why coverage offered is with less favorable terms or conditions than those requested; and

5. For new policies, not bind coverage for automobile physical damage perils prior to inspection of the automobile by the insurer, and, for renewals, shall not provide automobile physical damage coverage prior to inspection if the insurer requires such inspection. See N.J.A.C. 11:3-32.

(b) For the purpose of this section, automobile insurance means insurance for an automobile as defined at N.J.S.A. 39:6A-2, including any or all of the following coverages: bodily injury liability and property damage liability, comprehensive and collision coverages, uninsured or underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

(c) For the purpose of this section, in addition to any other penalty, the Commissioner of Insurance may impose a civil penalty in an amount of up to $2,000 for the first violation and up to $5,000 for the second and each subsequent violation, in accordance with law.

Recodify existing N.J.A.C. 11:17A-1.7 and 1.8 as **1.8 and 1.9** (No change in text.)

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

11:3-33.1 Purpose; scope

This subchapter sets forth an appeal procedure for a person who has been denied automobile insurance in the voluntary market by an insurer who is not exempt pursuant to N.J.S.A. 17:33B-19, in implementation of N.J.S.A. 17:33B-17. The appeal procedures set forth herein shall apply to persons who have been nonrenewed on the grounds that they are not eligible for insurance in the voluntary market as set forth in N.J.A.C. 11:3-8.4(a).

11:3-33.2 Definitions

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

"Applicant" means an insured or prospective insured who has made a request for automobile insurance on either a first time or renewal basis.

"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; and 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 meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Automobile insurance" means insurance for an automobile including any or all 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 of New Jersey or his or her designee.

"Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decision, determination, or order, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

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

"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.4.

"Insurance agent" or "agent" means an insurance agent as defined at N.J.S.A. 17:22A-2 and shall also include an "insurance broker" as defined at N.J.S.A. 17:22A-2 who has a brokerage relationship with an insurer.

"Insurer" means any insurer authorized or admitted to write automobile insurance in New Jersey, but does not include any residual market mechanism created by any statute.

"Person" means an individual, association, corporation, partnership or other entity.

"Voluntary market" means automobile insurance written other than through a plan of operation established pursuant to N.J.S.A. 17:29D-1 et seq., 17:30E-1 et seq. or 17:33B-11.

11:3-33.3 Right to appeal

Any person who has been denied automobile insurance in the voluntary market by an insurer shall be entitled to appeal the denial in the manner provided by this subchapter.

11:3-33.4 Duties of insurer or insurance agent

(a) If the application or request for coverage was made in writing, the insurer or agent shall provide the applicant with an explanation of the reasons for the denial in writing. If the application or request for coverage was made orally, the insurer or agent may provide the applicant with an oral explanation instead of a written explanation, and shall provide a written explanation if the applicant requests a written explanation within 90 days of the oral denial.

(b) An insurer or agent, upon denying automobile insurance in the voluntary market, shall, within 10 calendar days of its determination when written application is made, or within 10 calendar days of a request for a written determination when oral application is made, notify the applicant, in writing, of each specific reason for the denial. The reasons provided by an insurer or insurance agent shall be comprehensive and written in plain language. The reasons shall identify the specific basis on which the applicant fails to qualify as an "eligible person."

(c) An insurer or agent who has issued a denial shall notify an applicant of his right to appeal to the Department pursuant to the provisions of this subchapter. As part of this notification, an insurer or agent shall provide an applicant with the letter and appeal form which comprise the Appendix to this subchapter. For nonrenewals, the insurer shall provide the notice set forth in N.J.A.C. 11:3-8.3 in lieu of any other notice.

11:3-33.5 Procedure for filing an appeal

(a) Appeals from a denial of automobile insurance in the voluntary market shall be submitted to the Department, on a form prescribed by the Department (see the Appendix to this subchapter, which is incorporated herein by reference as part of this rule), within 90 days of the date of a written denial from an insurer or insurance agent. In addition to the obligation of an insurer or agent to provide a person with this form upon a denial of initial coverage (see N.J.A.C. 11:3-33.4(c)), copies of this form can be obtained by contacting the Department by telephone (609) 984-2426; or by mail at the address below:

Department of Insurance
Division of Enforcement and Consumer Protection
Attn: Auto Insurance Denial
20 West State Street
CN 329
Trenton, New Jersey 08625

The form prescribed by the Department shall be completed and submitted to the address above and shall include, at a minimum, the following information:

1. A copy of the written denial obtained from the insurer or agent pursuant to N.J.S.A. 17:33B-16 and N.J.A.C. 11:3-33.4. When a person receives an oral denial, he or she shall request a written denial as provided by N.J.A.C. 11:3-33.4; and

2. A statement from the person who has received a denial of coverage, including supporting documentation, if any, indicating the reasons why the denial is incorrect.

11:3-33.6 Processing appeals

(a) Upon receipt of an appeal submitted in accordance with N.J.A.C. 11:3-33.5, the Department shall send to the insurer and/or insurance agent who provided the written denial, a copy of all pertinent documents which have been submitted by the appellant, and shall require a final written response within 30 days of the receipt of these documents.

(b) Upon receipt of the insurer's response to the appeal, and upon review of the papers, the Commissioner shall render his or her decision on the appeal. The decision shall be in writing and shall set forth the reasons why the denial was appropriate or inappropriate under law. Copies of the Commissioner's decision shall be mailed to the appellant and to the insurer or insurance agent, as the case may be. The Commissioner's decision shall also include a written notice explaining the procedures for appealing the decision pursuant to N.J.A.C. 11:3-33.7.

(c) The failure of an insurer or agent to timely respond pursuant to (a) above shall be grounds for a determination by the Commissioner that the denial was improper and the Commissioner shall require that the requested coverage be provided. Coverage shall be provided, reinstated or renewed immediately upon receipt by an insurer or agent of a decision favorable to an insured or prospective insured.

11:3-33.7 Contested case hearings; pleadings

(a) An appeal from a decision of the Commissioner made pursuant to N.J.A.C. 11:3-33.6 shall be heard as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1-1.

(b) The procedure for filing an appeal from the Commissioner's decision in N.J.A.C. 11:3-33.6 shall be as follows:

1. Upon receipt of the decision of the Commissioner, the insurer, agent or person denied automobile insurance shall, within 20 calendar days of receipt of the decision, unless this period is extended by the Commissioner for good cause and in the interest of justice, file with the Department a written request for a contested case hearing. If there is a failure to timely file an appeal as required by this section the Commissioner's decision shall remain the final agency action pursuant to N.J.A.C. 11:3-33.6. The request shall contain the following information.

i. The name and address of the appellant;

ii. If the appellant is the person denied insurance, the name and address of the insurance company and/or insurance agent which issued the denial of automobile insurance. If the appellant is the insurance company, the name and address of the insurance agent who issued the denial of coverage, if any, and the name and address of the person to whom automobile insurance was denied;

iii. A statement, explaining in detail, the reasons why the Commissioner's determination is erroneous, including the filing therewith of supporting documentation, if any; and

iv. A statement as to whether the appellant is represented by legal counsel, or another person, pursuant to N.J.A.C. 1:1-5.1, and the name, address and telephone number of said person.

(c) Upon receipt of the items set forth in (b) above within the time provided, the Department shall send a copy of the documents to the opposing party and shall transmit the matter to the Office of Administrative Law for hearing as a contested case.

11:3-33.8 Penalties

Any insurer or insurance producer who violates any provision of this subchapter shall be subject to the penalties provided by law, including, but not limited to, the suspension or revocation of a certificate of authority or licensure and a civil penalty in an amount of up to $2,000 for the first violation and of up to $5,000 for the second and each subsequent violation, pursuant to N.J.S.A. 17:33-2.

11:3-33.9 Compliance

(a) Pursuant to N.J.S.A. 39:6A-3 and 17:33B-15, compliance with the provisions of this subchapter shall be affected in the following manner:

1. Appeals from denials concerning new policies may be filed in the manner prescribed by this subchapter on or after April 1, 1992; and

2. Appeals from denials concerning policy renewals may be filed in the manner prescribed by this subchapter on or after the date of the

promulgation of rules concerning "eligible persons" (N.J.A.C. 11:3-34) and amendments to rules concerning nonrenewals (N.J.A.C. 11:3-8).

APPENDIX TO SUBCHAPTER 33

Dear Applicant,

The "Fair Automobile Insurance Reform Act of 1990" (Act) provides that on or after April 1, 1992, every insurer, either by one or more separate rating plans, shall provide automobile insurance for eligible persons.

Therefore, an insurer may deny coverage only to those applicants who are not eligible. New Jersey law provides that any person who owns or has registered an automobile in New Jersey or a person who has a valid New Jersey drivers license is eligible except a person:

1. Who, in the last three years, has been convicted of driving under the influence or refusing a chemical test in New Jersey or elsewhere;
2. Who, in the last three years, has been convicted of a crime involving an automobile;
3. Whose driving license is suspended or revoked by a court;
4. Who, in the last five years, has been convicted of fraud or intent to defraud involving an insurance claim or application;
5. Who, in the last five years, has been denied payment of an insurance claim in excess of $1,000, if there was evidence of fraud or intent to defraud;
6. Whose automobile insurance policy, in the last two years, was cancelled because of nonpayment of premium or financed premium (unless the entire annual premium for the new coverage is paid in full before issuance or renewal);
7. Who fails to maintain membership in a club, group or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance;
8. Whose driving record, for the last three years, has an accumulation of nine or more eligibility points. (Eligibility points are accumulated as a result of convictions, suspensions, revocations and determination of responsibility for civil infractions in accordance with schedules adopted by the New Jersey Department of Insurance. For example, one at-fault accident has been assigned five eligibility points.)

NOTE: The above description is a simplification of the statutory definition. For a more extensive description, see the New Jersey Administrative Code at *N.J.A.C.* 11:3-34.

The Commissioner of Insurance has established an appeal process for persons who have been denied automobile insurance. The procedure for filing a written appeal can be found in the New Jersey Administrative Code at *N.J.A.C.* 11:3-33. Most New Jersey public libraries have this material.

To begin the appeal process, you must complete the attached form and mail it, with the necessary documentation, to the address indicated.

NOTE: YOU HAVE 90 DAYS FROM THE DATE ON WHICH A WRITTEN DENIAL OF AUTOMOBILE INSURANCE IS MADE TO FILE THIS APPEAL.

NEW JERSEY DEPARTMENT OF INSURANCE
AUTOMOBILE DECLINATION APPEAL

Your Name: _____

Your Address: _____

_____

Your Telephone Number: (____) _____

Insurance Company and/or Insurance Producer (agent or broker) that declined your application for automobile insurance coverage in the voluntary market (if producer, please provide the name and address):

Company _____

Producer _____

YOU MUST ATTACH A COPY OF THE DECLINATION (If you have not received a written declination from the insurance company or producer, you must request one within 90 days of your application for insurance.)

BASIS FOR YOUR APPEAL (Please indicate with an "X" those statements or reasons that apply and attach a copy of pertinent documentation supporting your appeal. Such documentation should include a certified motor vehicle driver "abstract", available from the Division of Motor Vehicles, where appropriate.)

- ☐ I have not been convicted of Driving Under the Influence (*N.J.S.A.* 39:4-50) or of refusing to submit to a chemical test (*N.J.S.A.* 39:4-50.4(a)), or for a similar offense in another jurisdiction, or of a crime involving an automobile or theft of a motor vehicle.
- ☐ My driver's license is not suspended or revoked, nor has it been for any 12-month period in the preceding three years.
- ☐ I have not been convicted of insurance fraud or intent to defraud, or had an insurance claim (in excess of $1,000) denied because of evidence of fraud within the five-year period immediately preceding application or renewal.
- ☐ My auto insurance has not been cancelled for nonpayment of premium within the last two years OR I have had my policy cancelled for nonpayment AND I am able to pay the full annual premium for this policy.
- ☐ I am qualified as a member of a group or organization in which membership is required in order to obtain this insurance policy.
- ☐ I have fewer eligibility points accumulated than alleged the declination letter as evidenced by the attached copy of my driving record.
- ☐ The accident record indicated in the declination letter is wrong as evidenced by the attached.
- ☐ Other (Specify and provide proof, if appropriate).

CERTIFICATION OF APPEAL

The information contained in this appeal is true and complete to the best of my knowledge and belief.

Your Signature _____ Date _____

MAIL THIS COMPLETED FORM AND NECESSARY DOCUMENTATION TO:

New Jersey Department of Insurance
Division of Enforcement and Consumer Protection
CN 329
Trenton, New Jersey 08625
Attn: Auto Insurance Denial

TRANSPORTATION

(a)

NEW JERSEY TRANSIT CORPORATION
Procurement Policies and Procedures
Proposed Amendments: N.J.A.C. 16:72

Authorized By: New Jersey Transit Corporation, George Warrington, Acting Executive Director.
Authority: N.J.S.A. 27:25-5(e).
Proposal Number: PRN 1990-336.

Submit comments by September 19, 1990 to:
Albert R. Hasbrouck, III, Assistant Executive Director
New Jersey Transit Corporation
P.O. Box 10009
Newark, New Jersey 07101

The agency proposal follows:

Summary

NJ TRANSIT is required to amend the portion of its procurement regulations governing debarment of firms and vendors in order to comply with Executive Order No. 189. These proposed changes are set forth at N.J.A.C. 16:72-4.1(a)14-18 and 16:72-4.1(b) and are copied verbatim from Executive Order No. 189 (1988). Additional amendments have been made, where necessary, to conform the rules to the changes made at N.J.A.C. 16:72-4.1.

In addition, NJ TRANSIT has operated under its current procurement rules for almost ten years with only minor changes. Based on this experience over the past decade, NJ TRANSIT is recommending a number of changes which it believes will make it easier for firms who do, or wish to do, business with NJ TRANSIT to compete for contracts. These changes are as follows:

1. N.J.A.C. 16:72-1.5(c)—This section has been changed to make it clear that the Executive Director has the discretion to award professional services contracts in excess of $7,500 without following a request for proposal process, if it is deemed to be in NJ TRANSIT's best interest. This authority is similar to that given the Director of the Division of Purchase and Property pursuant to N.J.S.A. 52:34-8.

2. N.J.A.C. 16:72-1.5(d)(5)—The additional language proposed for this section, which places conditions upon a purchase, contract or agreement entered into after the rejection of all bids, is similar to the language of N.J.S.A. 52:34-9(e) upon which 16:72-1.5(d)(5) is based and which is incorporated by reference in NJ TRANSIT's enabling legislation at N.J.S.A. 27:25-11(g)(2)(b).

3. N.J.A.C. 16:72-1.5(d)(13)—This provision, which delineates requirements for the procurement of services, is similar to the language of N.J.S.A. 52:34-9(a), which is also incorporated by reference in the NJ TRANSIT authorizing legislation at N.J.S.A. 27:25-11(g)(2)(b).

4. N.J.A.C. 16:72-2.3(b)—This amendment deletes the current requirement for a 100 percent performance bond for capital improvements and gives NJ TRANSIT the discretion to require less than a 100 percent performance bond or some other form of security.

5. N.J.A.C. 16:72-2.3(d)—This amendment deletes the current requirement for a 100 percent payment bond for capital improvements and gives NJ TRANSIT the discretion to require a payment bond of less than 100 percent or some other form of security.

There are a number of other proposed changes which reflect organizational changes or NJ TRANSIT's current statutory and procedural requirements regarding procurement.

Social Impact

The proposed changes affect, in several ways, those firms or individuals wishing to do business with New Jersey Transit. The requirements which conform to Executive Order No. 189 (1988) provide for the debarment of any person who attempts to solicit preferential treatment in a business relationship with New Jersey Transit. The changes relating to the reorganization of the agency make the structure of the agency more clear to those firms or individuals wishing to do business with New Jersey Transit. The amendments to the bidding process are beneficial to small busineses owned by women or minorities, and to businesses that are economically disadvantaged. Additionally, the changes related to Executive Order No. 189 (1988) provide to the general public assurance that debarment will be a consequence for those who seek to subvert the established procurement rules for personal advantage. NJ TRANSIT expects no public opposition from the proposed amendments.

Economic Impact

Under the current bonding requirements, all firms wishing to bid on an NJ TRANSIT capital improvement project must post 100 percent performance and payment bonds. These bonds add significant cost to the project and may in some cases prevent someone from bidding and may require a level of bonding which is unnecessarily high. This has been especially true with regard to small or economically disadvantaged firms who have claimed that bonding requirements are onerous. In order to make it possible for more firms to bid on certain of our capital projects and allow NJ TRANSIT to benefit from increased competition, we are proposing to exercise our discretion in certain procurements and not require 100 percent performance and payment bonds. We expect that in certain procurements this will encourage small and disadvantaged firms to bid or propose for work. NJ TRANSIT expects no public opposition to these proposals.

Regulatory Flexibility Analysis

The proposed changes imposed on those firms or individuals wishing to do business with NJ TRANSIT, some of whom are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., include provisions requiring ethical conduct, methods of accessing specific representatives of NJ TRANSIT, and reduction in requirements for bonding. The reduction in bonding requirements is expected to be particularly beneficial to small businesses, who have claimed that the bonding requirements have been onerous. Beyond the amendments to the bonding requirements, NJ TRANSIT does not consider any differential treatment based on business size appropriate.

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

SUBCHAPTER 1. GENERAL PROVISIONS

[16:72-1.1 Description of organization

(a) The official title of the Division of Procurement and Contract Administration is as follows: New Jersey Transit Corporation, Department of Management and Administration, Division of Procurement and Contract Administration.

(b) The Division is under the direct supervision of the Director, Division of Procurement and Contract Administration, who has the responsibility for acquisition of supplies, services and capital improvements on behalf of NJ TRANSIT and making contracts, agreements and orders.]

16:72-[1.2]**1.1** Source for public information

The public may receive information concerning NJ TRANSIT's procurement program by contacting the [Director, Division of] **Department** [and Contract Administration], NJ TRANSIT, McCarter Highway and Market Street, P.O. Box 10009, Newark, New Jersey 07101.

16:72-[1.3]**1.2** Definitions

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

. . .

"Bid security" means a guarantee, in the form of a bond [or deposit,] that the bidder, if selected, will accept the contact as bid; otherwise, the bidder [(in case of a deposit) or the bidder] or his guarantor [(in the case of a bond)] will be liable for the amount of the loss suffered by NJ TRANSIT, which loss may be partially or completely recovered by NJ TRANSIT in exercising its rights against the [deposit or] bond.

. . .

["Director" shall mean the Director, Division of Procurement and Contract Administration.]

. . .

["Division" shall mean the Division of Procurement and Contract Administration.]

. . .

"NJ TRANSIT [shall mean] **means** the New Jersey Transit Corporation which was established by N.J.S.A. 27:25-[4] **1 et seq. and its subsidiaries.**

"Payment bond" means a guarantee in the form of a bond or other security that the vendor will pay all of its obligations to its subcontractors and suppliers and that NJ TRANSIT subcontractors and suppliers will be protected from loss in the event that the vendor fails to make payment as agreed.

"Performance security" means a guarantee, [executed subsequent to award,] **provided prior to execution of a contract** in the form of a bond [or deposit,] **or other security** that the successful bidder will complete the contract as agreed and that NJ TRANSIT will be protected from loss in the event the [contractor] **vendor** fails to complete the contract as agreed. . . .

"Procurement" means [the acquisition of real or personal property by NJ TRANSIT and] the awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to NJ TRANSIT.

. . .

"Vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for NJ TRANSIT.

16:72-[1.4]**1.3** Competition

(No change in text.)

16:72-[1.5]**1.4** Responsible contractors

(a) Procurements shall be made from, and contracts shall be awarded to, responsible contractors only. A responsible contractor is one who meets the following standards:

1.-4. (No change.)

5. Is otherwise qualified and eligible to receive an award under applicable laws and regulations[.];

6.-7. (No change.)

(b) [The Director, with the approval of the Executive Director,] **NJ TRANSIT** shall establish procedures for determining whether a prospective contractor has met the standards of a responsible contractor.

(c) (No change.)

[(d) NJ TRANSIT shall not contract with firms or individuals listed on the "Record of Suspensions, Debarments and Disqualifications" published in accordance with Executive Order No. 34.]

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

16:72-[1.6]**1.5** Methods of procurement

(a) (No change.)

(b) Quotation: Except as provided in (c) and (d) below, purchases for an amount greater than $2,000 but not in excess of $7,500 shall be made after quotes have been obtained from at least two qualified and responsible prospective contractors. Written quotations [are required] **shall be submitted** for purchases in excess of $5,000.

(c) Request for proposals/negotiations: The procurement of professional and technical services in excess of $7,500 shall be accomplished [whenever appropriate] through the issuance of a request for proposal to a minimum of three vendors and subsequent negotiation[.], **except where determined by the Executive Director or his designee, in writing, that an alternative method of procurement is in NJ TRANSIT's best interest.**

(d) Procurement-by-exception: The requirements of (a), (b) and (c) above may be waived under the following circumstances:

1.-4. (No change.)

5. The procurement of supplies or services [as to] **for** which the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition[.], **provided that no negotiated purchase, contract, or agreement may be entered into under this paragraph after the rejection of all bids received unless:**

i. Notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by NJ TRANSIT to each responsible bidder,

ii. The negotiated price is lower than the lowest rejected bid price of a responsible bidder; and

iii. Such negotiated price is the lowest negotiated price offered by any responsible supplier.

6.-11. (No change.)

12. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest[.]; **and**

13. The procurement of services is to be performed by the contractor personally under the supervision of the Executive Director, or his or her designee, and paid for on a time basis.

(e) Authority for procurement-by-exception: The authority for procurement under the circumstances listed above rests with the Executive Director for procurement transactions not in excess of $7,500. Transactions in excess of $7,500 will require approval [of the Board except that the Executive Director and the Chairman of the Board are authorized to approve transactions in excess of $7,500 where they determine that the public exigency requires such action. A record of the circumstances explaining the public exigency shall be submitted to the Board at its next regular meeting for review.] **as may be set forth in the By-Laws of NJ TRANSIT.**

(f) Fragmentation of requirements: NJ TRANSIT's purchase requirements shall not be split into parts for the purpose of avoiding the provisions of [(d) 1 or 2](**a**), (**b**), **or** (**c**).

Recodify 16:72-1.7 and 1.8 as **16:72-1.6 and 1.7** (No change in text.)

16:72-[1.9]**1.8** Specifications

Plans, drawings, or specifications shall state only the actual minimum needs of NJ TRANSIT and describe the [property to be acquired] **work to be performed** in a manner which encourages maximum competition and eliminates, insofar as possible, any restrictive features which might limit acceptable offers to a relatively few bidders. Specifications, plans and drawings without reference to brand names or items manufactured by a single company shall be used to the maximum extent possible.

16:72-[1.10]**1.9** Purchase descriptions

(No change in text.)

16:72-[1.11]**1.10** Out-of-State vendors

All out-of-State corporations that wish to do business with NJ TRANSIT shall be afforded seven days to register with the Secretary of State of New Jersey, after notification by [the Procurement Division] **NJ TRANSIT** of the intent to award that out-of-State firm a contract. Failure to provide either certification or notification of filing with the Secretary of State within the seven-day period **may** constitute[s] cause for [automatic] rejection of that firm's bid **or proposal.**

SUBCHAPTER 2. BIDDING PROCEDURES

16:72-2.1 Advertising of bids

The advertisement for bids shall be placed in such newspaper or newspapers selected by [the Executive Director as] **NJ TRANSIT that** will give best notice thereof to bidders. Advertisements shall be made a minimum of 20 calendar days in advance of the bid opening. The advertisement shall designate the time and place, when and where sealed [proposals] **bids** shall be received and publicly opened and read, [the amount of cash, certified check, cashiers check or bank check, if any, which shall accompany each bid,] and such other terms as NJ TRANSIT may deem proper.

16:72-2.2 Bid bonds

A bid (proposal) bond equal to 50 percent of the bid shall accompany all bids to serve as a guarantee that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within [ten] **10** working days after **issuance of a notice of intent to** award. Such bonds must be executed by surety companies licensed to do business in the State of New Jersey.

16:72-2.3 Performance and payment bonds

(a)[A] **In accordance with N.J.S.A.** 2A:44-143 **et seq.,** performance bond equal to 100 percent of the contract price shall be required of the successful bidder when a contract for [capital improvements] **public buildings, or other public works or improvements** is awarded to secure fulfillment of the contractor's obligations specified in the contract.

[(b) A payment bond equal to 100 percent of the contract price shall be required of the successful bidder when a contract for capital improvements is awarded to protect firms or persons supplying labor or materials to the contractor/subcontractor for the performance of work provided for in the contract.]

(b) A performance bond of less than 100 percent of the contract or some other form of security may be required at NJ TRANSIT's sole discretion, of the successful bidder when a contract for other procurements is awarded to secure fulfillment of the contractor's obligation specified in the contract.

[b](**c**) [A] **In accordance with N.J.S.A. 2A:44-143 et seq.,** payment bond equal to 100 percent of the contract price shall be required of the successful bidder when a contract for [capital improvements] **public buildings, or other public works or improvements** is awarded to protect firms or persons supplying labor materials to the contractor/subcontractor for the performance of work provided for in the contract.

(d) A payment bond of less than 100 percent of the contract or some other form of security may be required, at NJ TRANSIT's sole discretion, of the successful bidder when a contract for other procurements is awarded to protect firms or persons supplying labor or materials to the contractor/subcontractor for the performance of work provided for in the contract.

[c] (**e**) Performance and payment bonds must be executed by surety companies licensed to do business in the State of New Jersey.

16:72-2.4 Pre-qualification of firms for capital projects

(a) Prospective contractors, prior to bidding on [capital] improvements [projects,] **to capital facilities and equipment,** must be prequalified as to [their] **the** character and amount of work for which they are permitted to submit bids. Such pre-qualification shall be

based on all factors relating to contractor responsibility as set forth in N.J.A.C. 16:72[1.5]**1.6**, and any pertinent information relating to the qualifications of contractors.

(b) Such pre-qualification, as noted in (a) above, shall be assigned contractors based on information submitted by them in response to a questionnaire provided by [the Director] **NJ TRANSIT**. A prospective contractor dissatisfied with its pre-qualification classification may request [a] **an informal** hearing before the Pre-Qualification Committee to present additional information to justify a different classification. After hearing the additional evidence, the Pre-Qualification Committee may, in its discretion, change or modify the bidder's classification.

16:72-2.5 Amendment of Invitation for Bids

(a) **If,** after issuance of an Invitation for Bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous Invitation, such changes shall be accomplished by issuance of an amendment to the Invitation for Bids.

1. The amendment shall be sent to everyone to whom Invitations have been furnished [and shall be displayed in the bid room.]

2. The amendment shall be issued a reasonable time before the scheduled bid opening. If necessary the bid opening will be rescheduled at the discretion of the Director.

(b) Any information given to a prospective bidder concerning an Invitation for Bids shall be furnished promptly to all other prospective bidders, as an amendment to the Invitation, if such information is necessary to the bidders in submitting bids on the Invitation or if the lack of such information would be prejudicial to uninformed bidders.

[1. No award shall be made on the Invitation unless such amendment has been issued in reasonable time prior to scheduled opening.]

16:72-2.6 Cancellation of Invitations before opening

(a) Invitations for Bids should not be cancelled unless cancellation is [clearly in the public] **in NJ TRANSIT's** interest, such as where there is no longer a requirement for the supplies or services or where amendments to the Invitation would be of such magnitude that a new Invitation is desirable.

(b) Where an Invitation is cancelled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom Invitations for Bids were issued. [The notice of cancellation shall identify the Invitation of Bids and briefly explain the reason why the Invitation is being cancelled.]

16:72-2.8 Receipt and safeguarding of bids.

(a) (No change.)

(b) Unidentified bids may be opened soley for the purpose of identification[, only by the Director,] and then immediately resealed. **A record of this event shall be kept in the bid file.**

16:72-2.11 [Responsiveness of] **Responsive** bids

(No change in text of rule.)

16:72-2.12 Rejection of all bids

(a) Invitations for Bids may be cancelled after opening but prior to award and all bids rejected, where [the Executive Director] **NJ TRANSIT** determines [in writing] that:

1.-7. (No change.)

(b) A record of the cancellation of Invitations for Bids shall be kept in the bid file.

16:72-2.13 Rejection of individual bids

(a) (No change.)

[(b) Any bid which fails to conform to the delivery schedule should be rejected.]

Recodify (c)-(d) as (**b**)-(**c**) (No change in text.)

[(e)**](d)** Where a bidder fails to furnish a bid [guarantee] **bond** in accordance with the material requirements of the Invitation for Bids, the bid shall be rejected.

[(f)**](e)** Where a bid fails to comply with all material EEO/[MBE] **DBE** requirements expressed in an Invitation for Bids, the bid shall be rejected.

16:72-2.14 By-pass of low bidders

If the low bidder is by-passed, a memorandum stating the justification shall be prepared for the file and a letter explaining the decision shall be forwarded to the [lower] bidder.

16:72-2.15 Mathematical calculations

(a) (No change.)

(b) In the event of a discrepancy between the unit price bid for any contract line item and the extension shown for that item under the column of the bid designated "Amount," the unit price shall govern.

1. Where a unit price is bid for a contract line item, but no extension is provided, [the Director] **NJ TRANSIT** shall provide the extension based on the unit price bid and the estimated quantity for that contract item.

2. Where an extension is provided by the bidder in the "Amount" column, but no unit price appears in the "Unit Price" column of the bid, [the Director] **NJ TRANSIT** shall provide the unit price by dividing the "Amount" figure provided by the bidder by the estimated quantity.

3. Where no figure is provided by the bidder in both the "Unit Price" and "Amount" columns for one or more contract line items or where no figure is provided in the "Amount" column for one or more "Lump Sum" contract line items, the bid shall be considered to be [non-conforming] **non-responsive** and shall be rejected.

16:72-2.16 initialing of price changes

[Any price] **Price** changes in bids shall be initialed by the vendor in the bid submitted to NJ TRANSIT.

16:72-2.17 Waiver of minor informalities or irregularities in bids

(a) NJ TRANSIT reserves the right to waive any minor informalities or irregularities **in a bid** not in compliance with the specifications, terms and conditions of the Invitation for Bids.

1. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the Invitation for Bids, having no effect on quality, quantity or delivery of the supplies or performance of [the services] **work** being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, **other** bidders.

2. (No change.)

16:72-2.18 Tie bids

(a) In the event that the correct total contract prices submitted by two or more vendors are identical, NJ TRANSIT shall award the contract based on a relative comparison of the following factors:

1. (No change.)

2. History of vendors' performance. [as evidenced by formal complaints or, if applicable, record of outstanding performace.]

(b) When none of the distinguishable characteristics in (a) above are available, NJ TRANSIT shall, if practicable, provide for contract award by splitting the award. **If splitting the award is not practicable, award will be made by a single toss of a coin.**

SUBCHAPTER 3. REQUESTS FOR PROPOSALS

16:72-3.1 Solicitation of proposals

Proposals for professional and technical services shall be solicited in a manner which maximize[d]**s** the opportunity for competition **unless otherwise provided in N.J.A.C. 16:72-1.6(c).**

16:72-3.2 Form of proposal

Proposals shall consist of separately bound technical and cost proposals to be sealed and delivered to NJ TRANSIT no later than the deadline specified in the Request for Proposal (**RFP**).

16:72-3.3 Amendment of request for proposals

(a) If after issuance of a request for proposal, but before the time of opening, it becomes necessary to make changes in scope, delivery deadline, closing dates, **or any other part of the proposal** or to correct a defective or ambiguous [Request,] **RFP,** such changes shall be accomplished by issuance of an amendment of the [Request for Proposal] **RFP.** The amendment shall be sent to everyone to whom [Requests] **RFPs** have been furnished.

(b) Any information given to a prospective proposer concerning [a Request for Proposals] **an RFP** shall be furnished promptly to all other prospective proposers as an amendment to the [Request,] **RFP** if such information is necessary to the proposers in submitting proposals on the [Request] **RFP** of if the lack of such information would be prejudicial to uninformed proposers.

16:72-3.4 Cancellation of Requests before opening

(a) Requests for Proposals [(RFP)] should not be cancelled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the services or where amendments to the [Request] **RFP** would be of such magnitude that a new [Request] **RFP** is desirable.

1. Where [a Request] **an RFP** is cancelled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom [Requests] **RFPs** were issued. The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

16:72-3.5 Receipt and safeguarding of proposals

(a) All proposals received prior to the time of opening shall be kept secure, and except as provided in (b) below, unopened. If [a Request for Proposals] **an RFP** is cancelled, or if a proposer effectively withdraws its proposal, all proposals, or the withdrawn proposal, as the case may be, shall be returned to the proposers.

(b) Unidentified proposals may be opened solely for the purpose of identification[, only by the Director] and then immediately resealed. **A record of this event shall be kept in the RFP file.**

16:72-3.7 Evaluation of proposals

Sealed technical proposals shall be opened, evaluated and ranked prior to the opening of the separate cost proposals[.] **consistent with State and federal law.** General evaluation criteria shall be outlined in the RFP.

16:72-3.8 Negotiations

Negotiations may be conducted with proposers whose proposals are considered to be competitive[, price and other factors considered.] **in accordance with State and federal law.**

[16:72-3.9 Consultant selection committee

The Consultant Selection Committee shall review the evaluation process to ensure that correct procurement procedures were followed and that the best interests of NJ TRANSIT are served by the selection. Final approval is made by the Executive Director, and when required, the Board.]

16:72-3.[10]**9** Rejection of all proposals

(a) Requests for proposals may be cancelled after opening but prior to award and all proposals rejected, where [the Executive Director] **NJ TRANSIT** determines in writing that:

1. Inadequate or ambiguous specifications were given in the [Request] **RFP**;

2. (No change.)

3. The [Request for Proposals] **RFP** did not provide for consideration of all factors of cost to NJ TRANSIT.

4.-6. (No change.)

16:72-3.[11] **10** Rejection of individual proposals

(a) Any proposal which materially fails to conform to the requirements of the [Requests for Proposals] **RFP's** shall be rejected.

(b) (No change.)

Recodify 16:72-3.12 through 3.14 as **3.11 through 3.13** (No change in text.)

SUBCHAPTER 4. DEBARMENT, SUSPENSION AND DISQUALIFICAITON OF PERSONS

16:72-4.1 Causes for debarment of a person(s)

(a) In the public interest, NJ TRANSIT shall debar a person for any of the following causes:

1.-13. (No change.)

14. Any offer or agreement by a vendor to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State office or employee or special State officer or employee as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. The undertaking, directly or indirectly, of any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

17. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Cause or influence or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

(b) The provisions set forth in N.J.A.C. 16:72-4.1(a) 14 through 18 above shall be included in all Invitations for Bids and RFPs issued by or on behalf of NJ TRANSIT.

16:72-4.2 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1.-4. (No change.)

5. The existence of a cause set forth in N.J.A.C. 16:72-4.1(a)9 through [12] **18** shall be established by evidence which NJ TRANSIT determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 16:72-4.1(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 16:72-4(a)1 through [12] **18** was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

16:72-4.6 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by NJ TRANSIT.

1. NJ TRANSIT may suspend a person or his affiliates, provided that within ten days after the effective date of the suspension, NJ TRANSIT provides such party with a written notice stating that a suspension has been imposed and its effective date; setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed; stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for [a] **an informal** hearing if he so requests, or a statement declining to give such reasons and setting forth NJ TRANSIT's position regarding the continuation of the suspension.

Where a suspension by another agency has been the basis for suspension by NJ TRANSIT, the latter shall note that fact as a reason for its suspension.

2.-3. (No change.)

HEALTH

(a)

COMMUNITY HEALTH SERVICES

Food and Drugs

Proposed Readoption with Amendments: N.J.A.C. 8:21

Proposed Repeal: N.J.A.C. 8:21-12

Authorized By: Dr. Frances J. Dunston, Commissioner, Department of Health.

Authority: N.J.S.A. 24:2-1, 24:10-57.20, 24:10-57.24(b), 24:10-73.1, and 24:12-12.

Proposal Number: PRN 1990-439.

A **public hearing** concerning the proposed readoption of N.J.A.C. 8:21-7, Frozen Desserts, will be held on:

Wednesday, September 5, 1990 at 10:30 A.M.
New Jersey State Department of Health
363 West State Street
3rd Floor, Conference Room D
Trenton, New Jersey

Submit written comments relative to the entire proposal by September 19, 1990 to:

Kenneth Kolano, Chief
Food and Milk Program
Consumer Health Services
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:21 expires on November 18, 1990. The Department of Health has reviewed these rules and has determined that the majority of the rules established in these subchapters are reasonable and proper for the purpose for which they were originally promulgated. The Department is proposing a number of changes in these rules to include the repeal of outdated and unnecessary sections of a number of subchapters along with proposed revisions of several subchapters. The various subchapters under chapter 21 contain a great diversity of rules governing the sale of foods, drugs, devices and cosmetics; therefore, for clarity, a summary is being provided for each individual subchapter as follows:

SUBCHAPTER 1. FOOD, DRUG, COSMETIC AND DEVICE LABELING (PREVIOUSLY RESERVED)

Requirements being established under these rules, which were allowed to expire inadvertently, are being proposed for adoption as new rules in order to reinstate the labeling requirements for food, drugs, cosmetics and devices. The Department believes that these rules are necessary in order to ensure that foods, drugs and cosmetics marketed in the State are properly labeled in that they contain sufficient information to properly identify the product; the place of manufacture or distribution; ingredients; and directions for use in the case of drug products and those containing potentially hazardous ingredients. The proposed new rules follow the Code of Federal Regulations governing labeling, with the exception of the rules governing the labeling, sale, and distribution of cosmetics for professional use, which are not covered under Federal regulation. Whenever possible, the proposal references the applicable Code of Federal Regulations. The following summarizes the text of the proposed new subchapter:

N.J.A.C. 8:21-1.1 establishes the definition of the words and terms used in the section concerning cosmetics for professional use only.

N.J.A.C. 8:21-1.2 incorporates by reference the applicable Code of Federal Regulations pertaining to mandatory label information that applies to foods, drugs and cosmetics adopted by the U.S. Food and Drug Administration.

N.J.A.C. 8:21-1.3 incorporates by reference the specific food labeling requirements to include the nutritional quality guidelines for foods and labeling requirements for special dietary use adopted by the U.S. Food and Drug Administration.

N.J.A.C. 8:21-1.4 incorporates by reference the Federal drug labeling requirements, including direction of use requirements, labeling of over-the-counter drugs, label exemptions and labeling requirements for specific drugs.

N.J.A.C. 8:21-1.5 incorporates by reference the Federal cosmetic labeling requirements to include criteria for determining cosmetic misbranding, designation of ingredients and other necessary package information.

N.J.A.C. 8:21-1.6 establishes regulations for the labeling, sale and distribution of cosmetics for professional use only.

N.J.A.C. 8:21-1.7 incorporates by reference the Federal cosmetic product warning statements required on certain types of cosmetics, such as feminine deodorant sprays, cosmetics in self-pressurized containers and coal tar hair dye ingredients.

N.J.A.C. 8:21-1.8 establishes a definition of soap.

N.J.A.C. 8:21-1.9 incorporates by reference the Federal medical device labeling requirements which include the general device labeling requirements, direction for use, labeling of over-the-counter devices, exemptions from directions for use and special requirements for specific devices.

SUBCHAPTER 2. FOODS

This subchapter establishes rules dealing with standards for food products and related areas, such as prohibiting the sale of certain fish species because of polychlorinated biphenyls (PCBs) contamination. The following summarizes the text of the proposed readoption with amendments:

N.J.A.C. 8:21-2.1 through 8:21-2.11 established objectives for a Division of Environmental Health regarding food regulatory inspections and training activities. These rules are being proposed for repeal because this division was never established for that purpose and the Department has the statutory authority, pursuant to N.J.S.A. 24, to conduct the activities called for under the rules proposed for repeal.

N.J.A.C. 8:21-2.12, which deals with the preparation, handling and service of foods, is being proposed for repeal because the requirements are covered under various provisions of N.J.A.C. 8:24, "Retail Food Establishments and Food and Beverage Vending Machines," (Chapter XII of the State Sanitary Code.)

N.J.A.C. 8:21-2.13, which deals with the use of textile bags as containers for flour, is still appropriate for its intended purpose and is being proposed for readoption with no change.

N.J.A.C. 8:21-2.14, which establishes requirements for frozen food locker plants, is still appropriate for its intended purpose and is being readopted with no change.

N.J.A.C. 8:21-2.15, which establishes labeling requirements for sale of enriched white flour and unenriched white flour as called for under the statutory provisions under N.J.S.A. 24:11A-4, is being proposed for readoption with no change.

N.J.A.C. 8:21-2.16, which establishes sanitary requirements for egg-breaking establishments, is being proposed for repeal because the statutory authority for these facilities was transferred to the New Jersey State Department of Agriculture under N.J.S.A. 24:16B-4 and the plants are covered under a U.S. Department of Agriculture continuous inspection program.

N.J.A.C. 8:21-2.17 through 8:21-2.30, which establish standards of identity for a number of foods, are being proposed for repeal because these standards are either no longer enforced by the Department or are covered under the Code of Federal Regulations and referenced under N.J.A.C. 8:21-13.8(n).

N.J.A.C. 8:21-2.35 through 8:21-2.36, which require that the operator of food establishments publicly post and make available the results of inspection reports, are still appropriate and reasonable and are being proposed for readoption with no change.

N.J.A.C. 8:21-2.38, which establishes bacteriological standards for a number of potentially hazardous foods, is being proposed for readoption with no change at this time. The Department needs additional time to properly study this section and intends to review it separately in the near future in order to determine whether the standards should be retained, modified or abandoned.

N.J.A.C. 8:21-2.39, which establishes standards of quality and identity for ground meat, is being amended to be consistent with standards established by the U.S. Department of Agriculture. Also, the Department is proposing to repeal the standard of identity for margarine and oleomargarine because these standards are currently referenced under N.J.A.C. 8:21-13.8(n).

N.J.A.C. 8:21-2.40, which establishes maximum tolerance standards for ethylene dibromide (EDB) residues in food products subject to recall, is being proposed for repeal because the standards are no longer necessary, since the Federal Environmental Protection Agency no longer approves EDB for use on foods.

N.J.A.C. 8:21-2.41, which prohibits the sale of striped bass (*Morone sanatilis*), is being proposed for readoption with no change. This rule went into effect on March 2, 1987 based upon data provided by the Department of Environmental Protection that polychlorinated biphenyls (PCB's) were present in this species exceeding the Federal standards for this suspected human carcinogen. The Department does not have information indicating that the contamination levels have been reduced to warrant lifting the prohibition.

N.J.A.C. 8:21-2.42 proposes to prohibit the sale of channel catfish (*Ictalurus punctatus*) caught from portions of the Delaware River because of polychlorinated biphenyls (PCBs) contamination. As part of a Toxics in the Biota Monitoring Program, the Department of Environmental Protection has been collecting, and the Department of Health analyzing, edible tissues from fish taken from various locations on the Delaware River. Since 1986, fish have been collected from the river between Easton, Pennsylvania and Deepwater, New Jersey. In addition, as part of the Delaware Estuary Use Attainability Project, the Delaware River Basin Commission conducted sampling and analysis in 1987 on a section of the river between Burlington Island and the mouth of the Schuylkill River. Sampling was also conducted downstream of that area by the Pennsylvania Department of Environmental Resources. Analysis of these samples revealed the existence of elevated concentrations of polychlorinated biphenyls (PCBs) and/or chlordane in the edible tissue of channel catfish. Concentrations of PCBs in channel catfish taken from the stretch of river from Burlington Island to the Schuylkill River ranged from 2.34 to 4.20 parts per million (ppm) and averaged 3.25 ppm, which exceeds the tolerance of 2.0 ppm established by the United States Food and Drug Administration (FDA). The average concentration of chlordane in channel catfish in the vicinity of Chester, Pennsylvania was 1.0 ppm, which exceeds the action level of 0.3 ppm set by the United States Environmental Protection Agency (EPA). (The FDA uses tolerance and action levels to determine the suitability of fish for human consumption.)

PCBs were commonly utilized in transformer oils and various electrical products prior to 1977, when a ban was imposed on the manufacture of PCBs by the EPA. PCBs are a suspected human carcinogen. Birth defects and a wide range of acute and chronic health effects have been associated with PCBs, which accumulate in the human body. Chlordane is a pesticide that was widely used in agriculture and lawn care until the EPA restricted its use to termite control in 1976. The EPA banned the use of chlordane completely in 1988. Among the possible effects of exposure to chlordane is the potential for nervous system disorders.

The Pennsylvania Departments of Environmental Resources and Health and the Pennsylvania Fish Commission have issued a Notice that includes a consumption advisory for channel catfish taken from the waters between Burlington Island and the City of Chester, Pennsylvania. In order to take into account the possible movement of fish, and to provide for easily identifiable boundaries, the New Jersey Department of Environmental Protection issued an advisory against consumption of this species which includes additional lengths of the river beyond the area where elevated levels of these contaminants were actually found in the tissue of channel catfish.

On April 17, 1989, the New Jersey Department of Environmental Protection (DEP) issued an advisory against the consumption of channel catfish taken from the Delaware River between the Interstate 276 Highway Bridge in Burlington Township, Burlington County and Birch Creek, which flows into the Delaware River at Logan Township, Gloucester County. The proposed sales ban strengthens the DEP action by preventing the sale of fish from these waters.

SUBCHAPTER 3. DRUGS, DEVICES AND COSMETICS

This subchapter establishes rules for various drugs, cosmetics and medical devices. The following summarizes the text of the proposed readoption with amendments:

N.J.A.C. 8:21-3.1 through 8:21-3.7 establish objectives for a Division of Environmental Health regarding drugs, devices and cosmetics. These rules are being proposed for repeal because this division was never established for that purpose and the Department has the statutory authority pursuant to Title 24, to conduct the activities called for under the rules proposed for repeal.

N.J.A.C. 8:21-3.8 through 8:21-3.12, which establish warning statements for certain potentially dangerous drugs and cosmetics and restricts the sale of these preparations, is being proposed for readoption with no change. The Department believes that these rules are reasonable and proper for the purpose they are intended.

N.J.A.C. 8:21-3.13 deals with the recordkeeping required of drug manufacturing or wholesale drug businesses. The Department believes that this rule is reasonable and proper for its intended purpose and is proposing its readoption with no change.

N.J.A.C. 8:21-3.19 establishes a definition for the narcotic drug paregoric and restricts its sale. This rule is being proposed for readoption with a minor change. The Department believes that this rule is reasonable and proper for the purpose it is intended.

N.J.A.C. 8:21-3.20 through 8:21-3.21, which establish standards for compressed air used in self-contained underwater breathing devices, is being proposed for readoption with no change. The Department believes that these rules are proper and reasonable for the intended purpose.

N.J.A.C. 8:21-3.22 establishes criteria for the sale of medical locomotion devices adaptable to powered conveyances. This rule is being proposed for repeal because the regulation of these devices is covered under provisions of the Code of Federal Regulations, 21 CFR 890.1 "Physical, Medical Devices," and separate State rules are not deemed necessary.

N.J.A.C. 8:21-3.23 through 8:21-3.24 establish a list of animal repellants and active ingredients for human self-defense sprays. These rules are proper and necessary, pursuant to the provisions established under N.J.S.A. 2C:39-6(h), and are being proposed for readoption with no change.

N.J.A.C. 8:21-3.25 establishes permit requirements in order to use or handle nitrous oxide. The Department believes that these rules are proper and necessary because of the dangerous properties of this gas and are being proposed for readoption with no change.

SUBCHAPTER 4. NEW DRUGS

This subchapter, which establishes the rules for introducing new drugs into the marketplace and allows for the controlled use of amygdalin (laetrile), is being proposed for readoption with only minor amendments. The rules concerning new drug applications are current and follow the provisions established under Federal new drug regulations administered by the U.S. Food and Drug Administration. Therefore, the Department believes that these rules are reasonable and proper for the purpose for which they were originally promulgated and is proposing to readopt them with only minor amendatory language.

These rules establish the conditions of use for the substance amygdalin (laetrile) to treat cancer and approve its manufacture and use through the enactment of N.J.S.A. 24:6F-4 and N.J.S.A. 24:6F-5. The efficacy of treatments using this substance has been challenged by the U.S. Food and Drug Administration (FDA) and although the FDA has blocked the use of this substance for cancer treatment through successful court actions, the New Jersey statutes continue to permit its use. Therefore, because of this statutory preemption, these rules are being readopted with no change until the enabling statute is repealed. The following summarizes the text of the proposed readoption with amendments:

N.J.A.C. 8:21-4.1 establishes a statement of policy that the Department will implement and administer those provisions of the Federal new drug regulations that pertain to or are concerned with the safety of drugs sold in the State.

N.J.A.C. 8:21-4.2 adopts by reference 21 CFR 300.50, fixed combinations prescription drugs for humans.

N.J.A.C. 8:21-4.3 provides the definitions of the words and terms used throughout this subchapter.

N.J.A.C. 8:21-4.4 establishes the conditions for exemptions of new drugs.

N.J.A.C. 8:21-4.5 adopts by reference 21 CFR 310, 312, and 314 governing the general provisions for obtaining a new drug approval.

N.J.A.C. 8:21-4.6 through 8:21-4.24 are reserved for future use.

N.J.A.C. 8:21-4.25 establishes that amygdalin (laetrile) is subject to statutory provisions regulating its manufacture and use.

N.J.A.C. 8:21-4.26 through 8:21-4.34 establish the conditions and requirements which allow the manufacture and use of amygdalin in the State, including testing and reporting requirements, written orders for dispensing and prescribing. These sections also provide for confidentiality of information provided to the Department in the course of the study of the efficacy of laetrile in cancer therapy.

N.J.A.C. 8:21-4.35 through 8:21-4.49 are reserved for future use.

N.J.A.C. 8:21-4.50 establishes that laetrile can only be prescribed by a physician on a specific form set out in N.J.S.A. 24:6F-1.

SUBCHAPTER 5. (PREVIOUSLY RESERVED)— MANUFACTURING, STORAGE, HANDLING, AND STANDARDS OF BOTTLED WATER

The Department is proposing to adopt requirements for the manufacturing, storage, distribution, handling, and standards for bottled water as new rules to replace the provisions regarding bottled water in subchapter 12. The Department believes that a separate subchapter governing bottled water is necessary because of the specificity of the requirements concerning bottled water and the statutory provisions under N.J.S.A. 24:12-12, which require the Department to promulgate specific regulatory provisions establishing additional testing and reporting requirements for hazardous contaminants identifed by the Department of Environmental Protection in N.J.A.C. 7:10-14, Maximum Contaminant Levels for Hazardous Contaminants. The new rules require the registration of all companies selling bottled water in the State, in order to enable the Department to verify that all products being marketed meet the bottled water standards established under N.J.S.A. 24:12-12. The Department is also proposing strict sanitary requirements for bottled water manufacturing plants. A summary of each section in subchapter 5 follows:

N.J.A.C. 8:21-5.1 provides that if a provision of this subchapter is found invalid, it shall not affect other provisions of the subchapter.

N.J.A.C. 8:21-5.2 provides definitions of the words and terms used throughout this subchapter.

N.J.A.C. 8:21-5.3 indicates the requirements for an approved source of water and establishes the sanitary standards for construction and protection of wells.

N.J.A.C. 8:21-5.4 establishes the standards for construction and protection of springs.

N.J.A.C. 8:21-5.5 establishes the labeling requirements for bottled water and defines the different types of bottled water.

N.J.A.C. 8:21-5.6 specifies the construction requirements for a water bottling plant.

N.J.A.C. 8:21-5.7 specifies the design specifications for production and packaging equipment and establishes the disinfection treatment standards for bottled water.

N.J.A.C. 8:21-5.8 establishes the sanitary standards and maintenance requirements for equipment used to process and fill bottled water.

N.J.A.C. 8:21-5.9 establishes requirements for the proper storage and handling of chemicals.

N.J.A.C. 8:21-5.10 specifies hygienic practices for those working in the processing and bottling of water.

N.J.A.C. 8:21-5.11 establishes sanitizing requirements for multi-use bottles or containers.

N.J.A.C. 8:21-5.12 specifies the sanitary requirements for the handling and processing of bulk water.

N.J.A.C. 8:21-5.13 provides the recordkeeping requirements for water processed and establishes that certain records must be forwarded to the Department on a periodic basis.

N.J.A.C. 8:21-5.14 establishes the microbiological, physical, chemical, hazardous contaminants and radiological standards for bottled water.

N.J.A.C. 8:21-5.15 establishes registration requirements for out-of-State or foreign bottling plants and/or bulk water handling facilities that sell or distribute bottled water or bulk water in New Jersey.

SUBCHAPTER 6. (RESERVED) (No change.)

SUBCHAPTER 7. FROZEN DESSERTS

The Department is proposing to readopt this subchapter with amendments in order to acknowledge consumer preference in the standards of identity for frozen desserts and changes in the technology used in developing these products, as well as proposing additional requirements for frozen desserts manufacturers. A summary of each section in subchapter 7 follows:

N.J.A.C. 8:21-7.1 provides definitions of the words and terms used throughout this subchapter. An additional definition for the term "optional ingredients" is being proposed which defines the types of optional ingredients permitted in frozen desserts products. The other proposed term defines a wholesale frozen desserts manufacturer. This definition is being proposed to differentiate retail frozen desserts manufacturers from wholesale operations since certain proposed sanitary requirements will apply only to wholesale manufacturers.

N.J.A.C. 8:21-7.2 through 8:21-7.25 specify standards of identity for various frozen dessert products. Only technical amendments have been proposed for these rules except for N.J.A.C. 8:21-7.9, 7.10 and 7.11, where new standards of identity are proposed for frozen yogurt, frozen lowfat yogurt and frozen nonfat yogurt, respectively. These proposed amendments to the standards of identity combine consumer preference changes in the formulation of frozen yogurt products and acknowledges technical changes in the manufacture of these particular frozen dessert items.

N.J.A.C. 8:21-7.26 establishes the procedures for obtaining a temporary marketing permit for frozen desserts. The Department believes that these procedures are still needed and is proposing readoption with no changes.

N.J.A.C. 8:21-7.27 specifies a new proposed standard of identity for generic frozen desserts. This proposed generic standard of identity, in conjunction with the Temporary Marketing Permit requirements in N.J.A.C. 8:21-7.26, would allow the frozen dessert industry to more easily test market a frozen dessert product in the State.

N.J.A.C. 8:21-7.28 establishes a method for updating New Jersey's frozen desserts standards of identity when the U.S. Food and Drug Administration changes or amends its standards.

N.J.A.C. 8:21-7.29 through 8:21-7.30 are reserved for future use.

N.J.A.C. 8:27-7.31 provides for the keeping of specific plant records. The Department proposes that the type of records which a frozen dessert manufacturer must keep be expanded to include bacterial analyses, pasteurization processing records and mechanical cleaning procedures, where they are applicable. In addition, the Department is proposing a retention schedule for these records.

N.J.A.C. 8:21-7.32 establishes general requirements for frozen desserts manufacturing plant buildings and surroundings. The Department believes that these rules are still needed and is proposing their readoption without changes.

N.J.A.C. 8:21-7.33 specifies the requirements for frozen desserts plant construction. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-7.34 requires that the frozen desserts manufacturing plant be kept clean. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-7.35 specifies the construction requirements for containers and equipment. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-7.36 specifies the requirements for cleaning and sanitizing of containers and equipment. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-7.37 states the requirements to protect frozen desserts from contamination. The Department is proposing an additional provision under this rule. This requirement specifies the addition of a brilliant blue or green dye to brine solutions which are used as a freezing medium for frozen dessert novelties. The addition of this dye will more easily identify products which have been contaminated with brine solution.

N.J.A.C. 8:21-7.38 specifies the requirements for the pasteurization and cooling of frozen desserts mix. The Department is proposing minor technical amendments to these rules.

N.J.A.C. 8:21-7.39 states the bacterial standards and sampling frequency for frozen desserts. The Department is proposing that wholesale frozen desserts manufacturers conduct bacterial analysis of their products on a routine basis.

N.J.A.C. 8:21-7.40 provides the requirements for water supply, sewage disposal, toilet and handwashing facilities and garbage disposal. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-7.41 establishes requirements for disease control and personal hygiene for plant personnel. The Department is proposing only technical amendments to these rules.

N.J.A.C. 8:21-7.42 specifies the requirements for milk supply and fluid milk products for the manufacturing of frozen desserts. Amendments are being proposed by the Department which delineate the type(s) and source(s) of milk and fluid milk products which can be utilized to manufacture frozen desserts. The following milk and fluid milk products would not be permitted to be used in frozen desserts, under these rules, due to the high degree of potential contamination which their use would present: overflowed, leaked, spilled, and improperly handled product and damaged, punctured, contaminated containers or out of code date packaged milk or milk products.

N.J.A.C. 8:21-7.43 states packaging and labeling requirements. This rule is still appropriate for its intended purpose and is being proposed for readoption without change.

N.J.A.C. 8:21-7.44 provides requirements for the dispensing of frozen desserts by the customer. The Department is proposing this new rule to regulate the practice of frozen desserts dispensing by customers. The requirements are intended to prevent the intentional tampering and/or contamination of the product prior to dispensing as well as protection of the actual dispensing nozzle from customer contact.

N.J.A.C. 8:21-7.45 specifies the construction and operational requirements for mobile units which dispense frozen desserts. The Department is proposing only a technical change to this rule, necessitated by the renumbering of other rules in this subchapter.

N.J.A.C. 8:21-7.46 provides the requirements for construction and operation of the depots which service mobile units. The Department is proposing only a technical change to this rule necessitated by the renumbering of other rules in this subchapter.

SUBCHAPTER 8. IMITATION MILK, IMITATION LOWFAT MILK AND IMITATION FLUID MILK PRODUCTS

The Department is proposing to readopt this subchapter with no change. A summary of each section in subchapter 8 follows:

N.J.A.C. 8:21-8.1 provides definitions and standards of identity for the terms and products used throughout this subchapter.

N.J.A.C. 8:21-8.2 states the conditions under which imitation milk and imitation milk products would be considered misbranded.

N.J.A.C. 8:21-8.3 states the conditions under which foods made in semblance of imitation milk and imitation milk products would be considered misbranded.

N.J.A.C. 8:21-8.4 states the conditions under which imitation milk and imitation milk products would be considered adulterated.

SUBCHAPTER 9. LICENSING OF FOOD AND COSMETIC MANUFACTURING AND WHOLESALE ESTABLISHMENTS

The Department is proposing to readopt this subchapter with amendments in order to increase revenues to offset the costs to the Department associated with the handling and issuing of licenses and performance of sanitary inspections of these establishments. Also, several other changes are being proposed which clarify the types of establishments which are subject to the licensing provisions.

The Department is proposing to reduce and consolidate the current six tier fee schedule under N.J.A.C. 8:21-9.5 and create a new three tier fee system. The proposed fee schedule is as follows:

$100.00 for establishments having an annual gross business not in excess of $100,000.

$300.00 for establishments having an annual gross business greater than $100,000 but not in excess of $500,000.

$500.00 for establishments having an annual gross business of greater than $500,000.

Therefore, the proposed new fee schedule would combine those currently in the lowest two fees ($50.00 and $80.00) into a fee category of $100.00. Those firms in the $100.00 and $150.00 fee categories would be combined into the fee category of $300.00. Finally, those firms in the $300.00 fee category would be combined into the maximum fee category of $500.00.

The Department believes that the fee increases that will be produced through restructuring the fee schedules are justified, in that the current fees, particularly those assessed to the establishments with the lowest gross annual sales, do not approach the true costs to the Department associated with processing licenses and conducting sanitary inspections. The statutory provisions under N.J.S.A. 24:15-13 establish a $500.00 fee limit, therefore, the Department is not able to raise the fee for those establishments in the highest fee category. Notwithstanding the statutory limitations, the Department believes that the three tier fee schedule is the most equitable way of distributing the costs associated with the licensing and inspection of wholesale food establishments. A summary of each section in subchapter 9 follows:

N.J.A.C. 8:21-9.1 defines the terms used in the subchapter. The term "wholesale establishment" is being added in order to clarify those food establishments falling within the scope of the licensing provisions.

N.J.A.C. 8:21-9.2 establishes the food establishments subject to the licensing requirements and is being proposed for readoption with only a minor technical amendment.

N.J.A.C. 8:21-9.3 specifies the establishments which are exempted from obtaining a license and is being proposed for readoption with no change.

N.J.A.C. 8:21-9.4 establishes the requirements for filing a license application annually on forms provided by the Department and requires an affidavit by those making application. This section is being proposed for readoption with an amendment which clarifies that the requirements apply only to wholesale establishments.

N.J.A.C. 8:21-9.5 specifies the license fees, based upon annual gross business. The specific changes are detailed in the opening remarks to this subchapter summary.

N.J.A.C. 8:21-9.6 sets the expiration date of the license and specifies that the license is not transferable. This section is being proposed for readoption with no change.

N.J.A.C. 8:21-9.7 states that the license issued pursuant to the rules may be revoked for violating any of the rules and statutes enforced by the Department. This section is being proposed for readoption with no change.

SUBCHAPTER 10. DESIGNATED FLUID MILK PRODUCTS

The Department is proposing to readopt this subchapter with amendments in order to place its regulatory provisions in conformance with recent changes in the requirements established under the model Pasteurized Milk Ordinance (PMO) published by the U.S. Food and Drug Administration (FDA) which the Department recognizes through its participation in the National Conference on Interstate Milk Shipments. A summary of each section in subchapter 10 follows:

N.J.A.C. 8:21-10.1 provides definitions and standards of identity for the terms and products used throughout this subchapter. The Department is proposing to delete the definition for "certified milk", since the sale of certified milk is no longer permitted in this State.

Updated standards of identity are being proposed for egg nog, yogurt, lowfat yogurt and nonfat yogurt. These standards are consistent with the current standards of identity promulgated by the FDA.

The Department is proposing to define frozen yogurt, frozen lowfat yogurt and frozen nonfat yogurt mixes as fluid milk products. The inclusion of these frozen yogurt mixes as fluid milk products would mean that firms which manufacture these products would have to be licensed and inspected as milk plant operations and comply with the stringent requirements associated with the processing of milk.

The term "goat milk" has been amended to duplicate the definition currently utilized by the FDA.

In addition, the Department is proposing minor technical changes to the definitions for "homogenized milk" and "pasteurization."

N.J.A.C. 8:21-10.2 specifies labeling requirements for milk containers and tagging requirements for milk tankers. The Department believes that these rules are still needed and is proposing their readoption without changes.

N.J.A.C. 8:21-10.3 states the frequency of farm and milk plant inspections and the enforcement procedures which will be followed in specific instances. The Department is proposing an additional enforcement requirement which would be applied in situations where a critical processing element that could directly affect the public health is being compromised. The inclusion of this enforcement procedure is consistent with the PMO.

N.J.A.C. 8:21-10.4 establishes the frequency of milk sample collection and enforcement procedures which will be followed in specific instances. The Department is proposing a technical amendment to the wording of the rule to clarify the frequency at which samples must be collected. This wording change is consistent with the PMO.

N.J.A.C. 8:21-10.5 states the types of animal health programs which must be practiced on dairy herds used for milk and fluid milk products. The proposed amendment to the rule on brucellosis ring tests would provide consistency with the Federal requirement.

N.J.A.C. 8:21-10.6 specifies chemical, bacteriological and temperature standards for milk as well as sanitary requirements for dairy farms and milk plants. The Department is proposing a change to the rule that establishes the methodology for the separation of raw cream, lowfat and skim milk as well as the chemical tests required on these products. This wording change is consistent with the PMO.

An amendment is being proposed that would lower the maximum acceptable delivery temperature for milk from 50 degrees Fahrenheit to 45 degrees Fahrenheit. Refrigeration technology has sufficiently advanced that milk delivery vehicles are now capable of consistently delivering milk at this lower temperature.

The Department is proposing construction guidelines for convalescent (maternity) pens in milking barns. These proposed guidelines are provided in Appendix B.V. of the model Pasteurized Milk Ordinance of 1978 (PMO).

An amendment to the rule for the milking of cows is being proposed which would require that the teats and udders be "wiped" dry prior to milking instead of the current standard of only being "relatively" dry. This amendment would allow for less contamination of the milk by sanitizers and water during milking operations. This change is consistent with the PMO.

The Department is proposing a new rule which would require the physical separation of reclaim milk operations from other parts of the milk plant to prevent contamination of milk and milk products from the splash and mess generally associated with reclaiming operations. This change is consistent with the PMO.

N.J.A.C. 8:21-10.7 prohibits the transfer of milk from one container or tank truck to another, except as provided in the regulations and prohibits the sale or serving of milk under certain conditions. The Department is proposing a technical change to this rule since it relates to the temperature delivery standard of 45 degrees Fahrenheit which is proposed for amendment in N.J.A.C. 8:21-10.6.

N.J.A.C. 8:21-10.8 establishes the criteria by which New Jersey will accept milk from out-of-State sources. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-10.9 specifies the requirements for the health of personnel. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-10.10 establishes the procedures for evaluating an employee's health status. These rules are still appropriate for their intended purpose and are being proposed for readoption without change.

N.J.A.C. 8:21-10.11 states the procedures for plan review for the construction or alteration of milk houses, barns, parlors, transfer stations, receiving stations or milk plants. The Department is proposing to amend this regulation to require that certified industry inspectors must submit copies of any approvals which they have issued to the Department for its records.

N.J.A.C. 8:21-10.12 specifies the requirements for the dating of milk and fluid milk products. The Department is proposing to delete the requirement for the dating of "certified milk", since this product is no longer allowed to be sold in this State.

New rule N.J.A.C. 8:21-10.13, if adopted, would allow the Department to issue temporary marketing permits for fluid milk products which do not meet an established standard of identity.

SUBCHAPTER 11. DENTED CANS—SALVAGE OR DISTRESSED FOODS, ALCOHOL AND NONALCOHOLIC BEVERAGES AND INDUSTRIAL MISHANDLING

The Department is proposing to readopt these rules with minor technical amendments for the recodification of sections and an amendment to N.J.A.C. 8:21-11.5 in order to clarify a misinterpretation concerning the reprocessing of alcoholic beverages and the handling of such products involved in a fire or flood or other disaster resulting in product contamination. A summary of each section in subchapter 11 follows:

N.J.A.C. 8:21-11.1 establishes the scope of the rules.

N.J.A.C. 8:21-11.2 defines the terms used in the subchapter. This section is being proposed for readoption with no change.

N.J.A.C. 8:21-11.3 establishes the criteria for the type and extent of damage that will cause a container of food not to be suitable for sale. This section is being proposed for readoption with no change.

N.J.A.C. 8:21-11.4 establishes the type and extent of damage that can occur to a container of food and still be suitable for sale. This section is being proposed for readoption with no change.

N.J.A.C. 8:21-11.5 specifies the procedures to be employed when investigating a food establishment involved in a disaster. An amendment clarifying the types of alcoholic beverages that can be reprocessed and the procedures to be employed when investigating disasters involving alcoholic beverages are contained in N.J.A.C. 8:13-11.5(d)2 and 3. This section also provides the regulations for sanitizing hermetically sealed containers of food, regulations for handling alcoholic beverages, paper, plastic or similar type food containers.

N.J.A.C. 8:21-11.6 establishes the proper methods of disposal for foods contaminated because of fire, flood, or other natural disaster. This section is being proposed for readoption with no change.

SUBCHAPTER 12. MANUFACTURING, STORAGE, DISTRIBUTION, AND HANDLING OF NONALCOHOLIC BEVERAGES AND BOTTLED WATER

The Department is proposing to repeal this subchapter because the regulatory provisions concerning bottled water are being proposed as new rules under subchapter 5 in this proposal and the provisions applicable to nonalcoholic beverages are being incorporated as amendments to subchapter 13, rules governing wholesale food establishments.

SUBCHAPTER 13. RULES GOVERNING WHOLESALE FOOD ESTABLISHMENTS

The Department is proposing to readopt these rules with amendments in order to incorporate several provisions concerning the handling of nonalcoholic beverages and minor technical amendments for the renumbering of sections. The remaining rules governing wholesale food establishments are reasonable and proper and do not warrant further revisions, as they are currently in substantial uniformity with the good manufacturing practice regulations adopted by the U.S. Food and Drug Administration. The following summarizes this subchapter:

N.J.A.C. 8:21-13.1 establishes the scope of the rules.

N.J.A.C. 8:21-13.2 establishes a separability clause that provides that if a section of the subchapter is found invalid, the remainder of the subchapter is unaffected. N.J.A.C. 8:21-13.2 is being proposed for readoption with no change.

N.J.A.C. 8:21-13.3 provides definitions of the words and terms used throughout this subchapter. The term "nonalcoholic drink" is being added in order to establish the meaning of the term.

N.J.A.C. 8:21-13.4 establishes the requirements, facilities and procedures necessary to operate an establishment for the storage, distribution, handling and processing of food. An amendment is being proposed which will establish that these provisions apply to nonalcoholic beverages.

N.J.A.C. 8:21-13.5 establishes sanitary facilities and controls to include the water supply, sewage disposal, plumbing, toilet and handwashing facilities necessary for operating a food establishment. This section is being proposed for readoption with no change.

N.J.A.C. 8:21-13.6 establishes the requirements for general maintenance of the building, vermin control and sanitation of equipment and utensils. This section is being proposed for readoption with no change.

N.J.A.C. 8:21-13.7 establishes the requirements and procedures for proper maintenance and operation of the equipment. An amendment is being proposed that specifies requirements for the equipment used to bottle, cap and sanitize multiuse containers in a nonalcoholic beverage plant.

N.J.A.C. 8:21-13.8 establishes requirements for disease control and personal hygiene for plant personnel, and is being proposed for readoption with no change.

N.J.A.C. 8:21-13.9 establishes food production and process controls to ensure that foods are produced in such a manner that they will not be subject to contamination and also adopts by reference the applicable Federal standards used in determining whether the food, facilities, methods, practices and controls used are in conformity with good manufacturing practices. This section is being proposed for readoption with no change.

N.J.A.C. 8:21-13.10 requires that a food establishment must notify the Department in the event of a fire, flood, power outage or similar event that could result in contamination or prevent potentially hazardous foods from being held at safe temperatures. This section is being proposed for readoption with no change.

Social Impact

This proposal includes the readoption of existing rules, amendments, proposed new rules for bottled water, and reinstatement of expired provisions governing labeling of foods, drugs, and cosmetics. Readoption of the rules as proposed will provide reasonable standards for the Department to use in regulating the food, drug, cosmetic, and medical device industry in New Jersey. These rules establish the basic framework and controls to ensure that these products are safe, produced in a sanitary manner, labeled properly, are not misleading, and, in the case of drugs, that they are efficacious.

Failure to adopt these rules could jeopardize consumer health and safety. There is a definite need to prevent the consumer from suffering the consequences of contracting a foodborne illness, consuming adulterated foods, or purchasing foods of inferior quality or drugs that are not proven safe or effective. These rules are an integral part of the

Department's efforts to ensure the safety of foods, drugs, cosmetics, and devices manufactured, distributed, and sold in the State.

The public benefits which would be derived are the prevention of foodborne illness and increased public confidence in the safety and quality of the food and drugs offered for sale in New Jersey.

Economic Impact

The rules as proposed for readoption impact upon all firms manufacturing, distributing, or offering for sale foods, drugs, and cosmetic devices in the State. Failure by the Department to readopt its major food, drug, and cosmetic rules could result in a severe economic impact to New Jersey consumers. In the absence of rules, the Department believes that companies could manufacture and market products of inferior quality or mislead the consumer through misleading labels in order to avoid Federal regulatory action.

These rules provide the basic framework or minimum standards of performance which all wholesale food, drug, and cosmetic establishments are required to meet and also form the basis for industries' quality control program. Any resulting increases in illness and injury associated with an expected increase in adulterated foods, drugs, and cosmetics would lead to higher health care costs and loss of income.

The major New Jersey food, drug, and cosmetic industries must already comply with the labeling provisions of the Code of Federal Regulations being referenced in this proposal because these industries are involved in interstate commerce; therefore, there would be no additional economic burden placed upon them to comply with these provisions. The major economic burden for compliance would fall upon those manufacturers, particularly in the food industry, which may be producing products strictly for intrastate commerce. These manufacturers, which compose a small segment of the overall food industry in the State, may incur additional costs to print labels that are in conformance with the Federal requirements.

Since the proposed rules covered under these subchapters apply to a wide diversity of regulated products and industries, the specific economic impact of the amendments, with an emphasis upon the affected industries is being discussed by individual subchapter as follows:

SUBCHAPTER 1. FOOD, DRUG, COSMETIC, AND DEVICE LABELING

Except for the proposed new rule governing professional use of cosmetics, the rules follow the Code of Federal Regulations. The provisions concerning professional use cosmetics were previously in place for many years before the rules expired. In addition to the general economic impact discussed above, the consumer would, if the rules were not adopted, suffer losses associated with treatment for injuries as a result of the improper sale and use of cosmetics intended for professional use.

SUBCHAPTER 2. FOODS

The Department does not believe that the amendments to this subchapter would cause a substantial additional economic impact upon the affected industries. New section N.J.A.C. 8:21-2.42, which prohibits the sale of channel catfish in the Delaware River, would only cause a trivial economic impact. The channel catfish in the Delaware River are used primarily as a recreational fishery and the only known commercial sales would stem from a local fisherman selling their excess catch to a retail market in close proximity to the river. The public health protection far outweighs this slight economic loss.

SUBCHAPTER 3. DRUGS, DEVICES, AND COSMETICS

The Department does not believe that the amendments to this subchapter will have an additional substantial economic impact to the affected industries in that only outdated rules which do not impact upon them are being proposed for repeal. The economic impact to New Jersey consumers caused by the Department's failure to readopt these rules has been discussed under the general economic impact statement.

SUBCHAPTER 4. NEW DRUGS

Only minor changes are being made to update addresses; therefore, the amendments will have no discernable economic impact upon regulated industries.

SUBCHAPTER 5. MANUFACTURING, STORAGE, HANDLING, AND STANDARDS OF BOTTLED WATER

Compliance with this subchapter will impose additional costs on the bottled water industry. The State Legislature, in amending N.J.S.A. 24:12-1, intended that the industry initiate additional testing and recordkeeping requirements for bottled water. The Department also considers it appropriate to adopt strict sanitary requirements for the handling of water and the registration of out-of-State bottlers in order to insure that water meeting safe drinking water standards is sold to New Jersey consumers. The public health benefit of ensuring that bottled water sold in the State meets these standards outweighs the cost of complying with the proposed rules.

The additional testing requirements under this proposal for semiannual analysis for additional hazardous contaminants would cost less than $1,000 per analysis, according to our cost estimates. The Department believes that this additional cost would not add significantly to the per unit cost of manufacturing and distributing bottled water in the State. N.J.A.C. 8:21-5.12, which requires dedicated tank trucks proposed for the purpose of hauling bulk water would impose additional costs to those bottlers or bulk water haulers that may wish to use their tank trucks to haul other liquid foods. The Department believes that the use of dedicated tankers is necessary to protect the integrity of the water, which could be adversely affected by the introduction of food residues or other substances due to the difficulties of completely removing all residues.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. FROZEN DESSERTS

The Department does not believe that the amendments to the frozen dessert rules will cause a substantial economic impact upon the frozen dessert industry. Additional costs will be incurred in order to comply in the areas of: (1) requiring wholesale frozen desserts manufacturers to routinely conduct bacteriological examinations of their products; (2) prohibiting the practice of using reclaimed milk in frozen desserts; (3) requiring sanitary shields on self-service frozen dessert machines; and (4) specifying the addition of brilliant dyes to brine freezing solutions.

SUBCHAPTER 8. IMITATION MILK, IMITATION LOWFAT MILK AND IMITATION FLUID MILK PRODUCTS

The proposed readoption of these rules would result in a continuation of the existing enforcement activities of the Department with the positive economic benefits to the consumer derived from obtaining industry compliance with the proper identification and labeling of imitation milk and imitation milk products. Failure to readopt these rules could have a serious economic impact on the consumer caused by potential mislabeling of imitation milk and fluid milk products as well as the sale of imitation milk products at real milk prices.

SUBCHAPTER 9. LICENSING OF FOOD AND COSMETIC MANUFACTURING AND WHOLESALE ESTABLISHMENTS

The license fee increases being proposed by the Department at N.J.A.C. 8:21-9.5 will impact all wholesale food and cosmetic establishments with gross annual sales of less than one million dollars. The Department does not believe that the increases, which range from $20.00 to $200.00 (depending upon gross annual sales), will have a major negative impact upon the ability of the regulated food establishments to conduct business in the State. The total additional revenues received will have a positive impact upon the Department and will enable it to continue to conduct an adequate level of regulatory inspections, while offsetting the increased costs to the Department created through inflation over the past five years since the fees were last increased.

SUBCHAPTER 10. DESIGNATED FLUID MILK PRODUCTS

There will be no major adverse economic impact caused by the readoption of these amended rules upon the affected milk industry. Where there is a potential impact, the Department feels that the public health benefits to be derived from the changes, far outweigh any economic effect on the industry. Such impact would be in the areas of: (1) lowering the acceptable delivery temperature for milk and milk products from 50 degrees Fahrenheit to 45 degrees Fahrenheit in an effort to increase the wholesomeness and shelf life of milk products; and (2) requiring that the Department institute immediate enforcement action against any milk plant where critical public health controls have been violated or bypassed until effective corrections have been made.

The inclusion of the new provision for issuance of a temporary marketing permit will have a definite positive economic impact on the milk industry. The rules as proposed will permit milk plants to test market new products without having to wait for the establishment of a specific standard of identity. Since the regulatory process could take several months, the milk plant could be marketing a new product while the regulatory process progresses.

Failure to readopt these rules would have a severe economic impact on both the milk industry and consumers. New Jersey's rules are based upon the model Pasteurized Milk Ordinance (PMO) published by the U.S. Food and Drug Administration (FDA). This Ordinance is the result of the efforts of all 50 States and U.S. Territories as part of the National Conference on Interstate Milk Shipments (NCIMS). The primary purpose of the NCIMS is to establish uniform rules regarding milk production and processing so that each state or territory can be assured of the quality of the milk received by them and permit the receipt of out-of-State milk. A failure by New Jersey to adopt uniform rules would lead to the abrogation of numerous reciprocity agreements with surrounding states. This could result in a shortage of milk for New Jersey consumers, since over 90 percent of the State's milk is received from outside the State and other states may refuse to ship into New Jersey because of a lack of regulatory control. New Jersey processed milk may no longer be accepted in other states since the lack of rules in New Jersey would make our State's milk quality suspect.

SUBCHAPTER 11. DENTED CANS: SALVAGE OR DISTRESSED FOODS, ALCOHOL, AND NONALCOHOLIC BEVERAGES AND INDUSTRIAL MISHANDLING

The rule amendment which clarifies the handling of alcoholic beverages in the case of a disaster resulting in product contamination will help those involved reclaim some of their tax loss while still protecting the consumer from contaminated alcoholic beverages.

Failure by the Department to readopt this rule would cause a significant economic loss to New Jersey consumers because a lack of regulatory controls could cause this State to become a dumping ground for the disposition of improperly salvaged distressed food products. These products have a much greater potential of being seriously adulterated, thus causing illness and injury. Also, the Department would not be able to meet its obligations under a Memorandum of Understanding with the surrounding states to regulate salvaged foods. Jeopardizing this reciprocal agreement with the other states would restrict food companies from shipping damaged foods for reconditioning, thus causing an additional economic burden on the food industry's ability to properly dispose of damaged foods.

SUBCHAPTER 12. MANUFACTURE, STORAGE, DISTRIBUTION, AND HANDLING OF NONALCOHOLIC BEVERAGES AND BOTTLED WATER

The economic impact of the repeal of subchapter 12 has been provided in the statements regarding subchapters 5 and 13.

SUBCHAPTER 13. RULES GOVERNING WHOLESALE FOOD ESTABLISHMENTS

The amendments being proposed to this subchapter relate to incorporating nonalcoholic beverage products under the provisions of this subchapter, which were previously under subchapter 12. The Department does not believe that this change will cause any significant additional economic impact upon the nonalcoholic beverage industry. The good manufacturing practices and sanitary requirements under this subchapter are for the most part consistent with those contained in subchapter 12, which is being repealed in order to establish a separate set of rules for bottled water.

Regulatory Flexibility Analysis

A number of the food, drug, and cosmetic manufacturers and distributors, and those offering these products for sale, might be considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The rules as proposed would impose a number of reporting, recordkeeping and other requirements, particularly subchapter 5, rules governing the Manufacture, Storage, Distribution, and Handling of Bottled Water and subchapter 10, rules concerning Designated Fluid Milk Products. The bottled water rules contain a number of recordkeeping requirements concerning the source, type, and amount of water bottled and the rules also contain reporting requirements relative to chemical and microbiological testing that needs to be performed on a periodic basis.

The designated fluid milk rules contain a number of reporting, recordkeeping and other requirements relating, for example, to the maintenance of pasteurization equipment and cleaning and sanitizing schedules. The rules impose reporting requirements associated with bacterial testing and other required tests for fluid milk products. Professional laboratory services are needed in order to comply with these testing requirements.

The Department has determined that the requirements contained in these rules must apply equally to all firms conducting business in the State and regulated under these rules. No differentiation in requirements based on business size is deemed appropriate because both large and small businesses have an equal responsibility under the law to offer for sale safe, unadulterated, and properly labeled foods, drugs, cosmetics, and medical devices.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:21.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:21-12.

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

SUBCHAPTER 1. FOOD, DRUG, COSMETIC, AND DEVICE LABELING

8:21-1.1 Definitions

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

"Consumer" means an individual who secures a cosmetic for his or her self application and has not received any special training or experience in its use.

"Cosmetic" means "cosmetic" as defined in N.J.S.A. 24:1-1h.

"Label" means "label" as defined in N.J.S.A. 24:1-1j.

"Labeling" means "labeling" as defined in N.J.S.A. 24:1-1k.

"Person" means an individual or firm, partnership, company, corporation, trustee, association, or any public or private entity.

"Professional" means an individual qualified through special training and experience and licensed by the State to perform beauty culture services.

"Professional use only" means for use only by a professional, or words of similar import.

"Retail" means sale or distribution directly to the consumer.

"Retail establishment" means any place used in the production, preparation, processing, manufacture, packing, storage, or handling of cosmetics for sale or distribution directly to the consumer.

"Wholesale establishment" means any place used in the production, preparation, processing, manufacture, packing, storage, or handling of cosmetics for sale or distribution to a person other than the consumer.

8:21-1.2 General labeling requirements

The general labeling requirements of 21 CFR 1.1, 1.3, 1.4, 1.20, 1.21, 1.23, 1.24 are incorporated herein by reference.

8:21-1.3 Food labeling

The food labeling requirements of 21 CFR 101, 102, 104, and 105 are incorporated herein by reference.

8:21-1.4 Drug labeling

The drug labeling requirements of 21 CFR 201 are incorporated herein by reference.

8:21-1.5 Cosmetic labeling

The cosmetic labeling requirements of 21 CFR 701 are incorporated herein by reference.

8:21-1.6 Labeling, sale, and distribution of cosmetics for professional use only

(a) For the purposes of this section, a cosmetic labeled for professional use only which is offered for sale or distribution to a consumer shall be deemed to be misbranded within the meaning of N.J.S.A. 24:5-18.1 at the time such cosmetic is offered for such sale or distribution.

(b) No person shall distribute or sell, or have in his or her possession with intent to distribute or sell, any cosmetic labeled for professional use only except to professional barbers, professional beauticians, licensed beauty salons, licensed schools of beauty culture, other beauty culture professions, or licensed wholesale establishments.

(c) Any person who offers a cosmetic labeled for professional use only for sale or distribution shall make reasonable inquiries regarding a person's professional status or affiliation as necessary to determine their qualifications to purchase such products so that the retail sale or distribution of such cosmetic may be prevented. This requirement shall

not apply to the sale or distribution of cosmetics labeled for professional use only between wholesale establishments.

(d) Cosmetics labeled for professional use only when displayed for sale in a combined retail-wholesale establishment shall be kept separate and apart from retail merchandise. Where such cosmetics are accessible to the general public, posters measuring at least 8½ by 11 inches with lettering measuring at least one-half inch in height shall be conspicuously displayed in all such display areas and contain the following statement, "NOTICE—FOR SALE ONLY TO LICENSED PROFESSIONALS."

(e) A cosmetic labeled for professional use only shall be exempt from all the provisions of this section if it can be shown through factual and scientific evidence in the possession of the person offering such product for sale or distribution prior to such offering that:

1. Such cosmetic does not require professional skill or knowledge for its safe or effective use;

2. Such cosmetic does contain necessary warnings, cautions, and directions for its safe and effective use in such terms as to render it likely to be read and understood by the consumer under customary conditions of purchase and use; and

3. Such cosmetic is labeled in compliance with all State and Federal requirements for retail sale.

(f) A cosmetic labeled for professional use only which has a retail counterpart identical in name, chemical composition, packaging (size, etc.) and labeling (directions, cautions, etc.) shall be exempt from all provisions of these rules.

8:21-1.7 Cosmetic product warning statements

The requirements that apply to feminine deodorant sprays, cosmetics in self-pressurized containers, and coal tar hair dyes posing a risk of cancer of 21 CFR 740, Cosmetic Product Warning Statements are incorporated herein by reference.

8:21-1.8 Definition of soap

(a) "Soap," as quoted in N.J.S.A. 24:1-1h(2), shall apply only to products that meet all of the following conditions:

1. More than 50 percent of the nonvolatile matter in the product consists of a salt resulting from an alkali-fatty acid chemical reaction commonly known as saponification and detergent properties of the product are due to the alkali-fatty acid salt; and

2. The product is labeled, sold and represented only as soap.

8:21-1.9 Device labeling

The device labeling requirements of 21 CFR 801 are incorporated herein by reference.

SUBCHAPTER 2. FOODS

8:21-2.1 [Objectives] **(Reserved)**

[The objectives of the Division of Environmental Health regarding food are as set forth in Section 2.2 through 2.11 of this Chapter.]

8:21-2.2 [Inspect food establishments] **(Reserved)**

[The Division shall inspect:

(a) Food establishments engaged in production, processing, storage of food intended for distribution or sale in interstate commerce.

(b) Food establishments doing business within the confines of the State].

8:21-2.3 [Special inspection of food establishments] **(Reserved)**

[The Division shall perform special inspection of food establishments, which shall include:

(a) Inspection of specific establishments to investigate new industries, products, processes, and follow-up complaints;

(b) Obtaining special selected samples during special investigation to assist in evaluating new products, processes and complaints;

(c) Participating in statistical or informational surveys as required.]

8:21-2.4 [Recalling foods] **(Reserved)**

[The Division shall recall misbranded, unwholesome or adulterated foods, including:

(a) Initiating recall program for adulterated, unwholesome or misbranded foods associated with improperly processed foods or foods associated with disasters;

(b) Initiating or coordinating embargo of foods exposed to adulteration by flood, fire or other disaster, as well as unwholesome food, or food dangerous to public health because of faulty processing or handling in establishments doing business in interstate commerce;

(c) Embargoing misbranded, unwholesome or adulterated foods associated with floods, fires, or other disaster as well as foods that are dangerous to the public due to faulty processing or handling in establishments doing business in intrastate commerce.]

8:21-2.5 [Standards for sanitarians] **(Reserved)**

[The Division shall establish standards for sanitarians who conduct inspections of food processing establishments:

(a) Establishing a uniform method to survey retail food establishments;

(b) Completing training and certification of district sanitarians;

(c) Training and rating local sanitarians in inspection methods under the Retail Food Establishment Code of N.J.-1965.]

8:21-2.6 [Food establishment surveys] **(Reserved)**

[The Division shall conduct food establishment surveys in local boards of health by means of:

(a) Utilizing accepted survey methods in determining effectiveness of administrative and inspection procedures in local boards of health;

(b) Conducting follow-up surveys in local boards of health after sufficient time lapse to determine progress.]

8:21-2.7 [Food product evaluation] **(Reserved)**

[The Division shall evaluate food products by means of:

(a) Expanding the potentially hazardous foods sampling program to include specimen types not previously covered;

(b) Continuing the selective sampling surveillance program for bacterial and chemical analyses to determine compliance with chemical and bacteriological standards and labeling requirements;

(c) Participating with U.S. Public Health Service, Division of Preventable Diseases, districts, local boards of health and Division of Laboratories in sampling and investigations associated with foodborne disease outbreaks;

(d) Continuing and expanding the selective sampling of raw agricultural commodities in surveillance for presence of pesticide residues and food additives.]

8:21-2.8 [Reciprocity programs] **(Reserved)**

[The Division shall expand reciprocity programs by means of:

(a) Developing broader ranges of reciprocity of inspection and sampling between the Reciprocity Program and local boards of health, surrounding states and municipalities, and work with the U.S. Food and Drug Administration, the U.S. Public Health Service and the U.S. Department of Agriculture toward development of a national food program currently under extensive study;

(b) Continuing and encouraging expansion of the Program for the supervision and control of caterers.]

8:21-2.9 [Food service training courses] **(Reserved)**

[The Division shall assist in developing food service training courses by:

(a) Cooperating with the Training Program, Rutgers University, district, local boards of health and other related agencies in developing training courses for supervisory personnel, sanitarian, industry and other related persons;

(b) Cooperating with the Training Program, local boards of health, professional associations and industry in developing workshops, seminars, institutes, conferences for continuation training of State and local sanitarians and health officers;

(c) Providing personnel to participate in food related conferences, seminars, workshops, institutes, conferences and for industry meetings;

(d) Cooperating with the Training Program, districts, local boards of health, Bureau of Examination and Licensing and other Health Department Divisions in developing qualifications for food inspection personnel and requirements for licensing and training;

(e) Providing more formal training for field personnel in the area of food processing technology to develop greater skills and competen-

cy in field inspection work and to encourage local boards of health to send representatives to such training facilities offered by the Public Health Service, U.S. Food and Drug Administration, U.S. Department of Agriculture, Universities, and so forth.]

8:21-2.10 [Licenses] **(Reserved)**

[The Division shall issue licenses based upon an evaluation of reports and other available data and issue licenses to complying applicants pursuant to legal responsibilities.]

8:21-2.11 [Promote standardized code adoption] **(Reserved)**

[The Division shall:

(a) Promote local health Department activity to secure adoption of the Retail Food Establishment Code of N.J.—1965;

(b) Promote local health activity to secure adoption of the N.J. Vending Machine Code;

(c) Complete a uniform bakery code, develop up-to-date non-alocholic beverage regulations, promote up-to-date legislation controlling the manufacture, storage, distribution, handling and sale of food, and develop regulations as needed;

(d) Continue efforts to locate, catalog, and inspect all plants needing a license for shipping foods in interstate and intrastate commerce;

(e) Cooperate with all food related subdivisions of the Department including public relations officers in making the general public, political leaders and applicable division heads aware of the need and urgency for complete and competent food programs at all government echelons;

(f) Cooperate with all food related subdivisions of the Department in making the public aware of progress, problems and needs of food programs to gain public support for the programs and to enhance the image of public health officials in this field;

(g) Cooperate with all food related subdivisions of the Department in making the public aware of the distinction between consumer protection as related to fraudulent sale of such items as freezer plans and storm windows, and protection of the public health as related to such matters as food borne disease potential, sanitation in food establishments, food wholesomeness, and temperature safeguards.]

8:21-2.12 [Preparation, handling and service of food] **(Reserved)**

[(a) The utensils, apparatus and equipment used in the preparation, handling and service of food shall not be used in the handling, dispensing or preparation of drugs, medicines, poisons or other substances injurious to health. The utensils, apparatus and equipment used in the preparation, handling and service of food shall be segregated from the equipment used in the handling, dispensing or preparation of drugs, medicines, poisons or other substances injurious to health.

(b) The washing, and cleaning of utensils, apparatus and equipment used in the preparation, handling and service of food shall be performed with the use of sinks or other cleaning equipment separate and apart from those sinks or other cleaning equipment used in the cleaning of equipment used in handling, dispensing or preparation of drugs, medicines, poisons or other substances injurious to health.

(c) Dishes, glasses, cooking and eating utensils, equipment or containers used in the preparation, service, sale and distribution of foods or drugs shall not be washed, cleaned or stored in any room used as a bathroom or toilet room, nor shall dishes, glasses, cooking and eating utensils, equipment or containers used in the preparation, service, sale or distribution of food or drugs be taken into any room used as a bathroom or toilet room.]

8:21-2.13 through 2.15 (No change.)

8:21-2.16 [Egg-breaking establishments] **(Reserved)**

[(a) Every person who operates or conducts any establishment where the business of breaking eggs is carried on, whether such eggs are broken for use as food or other purposes, shall make application to the Board of Health of the State of New Jersey to operate such egg-breaking establishment. Such application shall be in writing and shall be signed by the person making the application.

Upon receipt of an application for a license to conduct an egg-breaking establishment, an inspection will be made of the premises designated in the application. If it appears as a result of inspection that the establishment where the business of breaking eggs is carried on is in compliance with the provisions of "An act to regulate the sale, handling and distribution of eggs and egg products," a license will be issued.

(b) Rooms in which the business of breaking eggs is carried on must be provided with smooth, water-tight floors which can be properly cleansed, and such floors must be cleansed daily.

(c) The walls and ceilings of such rooms shall be provided with a smooth, hard finish, and must be so constructed that there be no ledges on which dust or dirt can collect. Such sidewalls and ceilings shall be kept in a clean condition at all times.

(d) All benches and tables must be constructed of hard, smooth material, and must be readily accessible for thorough cleansing.

(e) The establishment where the business of breaking eggs is carried on must be adequately lighted and ventilated, and shall be furnished with an abundant supply of hot and cold water. Sinks connected by suitable piping with the sewer and of sufficient size to enable all utensils to be thoroughly washed must be installed.

(f) All doors and windows of the establishment where eggs are broken shall be screened to prevent the entrance of flies and other insects.

(g) Proper apparatus for immediately cooling the eggs to a temperature of 45 degrees Fahrenheit or below must be installed in all establishments where eggs are broken for food purposes.

(h) All receptacles containing liquid egg material intended for food purposes shall be kept covered and in a cooler, except the receptacle into which eggs are actually broken.

(i) During the process of breaking out eggs for food purposes, any eggs found to be unfit for such use shall be denatured immediately.

(j) The term "denatured" when used herein refers to the treatment of eggs with a substance the presence of which prevents their use for human food. Eggs shall be regarded as denatured only when the denaturing substance is brought in contact with the whites and yolks.

(k) Proper receptacles for "rots" and "spots" shall be provided in all places where eggs are broken out for food purposes, and such receptacles shall contain a suitable denaturant.

(l) All persons engaged in the business of breaking eggs for food purposes shall thoroughly cleanse their hands before beginning work and after visiting the toilet.

(m) All persons engaged in the business of breaking eggs for food purposes shall be provided with outer garments of washable material which shall be clean at the beginning of each day's work.

(n) No person shall be allowed to live or sleep in any room where the business of breaking eggs is carried on.

(o) Upon the conclusion of the day's work, the floors, walls, tables and utensils must be thoroughly washed and cleansed. Egg shells and all other refuse shall be removed from the premises at least once in 24 hours.

(p) The license granted by the State Board of Health to conduct an egg-breaking establishment shall be framed and conspicuously displayed in the room where eggs are broken.]

8:21-2.17 [Canned tomatoes, identity; label statement of optional ingredients] **(Reserved)**

[(a) Canned tomatoes are mature tomatoes of red or reddish varieties which are peeled and cored and to which may be added or seasoned with one or more of the following optional ingredients:

1. The liquid draining from such tomatoes during or after peeling and coring;

2. The liquid strained from the residue from preparing such tomatoes for canning, consisting of peelings and cores with or without such tomatoes or pieces thereof;

3. The liquid strained from mature tomatoes of such varieties;

4. Salt;

5. Spices;

6. Flavoring.

(b) When the optional ingredient set forth in subsection (a)2 of this Section is present, the label shall bear the statement "With Added Strained Residual Tomato Material from Preparation for Canning". When the optional ingredient set forth in subsection (a)3 of this Section is present, the label shall bear the statement "With Added Strained Tomatoes." When the optional ingredient set forth in subsection (a)5 or (a)6 of this Section is present, the label shall bear

the statement or statements "Spice Added" or "With Added Spice," "Flavoring Added" or "With Added Flavoring," as the case may be. If two or all of optional ingredients set forth in subsection (a)2, 3, 5 and 6 of this Section are present such statements may be combined, as for example, "With Added Strained Tomatoes, Residual Tomato Material from Preparation for Canning, Spice, and Flavoring. In lieu of the word "Spice" or "Flavoring" in such statement or statements, the common or usual name of such spice or flavoring may be used. Wherever the name "Tomatoes" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement or statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed or graphic matter.

(c) Canned tomatoes shall be sealed in a container and so processed by heat as to prevent spoilage.]

8:21-2.18 [Canned tomatoes quality] **(Reserved)**

[(a) The standard of quality for canned tomatoes is as follows:

1. The drained weight, as determined by the method prescribed in subsection (b)1 of this Section, is not less than 50 per cent of the weight of water required to fill the container, as determined by the general method for water capacity of containers;

2. The strength and redness of color, as determined by the method prescribed in subsection (b)2 of this Section, is not less than that of the blended color of any combination of the color discs described in such method in which one-third the area of disc 1, and not more than 1/3 the area of disc 2, is exposed;

3. Peel, per pound of canned tomatoes in the container, covers an area of not more than one square inch; and

4. Blemishes, per pound of canned tomatoes in the container, cover an area of not more than 1/4 square inch.

(b) Canned tomatoes shall be tested by the following method to determine whether or not they meet the requirements of subsection (d)1.2 of this Section;

1. Remove lid from container, but in the case of a container with lid attached by double seam, do not remove or alter the height of the double seam. Tilt the opened container so as to distribute the contents over the meshes of a circular sieve which has previously been weighed. The diameter of the sieve used is eight inches if the quantity of the contents of the container is less than three pounds, of 12 inches if the quantity is three pounds or more. The meshes of such sieve are made by so weaving wire of 0.054 inch diameter as to form square openings 0.446 inch by 0.446 inch. Without shifting the tomatoes, so incline the sieve as to facilitate drainage of the liquid. Two minutes from the time drainage begins, weigh the sieve and drained tomatoes. The weight so found, less the weight of the sieve, shall be considered to be the drained weight.

2. Remove from the sieve the drained tomatoes obtained in paragraph 1 of this Subsection. Cut out and segregate successively those portions of least redness until 50 per cent of the drained weight, as determined under said paragraph 1, has been so segregated. Comminute the segregated portions to a uniform mixture without removing or breaking the seeds. Fill the mixture into a black container to a depth of at least one inch. Free the mixture from air bubbles, and skin off or press below the surface all visible seeds. Compare the color of the mixture, in full diffused daylight or its equivalent, with the blended color of combinations of the following concentric Munsell color discs of equal diameter, or the color equivalents of such discs:

i. Red-Munsell 5R2.6/13 (glossy finish);
ii. Yellow-Munsell 2.5YR5/12 (glossy finish);
iii. Black-Munsell N 1/(glossy finish);
iv. Grey-Munsell N 4(mat finish).]

8:21-2.19 [Canned tomatoes label statement of substandard quality] **(Reserved)**

[(a) If the quality of canned tomatoes falls below the standard prescribed in Section 2.18(a) (Canned tomatoes quality), of this Chapter the label shall bear the general statement of substandard quality as follows: "Below Standard Quality" on one line and "Good Food-Not High Grade" on the line below. In lieu of such general statement of substandard quality, the label may bear the alternative statement "Below Standard in Quality ____," the blank to be filled in with the two words specified after the corresponding number of each paragraph of Section 2.18(a) of this Chapter which such canned tomatoes fail to meet, as follows:

1. "Excessively Broken Up";
2. "Poor Color";
3. "Excessive Peel";
4. "Excessive Blemishes".

(b) If such canned tomatoes fail to meet both paragraphs 3 and 4 of subsection (a) of this Section, the words "Excessive Peel and Blemishes" may be used instead of the words specified after the corresponding number of such paragraphs. Such alternative statement shall immediately and conspicuously precede or follow, without intervening written, printed or graphic matter, the name "Tomatoes" and any statements required or authorized to appear with such name by Section 2.17(b) (Canned tomatoes identity) of this Chapter.]

8:21-2.20 [Tomato puree, tomato pulp: identity; label of optional ingredients] **(Reserved)**

[(a) Tomato puree, tomato pulp, is the food prepared for one or any combination of two or all of the following optional ingredients:

1. The liquid obtained from mature tomatoes of red or reddish varieties;

2. The liquid obtained from the residue from preparing such tomatoes for canning, consisting of peelings and cores with or without such tomatoes or pieces thereof;

3. The liquid obtained from the residue from partial extraction of juice from such tomatoes. Such liquid is obtained by so straining such tomatoes or residue, with or without heating, as to exclude skins, seeds, and other coarse or hard substances. It is concentrated and may be seasoned with salt. When sealed in a container, it is so processed by heat, before and after sealing, as to prevent spoilage. It contains not less than 8.37 per cent, but less than 25.00 per cent, of salt-free tomato solids.

(b) When the optional ingredient set forth in subsection (a)2 of this Section is present, in whole or in part, the label shall bear the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Canning." When the optional ingredient set forth in subsection (a)3 of this Section is present, in whole or in part, the label shall bear the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Partial Extraction of Juice." If both such ingredients are present, such statements may be combined in the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Canning and from Partial Extraction of Juice." Wherever the name "Tomato Puree" or "Tomato Pulp" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement or statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.]

8:21-2.21 [Tomato paste identity; labeling of optional ingredients] **(Reserved)**

[(a) Tomato paste is the food prepared from one or any combination of two or all of the following optional ingredients:

1. The liquid obtained from mature tomatoes of red or reddish varieties;

2. The liquid obtained from the residue from preparing such tomatoes for canning, consisting of peelings and cores with or without such tomatoes or pieces thereof;

3. The liquid obtained from the residue from partial extraction of juice from such tomatoes. Such liquid is obtained by so straining such tomatoes or residue, with or without heating, as to exclude skins, seeds, and other coarse or hard substances. It is concentrated, and may be seasoned with one or more of the optional ingredients:

i. Salt;
ii. Spice;
iii. Flavoring;
iv. It may contain, in such quantity as neutralizes a part of the tomato acids, the optional ingredient: Baking soda.

(b) When the optional ingredient set forth in subsection (a)2 of this Section is present, in whole or in part, the label shall bear the statement "Made From ____" (or "Made in Part From ____", as

the case may be) "Residual Tomato Material from Canning." When the optional ingredient set forth in subsection (a)3 is present, in whole or in part, the label shall bear the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Partial Extraction of Juice." If both such ingredients are present, such statements may be combined in the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Canning and from Partial Extraction of Juice." When the optional ingredient set forth in subsection (a)5 or 6 is present the label shall bear the statement or statements "Spice Added" or "With Added Spice," "Flavoring Added" or "With Added Flavoring," as the case may be. When the optional ingredient set forth in subsection (a)7 is present, the label shall bear the statement "Baking Soad Added." If two or all of the optional ingredients set forth in subsection (a)5, 6, and 7 are present, such statements may be combined, as for example, "Spice, Flavoring, and Baking Soda Added." In lieu of the word "Spice" or "Flavoring" in such statement or statements, the common or usual name of such spice or flavoring may be used. Whenever the name "Tomato Paste" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement or statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

(c) When sealed in a container, tomato paste is so processed by heat, before or after sealing, as to prevent spoilage. It contains not less than 25 per cent of salt-free tomato solids.]

8:21-2.22 [Tomato juice identity] **(Reserved)**

[Tomato juice is the unconcentrated liquid extracted from mature tomatoes of red or reddish varieties, with or without scalding followed by drainage. In the extraction of such liquid, heat may be applied by any method which does not add water thereto. Such liquid is strained from skins, seeds, and other coarse or hard substances, but carries finely divided insoluble solids from the flesh of the tomato. Such liquid may be homogenized, and may be seasoned with salt. When sealed in a container it is so processed by heat, before or after sealing, as to prevent spoilage.]

8:21-2.23 [Yellow tomato juice identity] **(Reserved)**

(a) Yellow tomato juice is the unconcentrated liquid extracted from mature tomatoes of yellow varieties. It conforms, in all other respects, to the defintion and standard of identify for tomato juice prescribed in Section 2.22 (Tomato juice identity) of this Chapter.]

8:21-2.24 [Catsup, ketchup, catchup: identity labeling of optional ingredients] **(Reserved)**

[(a) Catsup, ketchup, catchup, is the food prepared for one or any combination of two or all of the following optional ingredients:

1. The liquid obtained from mature tomatoes of red or reddish varieties;

2. The liquid obtained from the residue from preparing such tomatoes for canning, consisting of peeling and cores with or without such tomatoes or pieces thereof;

3. The liquid obtained from the residue from partial extraction of juice from such tomatoes. Such liquid is obtained by so straining such tomatoes or residue, with or without heating, as to exclude skins, seeds, and other coarse or hard substances. It is concentrated, and is seasoned with sugar or a mixture of sugar and dextrose (refined corn sugar), salt, a vinegar or vinegars, spices or flavoring or both, and onions or garlic or both. When sealed in a container it is so processed by heat, before or after sealing, as to prevent spoilage.

(b) When the optional ingredient set forth in subsection (a)2 of this Section is present, in whole or in part, the label shall bear the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Canning." When the optional ingredient set forth in subsection (a)3 is present, in whole or in part, the label shall bear the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Partial Extraction of Juice."

If both such ingredients are present, such statements may be combined in the statement "Made From ____" (or "Made in Part From ____", as the case may be) "Residual Tomato Material from Canning and from Partial Extraction of Juice." Whenever the name "Catsup," "Ketchup," or "Catchup" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement or statements herein specified showing the optional ingredients present shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.]

8:21-2.25 [Frozen yolks, frozen egg yolks identity] **(Reserved)**

[Frozen yolks, and frozen egg yolks are the food prepared by freezing egg yolks.]

8:21-2.26 [Dried egg yolks, dried egg yolks identity] **(Reserved)**

[Dried egg yolks and dried yolks are the food prepared by drying egg yolks. They contain not less than 95 per cent total egg solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids."]

8:21-2.27 [Egg yolks, liquid egg yolks, yolks, liquid yolks identity] **(Reserved)**

[Egg yolks, liquid egg yolks, yolks and liquid yolks are yolks of eggs of the domestic hen so separate from the whites thereof as to contain not less than 43 per cent total egg solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids." They may be mixed, or mixed and strained.]

8:21-2.28 [Dried eggs, dried whole eggs identity] **(Reserved)**

[Dried eggs and dried whole eggs are the food prepared by drying liquid eggs. They may be powder. They contain not less than 92 per cent total egg solids, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists," Fourth Edition, 1935, pages 297 and 298, under "Total Solids."]

8:21-2.29 [Liquid eggs, mixed eggs, liquid whole eggs, mixed whole eggs identity] **(Reserved)**

[Liquid eggs, mixed eggs, liquid whole eggs and mixed whole eggs, are eggs of the domestic hen broken from the shells, and with yolks and whites in their natural proportions so as broken. They may be mixed, or mixed and strained.]

8:21-2.30 [Frozen eggs, frozen whole eggs, frozen mixed eggs identity] **(Reserved)**

[Frozen eggs, frozen whole eggs and frozen mixed eggs are the food prepared by freezing liquid eggs.]

8:21-2.31 through 2.34 (Reserved)

8:21-2.35 and 2.36 (No change.)

8:21-2.37 (Reserved)

8:21-2.38 (No change.)

8:21-2.39 Sale of ground meat and similar products

[The following definitions or standards of identity purity, quality or strength for foods or food products are hereby established.

1. Meat and Meat Products:

i. Hamburger shall consist of chopped beef, ground beef or beef patties, with or without the addition of beef fat as such seasoning, and shall not contain more than 30 per cent of fat by chemical analysis;

ii. Ground meat, chopped meat, uncooked meat loaf, chopped meat patties, or similar meat products, shall consist of either ground beef, ground veal, ground mutton, ground lamb, ground pork, or any combination thereof, with or without the addition of fat or seasoning and shall not contain more than 30 per cent of fat by chemical analysis. In every case in which any such product is sold in other than packaged form, the product shall be accompanied by a placard or label placed on or adjacent to its immediate container declaring the common or usual name of the ingredients contained therein in the order of their predominance;

iii. Pork sausage, country style sausage, breakfast sausage, and farm style sausage shall consist of ground fresh pork, with or without

the addition of condimental proportions of condimental seasonings and shall not contain more than 55 per cent of fat by chemical analysis;

iv. All sausages to which cereal, vegetable starch, starchy vegetable flour, soya flour, dried milk or nonfat dried milk has been added shall not contain more than 3½ per cent individually or collectively of such ingredients, and not more than 55 percent of fat by chemical analysis.

2. Food products: Oleomargarine or margarine includes all substances, mixtures and compounds sold, offered for sale, or labeled as oleomargarine or margarine and all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter. Oleomargarine or margarine shall contain not less than 80 per cent of fat.]

(a) The following Federal standards of identity as currently promulgated and hereafter amended shall apply to the processing and retail sale of ground meat, sausage, and similar products in this State. The quality standards of 9 CFR 319.15, 319.140, 319.141, 319.142, 319.143, 319.144, 319.145, 319.160, 319.180, 319.181, and 319.182 are incorporated herein by reference.

8:21-2.40 [Maximum tolerance standards for ethylene dibromide (EDB) residues in food products subject to recall] **(Reserved)**

[(a) The Department of Health establishes maximum allowable levels of ethylene dibromide residues in the following types of food products:

1. For raw grain intended for human consumption such as wheat, corn, oats, etc., ethylene dibromide levels shall not exceed 300 parts per billion;

2. For intermediate level products such as flour, various mixes for preparing baked goods, soft cereals and other products that would normally require cooking before eating, ethylene dibromide levels shall not exceed 50 parts per billion;

3. For ready-to-eat products such as cold cereals, snack foods, bread, all baked goods, citrus fruits and vegetables, ethylene dibromide residues shall not exceed 10 parts per billion; and

4. Baby foods, that is, those foods intended for consumption by infants and toddlers as determined by product labels, use directions or marketing approach shall contain no detectable level (that is, less than 1 part per billion) of EDB.

(b) The Commissioner of Health may order manufacturers, distributors, and importers to recall food products, and retailers to remove food products from sale and/or distribution when the Commissioner determines, based upon the test results of food samples analyzed by the Division of Public Health and Environmental Laboratories that said products exceed the established maximum tolerance levels.

(c) The Department shall provide notice, which may be made initially by oral communication to a responsible representative of the manufacturing firm, distributor, importer or retail establishment. When oral notice is given to a manufacturer, distributor or importer to recall a food product, it shall be followed by written confirmation. Failure to receive written confirmation shall not relieve the manufacturer, distributor or importer of the obligation to recall the food product, after the Department has given oral notice. The written confirmation shall include: the identity of the product; the lot or code number or any other information which may be useful in identifying the specific product being recalled; the reason for the recall or removal of the product; and any further information as may be deemed necessary by the Department.

(d) The recalling manufacturer, distributor or importer shall take all necessary action to immediately notify their direct accounts and shall request, and shall follow through on, notification to all consignees of the direct accounts.

1. The recalling firm shall provide the Department no later than five days from receipt of written confirmation, a copy of the recall notification sent to all their direct accounts and, when requested by the Department, a listing of these direct accounts.

2. The list of direct accounts shall be considered confidential information and shall not be released to anyone other than authorized agents or representatives of the Department for purposes of conducting a recall effectiveness check.]

8:21-2.41 (No change.)

8:21-2.42 Prohibition of sale of channel cat fish

No person may expose for sale, or sell channel cat fish (*Ictalurus punctatus)* harvested from the Delaware River between the Interstate 276 Highway Bridge in Burlington Township, Burlington County and Birch Creek, which flows into the Delaware River at Logan Township, Gloucester County.

SUBCHAPTER 3. DRUGS, DEVICES AND COSMETICS

8:21-3.1 [Objectives] **(Reserved)**

[The objectives of the Division of Environmental Health regarding drugs, devices and cosmetics are as set forth in Sections 3.2 through 3.7 of this Subchapter.]

8:21-3.2 [Adulterated and misbranded drugs] **(Reserved)**

[The Division shall endeavor to prevent the manufacture and distribution of adulterated and misbranded drugs throughout the entire State by means of:

(a) Locating and registering new previously nonregistered drug manufacturers and wholesalers through:

1. Reviewing current established lists of drug manufacturers and distributors;

2. Observing drug program personnel in their travels throughout the State;

3. Exchanging information with other governmental agencies at the local, State and national levels.

(b) Making a sanitary and quality control inspection of all New Jersey drug manufacturing businesses and selective wholesale drug businesses, registered in compliance with N.J.S.A. 24:6B, through:

1. Establishing a realistic workload schedule to permit each drug manufacturer to be inspected once during a 12-month period:

2. Developing new inspection techniques through experience and inservice education based on good manufacturing procedures.

(c) Sampling drug products for analytical determinations through:

1. Selective sampling of marginal or submarginal drug manufacturers for potentially adulterated or misbranded products;

2. Participating in and utilizing the results of Federal-State Single Service Sampling Program.

(d) Intensifying activities to eliminate the resale of distressed drugs by:

1. Maintaining and improving the existing reporting system of locations of distressed drugs;

2. Immediate visitation to any location where distressed drugs are located and take immediate steps to assure such distressed drugs do not return to commercial channels.]

8:21-3.3 [Narcotic drug manufacturing establishment inspections; wild marihuana growth] **(Reserved)**

[The Division shall inspect establishments licensed to manufacture and wholesale narcotic drugs and shall certify the existence and destruction of wild marihuana growth by:

(a) Inspecting all licensees one to two months prior to anniversary date of renewal of license;

(b) Certifying existence and destruction of wild marihuana growth through:

1. Maintaining marihuana growth register of all previously known sites of wild growth;

2. Visiting each site in register during June, July and August to ascertain regrowth;

3. Notifying county prosecutor of sites of wild marihuana growth;

4. Determining that destruction has been completed by county.]

8:21-3.4 [SCUBA regulation] **(Reserved)**

[The Division shall regulate compressed breathing air used in Self-Contained Underwater Breathing Apparatus (SCUBA) by inspecting all known SCUBA shops and stations and sampling and analyzing quality of breathing air pursuant to regulation.]

8:21-3.5 [Control of certain drugs] **(Reserved)**

[The Division shall control through inspection, all controlled drugs at all levels of distribution from manufacturer to ultimate consumer, and narcotic accountability in all pharmacies by:

(a) Agreement with Federal Bureau of Drug Abuse, to direct efforts to controlled drug accountability in each of 1,900 pharmacies operating in this State through:

1. Inspecting and conducting drug accountability in pharmacies on a priority basis, as follows:

i. Suspect stores;

ii. Ocean and lake resort areas;

iii. Educational institution areas;

iv. Where teenagers congregate;

v. Poverty areas

2. Inspecting and conducting drug accountability in remaining facilities that handle controlled drugs:

i. Manufacturers 250 (Federal BDAC by agreement);

ii. Wholesalers 400 (Federal BDAC by agreement);

iii. Hospitals and institutions 800, N.J. Drug Program;

iv. Industrial and school dispensaries 500, N.J. Drug Program;

v. Dispensing physicians 800, N.J. Drug Program.

(b) Consolidating narcotic accountability inspection of all 1,900 pharmacies in this State, inspecting narcotic records and accounting for all narcotic drugs purchased and dispensed.]

8:21-3.6 [Labeling of hazardous substances; inspection] **(Reserved)**

[The Division shall inspect and review all labeling by hazardous substance manufacturers of their products in this State by means of:

(a) Maintaining a list of all known manufacturers in this State and their products, inspecting manufacturers of hazardous substances and collecting samples of all labels of hazardous substances and reviewing them for compliance with statutory requirements;

(b) Stimulating local participation in controlling hazardous substances by:

1. In-service training and consultation with local or regional boards of health;

2. Local market surveys in retail outlets for any hazardous substance.]

8:21-3.7 [Illegal drug activity control] **(Reserved)**

[The Division shall endeavor to control counterfeiting and other illegal drug activities by:

(a) Exchanging information with other governmental agencies;

(b) Promoting close cooperation with agencies in exchange of information;

(c) Promoting close cooperation with the pharmaceutical industry;

(d) Surveillance of operations of suspected parties, including reporting contacts and meetings of suspected parties with other parties engaging in the drug industry.]

8:21-3.8 through 3.13 (No change.)

8:21-3.14 through 3.18 (Reserved)

8:21-3.19 Paregoric

Paregoric, as defined in the United States Pharmacopoeia XVII, shall be henceforth regarded as a narcotic drug and subject to the provisions of the [Uniform Narcotic Drug Law] **Controlled Dangerous Substances Act, N.J.S.A. 24:21-1 et seq.**, of this State requiring a prescription except when sold or dispensed in compounds containing not more than one fluid drachm of Paregoric in each fluid ounce.

8:21-3.20 and 3.21 (No change.)

8:21-3.22 [Locomotion control systems adaptable to powered conveyances] **(Reserved)**

[(a) Locomotion control systems, including but not limited to breath control, eye movement control, voice control, sound control, or others adaptable for powered conveyances, including wheel chairs, installed, mounted, or capable of installation or mounting, shall be sold or distributed only on the written order of a licensed physician.

(b) The written order of the physician shall be retained by the manufacturer or distributor as a sales record for a period of five years and subject to inspection by the New Jersey State Department of Health.

(c) Such written order shall include the name, address and professional license number of the ordering physician, the name and address of the patient or user of the locomotion device, the nature of his handicap, and the specific type of locomotion device prescribed.

(d) A copy of the written order of the physician for a locomotion device shall be forwarded to the New Jersey State Department of Health.

(e) Locomotion control devices may be sold or distributed in this State only if a curriculum of habilitation, instruction and training, approved by the State Department of Health, in the use of such a control system is provided to the user by the seller.

(f) Sale and distribution of locomotion control devices in this State shall require registration of the manufacturer or distributor with the State Department of Health pursuant to the provisions of N.J.S.A. 24:6B-1 et seq.]

8:21-3.23 to 3.25 (No change.)

SUBCHAPTER 4. NEW DRUGS

8:21-4.1 (No change.)

8:21-4.2 [Subpart A,] Combination drugs
(No change in text.)

8:21-4.3 [Subpart A,] General provisions; definitions
(No change in text.)

8:21-4.4 [Subpart A,] Exemptions from section 505(a)
(No change in text.)

8:21-4.5 [Subpart A,] General provisions; new drug applications

(a) and (b) (No change in text.)

(c) Full text of Federal regulations pertaining to new drugs, **incorporated herein by reference,** may be found in sections 310, 312 and 314 of 21 C.F.R., parts 300 through 499, revised as of [April 1, 1986] **April 11, 1989** and may be purchased from:

Superintendent of Documents
United States Government Printing Office
Washington, D.C. 20402
Price—[$25.00] **$28.00** per copy.

(d) The complete text of those sections adopted by the Department may be reviewed in the:

Office of Drug Control
[Narcotic and Drug Abuse Control]
Alcoholism and Drug Abuse
New Jersey Department of Health
CN 362 (129 [E.] **East** Hanover Street)
Trenton, [N.J.] **New Jersey** 08625-0362
[(609) 984-1308]

8:21-4.6 through 8:21-4.24 (Reserved)

8:21-4.25 (No change.)

8:21-4.26 Amygdalin; testing

(a) As a substance subject to a new drug application (FD form 356H), amygdalin, also known as Laetrile or vitamin B-17, shall not be available for testing on humans until such time as the sponsor identified in FD form 356H provides to the Department the information specified in a "Notice of Claimed Investigational Exemption for a New Drug" (form FD 1571, 1572 and 1573), known as an IND. Copies of these IND forms may be obtained from:

Office of Drug Control
[Narcotic and Drug Abuse Control]
Alcoholism and Drug Abuse
New Jersey Department of Health
CN 362, (129 E. Hanover Street)
Trenton, New Jersey 08625-0362

8:21-4.27 through 4.50 (No change.)

SUBCHAPTER 5. MANUFACTURING, STORAGE, DISTRIBUTION, AND HANDLING OF BOTTLED WATER

8:21-5.1 Separability

If any provision or application of any provision of this subchapter is held invalid, that invalidity shall not affect other provisions or applications of this subchapter.

8:21-5.2 Definitions

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

"Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practices.

"Adulteration" means the term "adulteration" as defined in N.J.S.A. 24:5-8.

"Approved" means acceptable to the Department, local health authority, or other appropriate administrative agency based on its determination as to the conformance with applicable standards and good public health practices.

"Approved source" means the source of water from a spring, artesian well, drilled well, municipal water supply, or any other source which has been evaluated and found to be of satisfactory sanitary quality as determined by the governmental regulatory agency having primary jurisdiction for that source.

"Aquifer" means a water bearing stratum used as a source of potable water supply.

"Artesian well water" means water that comes from a deep well where water is forced up by underground pressure.

"Bottled water" means all water which is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"Bulk water" means water intended for potable uses which is transported by means of tank trucks.

"Certified laboratory" means a laboratory approved by the New Jersey State Department of Environmental Protection in accordance with N.J.A.C. 7:18, Regulations Governing Laboratory Certification and Standards of Performance.

"CFR" means the Code of Federal Regulations.

"Department/State Department" means the New Jersey State Department of Health.

"Drilled well" means a system whereby water is taken from below the ground through a pipe or piping system or similar installed device utilizing external force or vacuum.

"Expiration date" means the date established by N.J.S.A. 24:12-2 as two years from the date the product was bottled.

"Local health authority" means the local board or local board of health of any municipality or the boards, body or officers in such a municipality lawfully exercising any of the powers of the local board of health under the laws governing such municipality, and includes any consolidated board of health, local or county board of health created and established pursuant to law.

"Lot" means a collection of primary containers or units of the same size, type, and style containing a finished product produced under conditions as nearly uniform as possible and designated by a common container, code or marking; and, in any event, "lot" means no more than one day's production.

"Misbranded" means the term "misbranded" as defined in N.J.S.A. 24:5-16 and 17.

"Multi-use containers" means containers intended for use more than one time.

"Nontoxic materials" means materials for product water contact surfaces utilized in the transporting, processing, storing, or packaging of bottled drinking water which are free of substances which may render the water injurious to health or which may adversely affect the flavor, color, odor or bacteriological quality of the water.

"Operations water" means water which is delivered under pressure to a plant for container washing, hand washing, plant and equipment clean up and for other sanitary purposes.

"Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, storage, processing, packaging, labeling or handling of bottled water.

"Product contact surfaces" means those surfaces that contact product and those surfaces from which drainage onto product or onto surfaces that contact product ordinarily occurs during the normal course of operations.

"Product water" means processed water used by a plant for bottled drinking water.

"Sanitize" means adequate treatment of surfaces by a process that is effective in destroying the vegetative cell of microorganisms of public health significance and in substantially reducing numbers of other microorganisms.

"Source water" means water from a spring, artesian well, drilled well, community water supply or any other approved source which is used for or in connection with bottled water.

"Spring" means water that is taken from a natural orifice in the ground without external force or vacuum. It may be collected from the natural orifice and transported by pipes, tunnels, or similar devices.

"Spring house" means a structure approved by the Department that is constructed over a spring so as to provide complete protection for the source from all types of external sources of contamination.

"Total Trihalomethanes (TTHM)" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane dibromochloromethane, bromochloromethane, bromodichloromethane and tribromomethane).

"Water hauler" means any person who causes bulk water to be transported for bottling for human consumption or other consumer uses from the source to the bottling plant.

8:21-5.3 Water source protection

(a) The source water supply for bottled water shall be from an approved source which is properly located, protected, and operated and shall be easily accessible, adequate, and of safe, sanitary quality. The water quality and sampling frequency shall be in conformance at all times with the applicable laws and rules and regulations of the Department or other governmental agencies having jurisdiction. Examples of source water supplies which may be used for bottled water upon approval by the Department are as follows:

1. Approved public community water systems;

2. Drilled and driven wells when constructed and protected in accordance with applicable standards set forth in N.J.A.C. 7:10-12, Standards for the Construction of Public Non-community and Non-public Water Systems; and

3. Springs inspected for development as a water source and constructed in accordance with the applicable standards established by the Department of Environmental Protection and set forth in N.J.A.C. 7:10-12.24, Standards for the Construction of Public Non-Community and Non-Public Water Systems (springs) and shall meet the standards for springs set forth under N.J.A.C. 8:21-5.4.

8:21-5.4 Springs

(a) The spring shall be properly protected from the entry of insects, birds, rodents and other vermin.

(b) Adequate ventilation shall be provided.

(c) Suffficient protection shall be provided at the intake end of the draw pipe to prevent the introduction of stone, gravel, sand and other particulate matter.

(d) The overflow shall be free-flowing and shall be constructed in a manner to prevent flooding of the springhouse and surrounding area.

(e) The minimum distance from a spring to a building sewer line, septic tank, and a distribution box shall be 50 feet. The minimum distance from a spring to a disposal field or seepage pit shall be 100 feet.

(f) Plumbing shall be sized, installed and maintained in accordance with applicable State and local standards. Also, plumbing shall be properly designed and protected from contamination and damage.

(g) Walls and ceilings shall be smooth, easily cleanable, free of cracks and crevices and constructed of materials that are not adversely affected by moisture, algae, or mold.

(h) Proper cleaning and sanitization equipment and facilities shall be available and used whenever a spring is damaged, repaired and/or contaminated.

8:21-5.5 Bottled drinking water labeling requirements

(a) The type of source water for bottled water purposes shall be clearly and prominently identified on the primary container according

to the following criteria. Additional types of bottled water may be distributed by petitioning the Department to establish additional standards of identity.

1. For "artificially carbonated water," the source of the carbon dioxide gas being used for carbonation of the water shall not come naturally from the same source the water being bottled or packaged was obtained.

2. "Demineralized water," "distilled water," or "purified water" means water which has been treated by deionization, distillation, reverse osmosis, or other approved processes and contains no more than 10 parts per million total dissolved solids.

3. "Drinking water" means water which is derived from either approved public community or public non-community water systems. The source of bottled water derived from a public community water system shall be clearly identified on the label as to the origin of the water, for example, Newark Water Supply, Hackensack Water Supply, etc.

4. "Mineral water" means water containing at least 500 parts per million of naturally impregnated mineral solids which is derived from an underground source.

5. "Naturally carbonated" or "naturally sparkling water" means any water which contains carbon dioxide as it emerges from the source and is bottled directly with its entrapped gas, or, the carbon dioxide is mechanically separated from the water and later reintroduced into the water at time of bottling.

6. "Spring water" means water which is derived from an approved spring, that is a gravity spring, artesian spring, seepage spring, tubular spring, or fissure spring.

7. "Well water" means water which is derived from either an approved driven or a drilled well.

(b) The origin of the bottled water shall be clearly and prominently identified on the primary container. As a minimum, the common name of the source(s) and the location(s) including the municipality and state where located shall appear on the label. The primary container of bottled water shall not contain water from more than one source.

(c) Sodium labeling shall be in accordance with 21 CFR 101.9, 21 CFR 101.13, and 21 CFR 105.69. Mineral water and mineralized water labeling requirements shall include a declaration of the total sodium content stated in milligrams per eight fluid ounce serving.

(d) Each container of bottled water shall contain on its principal display panel an expiration date of two years from the date the water was bottled. Bottled water can no longer be offered for sale, distributed, or given to the public for consumption after the expiration date.

(e) If a bottled water exceeds any of the chemical standards as set forth in the tables listed under N.J.A.C. 8:21-5.12, such water shall be labeled as outlined in that section.

(f) Label claims of medicinal or health-giving properties are prohibited. In addition, references to bacteriological purity or laboratory examination which may have been made by a governmental agency are also prohibited.

(g) Products which are not in conformance with the above referenced bottled drinking water labeling requirements shall be deemed misbranded within the meaning of N.J.S.A. 24:5-16 and 17.

8:21-5.6 Facilities for the storage, distribution, handling, and bottling of bottled water

(a) The grounds surrounding the plant shall be kept in a condition that will not cause the bottled water to be contaminated and/or adulterated.

1. Equipment storage, litter, waste, and excessive weeds or grass within the immediate vicinity of the plant buildings or structures shall not constitute an attractant, breeding place or harborage for rodents, insects or other pests.

2. Roads, yards, and other parking lots shall be maintained so that they do not constitute a source of contamination to the bottled water.

3. Areas surrounding the plant shall be properly drained in order to prevent contamination of the bottled water by seepage, by foot-borne filth, or by providing a breeding place for rodents, insects or other pests.

(b) Plant buildings shall be of suitable size, construction, and design to facilitate maintenance and sanitary operations for processing purposes.

1. The bottle filling operations shall be separated from the balance of plant operations and storage areas by tight walls, ceilings, and self-closing doors or other appropriate barriers. No loading or unloading of trucks or other vehicles shall take place within an establishment unless acceptable segregation or isolation is accomplished.

2. Sufficient space shall be provided for such placement of equipment and storage of materials as is necessary for sanitary operations.

3. The plant shall be designed to reduce the potential for contamination of end products, raw materials, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination may be reduced by any effective means including the separation by location, partition, air flow, enclosed systems or other effective means, of the plant operations to include receiving; raw material storage; processing operations; packaging and packing; finished product storage and shipping; portable equipment and utensil cleaning and sanitizing; and equipment and vehicle maintenance.

4. Floors, walls, and ceilings shall be constructed to be easily cleanable and shall be kept clean and in good repair. Fixtures, ducts, pipes shall be installed in such a manner that drip or condensation does not contaminate the bottled water, raw materials, or product contact surfaces. Aisles or walking spaces between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties without contamination of the bottled water or product contact surfaces.

i. Floors, walls, and ceilings in the bottling room(s) shall be constructed of smooth, nonabsorbing, easily cleanable, light colored surface material and maintained in a clean and sanitary condition at all times.

ii. The floors in the bottling rooms shall be adequately drained in order to prevent pooling of water and to facilitate cleaning procedures. In addition, drain lines from equipment shall not discharge wastewater or product in such a manner as will permit flooding of floors or the flowing of water across working or walking areas or in difficult to clean areas or otherwise create a nuisance. Wastewater disposal shall be provided and have a discharge to a municipal wastewater system or an approved individual wastewater disposal system.

5. Adequate lighting shall be provided throughout the plant to facilitate cleaning and inspection procedures.

i. At least 30 foot candles of light shall be provided in the processing, bottling, equipment, and utensil washing areas. All other areas shall have a minimum of 10 foot candles of light at a distance of 30 inches from the floor surfaces.

ii. Light fixtures which are located in processing, equipment/utensil washing areas or other areas where bottled drinking water may be exposed shall be of the safety type, or otherwise protected to prevent contamination/adulteration in case of breakage.

6. Ventilation in every room of a plant or facility shall be adequate to minimize condensation, odors, vapors, noxious fumes, dust, and other potential airborne contaminants.

(c) Every plant and facility shall be provided with effective screening, rodent proofing, or other protective methods against animals and vermin.

1. No vermin or animal shall be permitted in the areas of a bottled water plant.

2. Effective measures shall be taken to exclude pests from processing areas and to protect against the contamination of the bottled water products.

3. The use of pesticides is permitted only under precautions and restrictions that will prevent contamination of the water. Pesticides shall be applied in an approved manner and by a certified applicator in conformance with the New Jersey Department of Environmental Protection Regulations, N.J.A.C. 7:30, Pesticide Control Regulations.

(d) The establishment shall be provided with adequate sanitary facilities and control measures to protect the purity and quality, of the bottled water. Facilities and controls shall include, but not be limited to:

1. The water supply shall be adequate as to quantity, of a safe, sanitary quality, and from a public or private water supply system which is constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., N.J.A.C. 7:10, and local laws, ordinances, and regulations; provided, that if approved by the Department of Environmental Protection, a nonpotable water supply system may be permitted within the establishment for purposes such as air conditioning and fire protection, only if such system complies fully with the above referenced regulations and the nonpotable water supply is not used in such a manner as to bring

it into contact, either directly or indirectly, with water processing or handling equipment.

i. Hot and cold running water, under sufficient pressure, shall be provided in all areas where bottled drinking water is processed and filled and where equipment, utensils, or containers are washed.

2. All plumbing shall be sized, installed and maintained in accordance with N.J.A.C. 5:23, New Jersey Uniform Construction Code and shall:

i. Carry adequate quantities of water to required locations throughout the establishment;

ii. Prevent contamination of the water supply;

iii. Properly convey sewage and liquid wastes from the establishment to the sewer or sewage disposal system; and

iv. Not constitute a source of contamination of water, equipment or utensils, or create an unsanitary condition or nuisance.

3. Nonpotable water shall not be connected to water related equipment or have outlets in the water processing areas. The potable water supply piping shall not be directly connected with any nonpotable water supply system whereby the nonpotable water can be drawn or discharged into the potable water supply system, provided, that an exception would be an approved physical connection conforming to N.J.A.C. 7:10-10, Safe Drinking Water regulations. The piping of any nonpotable system shall be adequately and durably identified, such as by a distinctive yellow colored paint, so that it can be readily distinguished from piping which carries potable water; and such piping shall not be connected to equipment or have outlets in the processing and bottling area.

4. All sewage and waste water shall be disposed of by means of:

i. A public sewerage system; or

ii. A disposal system which is constructed and operated in conformance with N.J.A.C. 7:9-2, Standards for the Construction of Individual Subsurface Sewage Disposal Systems, the New Jersey Water Pollution Control Act Regulations, N.J.A.C. 7:14, and local laws, ordinances, and regulations.

5. Each plant shall be provided with adequate, conveniently located toilet facilities accessible to the employees at all times.

i. Toilet facilities and dressing rooms, when provided, shall be installed in accordance with N.J.A.C. 5:23, New Jersey Uniform Construction Code.

ii. Doors to toilet rooms and dressing facilities shall be self-closing and shall not open directly into areas where product is exposed to airborne contamination, except where alternate means have been taken to prevent such contamination.

iii. Toilet facilities and dressing rooms, including toilet rooms and fixtures, shall be kept clean and in good repair and free from objectionable odors.

iv. A supply of toilet tissue shall be provided at each toilet at all times.

v. Handwashing signs stating "Wash Hands Before Resuming Work" shall be posted conspicuously in all toilet rooms and at each separate lavatory facility in a bottling plant.

vi. Easily cleanable receptacles shall be provided for waste materials and such receptacles in toilet rooms for women shall be covered. Such receptacles shall be emptied at least once a day, and more frequently when necessary, to prevent excessive accumulation of waste material.

vii. Hot or cold or tempered (90 degrees to 105 degrees Fahrenheit) water under pressure shall be provided in toilet facilities.

6. Lavatories shall be adequate in size and number and shall be so located as to permit convenient and expeditious use by all employees.

i. Lavatories shall be installed in accordance with N.J.A.C. 5:23, New Jersey Uniform Construction Code.

ii. Each lavatory shall be designed to provide hot and cold or tempered (90 degrees to 105 degrees Fahrenheit) running water.

iii. An adequate supply of hand cleansing soap, detergent, or other sanitizing solution shall be available at each lavatory. Also, an adequate supply of sanitary towels, or an approved drying device, shall be available and conveniently located near the lavatory. Common towels are prohibited. Where disposable towels are used, waste receptacles shall be located conveniently near the handwashing facilities.

iv. Lavatories, soap dispensers, hand drying devices, and all other components of the handwashing facilities shall be kept clean and in good repair.

8:21-5.7 Production, equipment, and packaging requirements

(a) All bottled water production, including transporting, packaging, and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for undesirable bacterial or other microbiological growth, toxic formations, deterioration or contamination of the processed product, production equipment, and product packaging materials and shall be in conformance with 21 CFR 129.1, 129.20, 129.30, 129.35, 129.37, 129.40, and 129.80, incorporated herein by reference.

(b) All water that is bottled shall receive a final disinfectant treatment that ensures a minimum 0.1 milligram per liter ozone residual or utilize other effective microbial control procedures at time of packaging. Test kits or other appropriate equipment shall be used to measure the disinfectant residual at least daily, or more frequently, if deemed appropriate by the Department.

(c) Water storage tanks shall be designed to exclude all foreign matter and all ports, hatches, and other openings shall be provided with tight fitting covers and shall be vented only through the use of inverted air filters or other approved venting device(s).

(d) Product water pipelines shall be constructed with seams and pipe connections that are smoothly bonded or connected to minimize the accumulation of scale residue or other contaminants.

1. Pipe connections shall be constructed for easy breakdown for inspection and cleaning.

2. Transport pipelines charging the storage tanks and transporting water to the filling lines shall be used only for bottled water products.

(e) All treatment and processing of bottled drinking water by distillation, ion-exchange, filtration, reverse osmosis, mineral addition, and ultraviolet treatment or any other process shall be done in a manner so as to be effective in accomplishing its intended purpose and in conformance with Section 409 of the Federal Food, Drug, and Cosmetic Act.

(f) Filling and closing of bottled water containers shall be done in a sanitary manner by approved mechanical filling and capping equipment provided that other sanitary methods may be approved by the Department.

1. Fillers shall have a charging inlet designed as to prevent the entrance of condensation and contaminants. All filling valves shall be equipped with a condensation diverting apron.

2. All closure hoppers and product reservoirs or filling machines along with any other type of hopper or conveying system used in the production and filling of bottled water products shall be equipped with covers. These covers shall adequately protect closures and bottled water from dust, dirt, and other contaminants and shall be used at all times during and after operations.

3. Fillers and other processing, filling and capping equipment used in the production of bottled drinking water shall be constucted of smooth, impervious, corrosion resistant nontoxic materials. All fillers shall be constructed for ease of cleaning and kept in good repair.

4. Fillers, filling line piping, pumps, and other processing, filling, and capping equipment used in the production of bottled drinking water may not be used for the production of milk, fruit drinks, and/or any other food products, unless an adequate washing and sanitizing procedure has been established. Non-food products shall not be processed, filled, and/or capped on lines used for bottling water products.

5. Only sanitary, nontoxic, food grade lubricants shall be used on container contact surfaces.

(g) Containers and closures for bottled water shall conform to the requirements of 21 CFR 177, incorporated herein by reference.

1. All cleaned bottled water containers and single service containers shall be protected from dust, dirt, insects, debris, and all other forms of contamination while in storage or during the production, filling and capping operations.

2. All closures (screw, snap, or crown caps) shall be new. These closures, while in storage, shall be covered and protected from contamination and/or adulteration at all times.

8:21-5.8 Sanitation and maintenance requirements

(a) All tanks, pipelines, and equipment used to store and transport water shall be inspected, maintained, cleaned, and sanitized. Sanitizing shall be accomplished by one of the following methods followed by a product water flush.

1. Chemical sanitizer shall be equivalent to a chlorine water solution of 50 parts per million for a minimum of two minutes at a temperature of 75 degrees Fahrenheit.

i. If surfaces cannot be reached by the aforementioned soaking treatment, surfaces shall be sprayed with 100 parts per million chlorine water solution at 75 degrees Fahrenheit.

ii. Other chemical sanitizers of equivalent concentration may be used provided they meet the equivalent concentrations as outlined in this subsection.

iii. Steam sanitization in an enclosed system of at least 170 degrees Fahrenheit for at least 15 minutes or 200 degrees Fahrenheit for five minutes.

iv. Hot water in an enclosed system of at least 170 degrees Fahrenheit for at least 15 minutes or at 200 degrees Fahrenheit for at least five minutes.

v. 0.1 parts per million ozone water solution for not less than a five minute contact time period.

(b) The following additional requirements shall apply to the cleaning, sanitizing, and monitoring of equipment.

1. Storage tanks shall be inspected on a monthly basis and shall be kept free of scale, evidence of oxidation, and residue.

i. Tank seams in contact with product water shall be smoothly bonded and maintained to minimize accumulation of possible contaminants.

ii. Tanks shall be cleaned and sanitized before use except that tanks that are used in a continuous production operation shall be cleaned and sanitized on a predetermined schedule with a minimum treatment of at least once a month.

2. Product water pipelines shall be kept free of scale, evidence of oxidation, and residue.

i. Product water pipelines shall be cleaned and sanitized before and after use and sanitizing shall be accomplished according to procedures outlined in this section.

3. Processing equipment, to include water treatment systems, shall be cleaned and sanitized in a manner and at a frequency so as to be effective in accomplishing its intended purpose(s). Cleaned and sanitized equipment and utensils when not in use shall be stored in a location and in a manner that protects product contact surfaces from splash, dust, dirt, and any other type of possible contamination.

i. Water treatment equipment to include ozone mixing tanks and equipment, soft water tanks, and all associated equipment shall be inspected on a monthly basis, disassembled, if necessary; cleaned; and sanitized.

ii. Bottle washing equipment shall be kept free of paper residue and substances which may interfere with the proper operation of the water or air jets. Internal sprays shall be checked on a daily basis to assure proper timing and adequate dispersion of the washing medium to properly clean the containers.

iii. Fillers shall be kept free from scale, evidence of oxidation and residue, and shall be sanitized before and immediately after use.

(1) The filler reservoir shall be kept adequately covered at all times.

(2) Filling and capping operations shall be conducted as to prevent contamination of the water being bottled.

iv. Cappers shall be kept free of residue and washed, rinsed, and sanitized before and after use.

(1) Capper hoppers shall be kept adequately covered to protect the closures from dust, dirt, and other contaminants and shall be emptied when not in use.

(2) Hopper surfaces in contact with product container closures shall be kept free of residue and sanitized before and after use.

8:21-5.9 Storage and handling of chemicals

(a) The following requirements shall apply to the storage and handling of chemicals:

1. Detergents, sanitizers, and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended use.

2. Only toxic materials that are required to maintain sanitary conditions in laboratory testing procedures, for plant and equipment maintenance and operations or in manufacturing or processing operations shall be used and stored in the facility.

3. Poisonous or dangerous cleaning compounds, sanitizing agents, and pest control chemicals shall be applied, stored, and held in a manner that prevents the raw water, bottled water, or water packaging materials and equipment from being contaminated.

4. These materials shall be identified and used only in the manner and under the conditions that will be safe for their intended use.

8:21-5.10 Personnel requirements

(a) All persons, while working in the processing and bottling of water, shall conform to good hygienic practices while those persons are on duty, to the extent necessary to prevent contamination of bottled water. The methods for maintaining cleanliness shall include, but are not limited to:

1. Wearing clean outer garments;

2. Maintaining a high degree of personal cleanliness;

3. Washing hands and exposed arms thoroughly with soap and warm water before starting work, after each absence from work station, after smoking, eating, drinking, or visiting the toilet room and at any other time when the hands may have become soiled or contaminated;

4. Removing all insecure jewelry and during periods in which the latter is manipulated by hand, removing from hands any jewelry that cannot be adequately sanitized;

5. If gloves are used in water bottling operations, they shall be maintained in a clean and sanitary condition;

6. Wearing hair nets, headbands, caps, beard covers, or other effective hair restraints in an effective manner;

7. No storing of clothing or other personal belongings in bottled water processing areas or in areas used for washing equipment or utensils;

8. No eating of food, drinking of beverages, expectorating, or using tobacco in areas where water is being processed or bottled or in areas used for washing of equipment or utensils; and

9. Taking any other necessary precautions to prevent contamination of bottled water with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines.

(b) No person shall be allowed to live or sleep in any room where bottled water is produced, manufactured, packed, stored, bottled, distributed, or sold.

(c) No person affected by disease in a communicable form or while a carrier of such disease, or while affected with boils, sores, infected wounds, or other abnormal sources of microbiological contamination, shall knowingly be permitted to work in a bottled water plant in any capacity in which there is a reasonable possibility of finished product water becoming contaminated by such person, or of disease being transmitted by such persons or other individuals.

8:21-5.11 Sanitizing requirements for multi-use bottles or containers

(a) Mechanical bottle washers shall be provided when multi-use containers are used. In addition, mechanical washers shall be designed and maintained to thoroughly wash and sanitize all surfaces of containers prior to filling.

(b) Multi-use bottles shall be checked prior to washing by a method acceptable to the Department to assure that containers that may have been used for other purposes are not reused for bottled water. Such containers shall be rendered unusable for rebottling.

(c) Before filling, all multi-use containers shall be thoroughly washed in an effective cleansing agent and water solution, having a temperature not less than 120 degrees Fahrenheit, followed by application of a bactericidal solution, and the inside rinsed with product water to remove traces of sanitizing agents.

(d) The bactericidal procedure as a minimum, shall be one of the following:

1. Sanitize with 100 parts per million chlorine water solution at 75 degrees Fahrenheit for not less than 30 seconds;

2. Sanitize with a 2 1/2 percent caustic solution at a minimum temperature of 120 degrees Fahrenheit followed by a rinse containing not less than 10 parts per million free chlorine. (Note: When caustic is discharged by means of high-velocity jets, this procedure shall be considered to satisfy both cleaning and bactericidal requirements);

3. Sanitize with water at an inside bottle temperature not less than 170 degrees Fahrenheit for not less than 15 seconds;

4. Sanitize by exposing all surfaces to a three percent caustic solution at a minimum temperature of 120 degrees Fahrenheit for five minutes by means of automatic bottle washers utilizing high-velocity

jets (hydro type) or by means of soaker washers, followed by a rinse containing not less than 10 parts per million free chlorine;

5. As an alternative to the use of a caustic alkali solution, multi-use containers may be cleaned and sanitized prior to refilling by the use of an alkaline detergent cleaner containing a minimum of 0.35 percent active alkalinity at a minimum temperature of 130 degrees Fahrenheit for not less than one minute (if high velocity jets are used), or for not less than three minutes (if a soaker type washer is used), followed by a rinse of at least one minute with a sanitizing solution containing at least 25 parts per million chlorine or 10 parts per million iodine. All bottles and carboys shall be rinsed until free of any detergent or sanitizing solution residue with product water; or

6. Other methods equally protective of public health as the above, when approved by the Department, may be used.

(e) Only sanitizers listed in 21 CFR 178.1010 shall be acceptable.

8:21-5.12 Bulk water requirements

(a) Tank trucks, loading and unloading facilities, storage tanks, and other equipment used to store or transport bulk water shall be maintained in a clean and sanitary condition. All previously cited rules and regulations which pertain to equipment, construction, maintenance, cleaning, and sanitizing shall also apply to transporting and handling of bulk water.

(b) All sources of water for bulk water shipment must be approved by the New Jersey Health Department or the governmental regulatory agency having jurisdiction over the source water location outside the State or in a foreign country. Before bulk water is delivered to any bottling plant, an analysis of the water indicating that it meets bacteriological, chemical, and radiological standards set forth in this subchapter shall be submitted to the plant owner or operator.

(c) Tank trucks previously used to transport toxic substances, petroleum products, or other deleterious substances shall not be used to transport bulk water.

(d) Tank trucks and related equipment used to transport or handle bulk water shall be used for no other purpose and shall be thoroughly cleaned and sanitized prior to filling in accordance with the provisions of N.J.A.C. 8:21-5.8 and shall comply with the following:

1. Storage tanks and tank trucks shall be free of deep pits, excessive scale, dents or poorly welded seams which may tend to hold standing water;

2. Inlets, outlets, piping hose and other appurtenances associated with storage tanks and tank trucks shall be constructed and handled to prevent contamination of product water;

3. All tank trucks shall be tagged identifying the time and place of cleaning and sanitization. These records shall be available at all times for inspection by the regulatory authority; and

4. All hoses, connections and fittings used in conjunction with the coupling of the tank truck to the bulk water delivery line shall be sanitized with 100 parts per million chlorine solution at 75 degrees Fahrenheit or any other approved sanitizer of equivalent concentration. The solution shall be brushed on all exposed parts to assure proper sanitization.

(e) The physical water quality in the tank truck shall be determined in the following manner:

1. At the time of filling of a tank with bulk water for transport, the tank truck shall be visually inspected and initially be filled with approximately 50 gallons of water. The discharge valve shall then be opened and several gallons of water discharged and checked for odor, clarity and particulates. If the water has an unsatisfactory odor, clarity or other detectable problem the tank truck shall be rejected. If satisfactory, the tank truck may be loaded for transport;

2. At time of delivery of bulk water to the bottling plant, the discharge valve of the tank truck shall be opened and several gallons shall be discharged and checked for odor, clarity and particulate matter. If the water has an unsatisfactory odor, clarity or other detectable problem the load shall be rejected;

3. The dome cover shall be opened at the time of filling and discharge of bulk water from the tank truck. The dome shall be in place and properly sealed during loading and unloading of tank trucks. Tank trucks shall be loaded and unloaded through the tail pipe discharge valve whenever possible; and

4. The dome cover and tail pipe valve cover and doors shall be closed prior to transport of water.

(f) The Department of Health shall be notified by telephone by the management of the water establishment anytime a tank truck or load of water is rejected at the time of pickup or delivery with the reason for rejection. This notification shall take place no later than the next business day.

8:21-5.13 Recordkeeping requirements

(a) Each bottling plant shall keep true and accurate records of all water processed. Such records shall show:

1. Source, type, and volume of water processed daily; and

2. Records indicating the physical inspection of bulk water delivered.

(b) Each bottling plant shall keep true and accurate records of finished product. Such records shall show:

1. The amount bottled;

2. Dates of bottling; and

3. Expiration date.

(c) Records of the required water analysis on both raw and finished product water as specified in N.J.A.C. 8:21-5.12 and 5.14 shall be forwarded to the Department. Upon completion, the certified laboratory conducting the required tests may, upon written approval of the Department, submit the test results on behalf of the plant owner or operator. The weekly microbiological test results may be consolidated and reported on a monthly basis.

(d) Records shall be kept of the cleaning and sanitizing of multi-purpose fillers and bottle washing equipment, if applicable.

(e) All records shall be maintained at the plant for 30 months from the date of processing of the raw water and shall be available for review by the inspecting agency upon request.

8:21-5.14 Water standards and sampling requirements

(a) Bottled water which is manufactured, distributed, or sold within this State shall comply with the microbiological, physical, chemical, hazardous contaminants, and radiological standards set forth in this section. Analyses shall be conducted in accordance with the procedures set forth in N.J.A.C. 7:18, Rules Governing Laboratory Certification and Standards of Performance, and the following:

1. Microbiological Standards: A weekly analysis for total coliform is required for finished product water. A weekly analysis for total coliform shall be required for source (raw) water if it is other than water from a public community water supply system. Bottled water should be examined for standard aerobic plate count. Standards for total coliform are contained in Table 1 below;

2. Physical Standards: An annual analysis shall be required for both source (raw) and bottled water. Standards for physical quality are contained in Table 2 below;

3. Chemical Standards: An annual analysis shall be required for both source (raw) and bottled water. Standards for chemical quality are contained in Tables 3 and 4 below;

4. Radiological Standards: A radiological analysis shall be required once every four years for both source (raw) and bottled water. Radiological standards are contained in Table 5 below; and

5. Hazardous Contaminant Standards: A semiannual analysis shall be required for selected hazardous contaminants as specified in N.J.A.C. 7:10-14.1, Maximum Contaminant Levels for Hazardous Contaminants. The current list of hazardous contaminants and maximum contaminant levels is contained in Table 6 below. This list may be updated periodically by the New Jersey State Department of Environmental Protection.

(b) Samples Exceeding Standards: If any bottled water standard for physical, chemical, radiological quality is exceeded, the product shall be labeled with a statement indicating substandard quality as follows:

1. "Excessively Turbid," "Abnormal Color," and/or "Abnormal Odor;"

2. "Contains Excessive Chemical Substance," if the bottled water fails to meet any of the chemical quality standards set forth in this section. The specific chemical(s) may be declared in lieu of the words "Chemical Substances" in the statement "Contains Excessive Chemical Substances." When a specific chemical is declared, that name by which the chemical(s) is designated in this section shall be used. Example: "Contains Excessive Copper;" and

3. "Excessively Radioactive" if the bottled water fails to meet the requirements of this section;

(c) Bottled water containing a substance at a level considered injurious to health shall be deemed adulterated, regardless of whether or not the bottled water bears a label statement of substandard quality prescribed in this section.

(d) The statement of substandard quality shall appear on the principal display panel or panels and shall immediately and conspicuously precede or follow, without intervening written, printed, or graphic matter, the type of bottled water.

(e) The Department may require the owner/operator of the bottled water facility to institute additional treatment in order to meet bottled water standards when a maximum contaminant level is exceeded. If contamination is excessive and the best available treatment will not result in meeting the maximum contaminant level, the water supply shall be deemed adulterated and its use prohibited.

TABLE 1
MICROBIOLOGICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	METHODS	STANDARD
Total Coliform	Membrane Filter (MF)	<1 per 100 milliliters
	Most Probable Number (MPN)	<2.2 per 100 milliliters

TABLE 2
PHYSICAL REQUIREMENTS FOR BOTTLED WATER

DETERMINATION	STANDARD
Color	15 units
Odor	8 threshold odor number
Turbidity	5 nepholometric turbidity units

TABLE 3
CHEMICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVEL
Arsenic	0.05 mg/l
Barium	1.0 mg/l
Cadmium	0.01 mg/l
Chloride	250.05 mg/l
Chromium	0.05 mg/l
Copper	1.0 mg/l
Fluoride	2.2 mg/l
Iron	0.3 mg/l
Lead	0.05 mg/l
Manganese	0.05 mg/l
Mercury	0.002 mg/l
Nitrate	10.0 mg/l
Selenium	0.01 mg/l
Silver	0.05 mg/l
Sulfate	250.0 mg/l
Total dissolved solids	500.0 mg/l
Zinc	5.0 mg/l
ABS/LAS (foaming agents)	0.5 mg/l
Total Trihalomethanes	0.1 mg/l
ph	+6.5 to 8.5 units
Sodium	++mg/l

+Recommended range.
++Maximum contaminant levels have not been established.
mg/l= milligrams per liter

TABLE 4
ORGANIC CHEMICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVELS
Endrin	0.002 mg/l
Lindane	0.004 mg/l
Methoxychlor	0.1 mg/l
Toxaphene	0.005 mg/l
2,4-D	0.1 mg/l
2,4,5-TP, Silvex	0.01 mg/l

mg/l= milligrams per liter

TABLE 5
RADIOLOGICAL STANDARDS FOR BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVEL
Gross alpha activity including radium 226; excluding radon and uranium	15 pci/l
Combined radium 226 and radium 228	5 pci/l
If two or more beta or photon emitting radionuclides are present, the sum of their annual dose equivalent to the total body or to any internal organ shall not exceed four millirems per year.	4 mrem/yr.

pci/l = picocuries per liter
mrem/yr. = millirems per year

TABLE 6
STANDARDS FOR SELECTED HAZARDOUS CONTAMINANTS IN BOTTLED WATER

DETERMINATION	MAXIMUM CONTAMINANT LEVELS
Trichloroethylene	1.0 ug/l
Tetrachloroethylene	1.0 ug/l
Carbon tetrachloride	2.0 ug/l
1,1,1,-trichloroethane	26.0 ug/l
1,2-dichloroethane	2.0 ug/l
Vinyl chloride	2.0 ug/l
Methylene chloride	2.0 ug/l
Benzene	1.0 ug/l
Chlorobenzene	4.0 ug/l
Dichlorobezenes (S)	
Ortho (O)	600.0 ug/l
Meta (M)	600.0 ug/l
Para (P)	75.0 ug/l
Trichlorobenzene	8.0 ug/l
1,1-Dichloroethylene	2.0 ug/l
1,2-Dichloroethylene Sis and trans	10.0 ug/l
Polychlorinated Biphenyls (PCB)	0.5 ug/l
Chlordane	0.5 ug/l
Xylenes	44.0 ug/l

ug/l= micrograms per liter

8:21-5.15 Bulk and bottled water registration (out-of-State) requirements

(a) Every out-of-State or foreign bottling plant and/or bulk water handling facilities that sell or distribute bottled and bulk water in New Jersey shall have a current valid registration issued by the Department.

(b) In order to obtain a valid registration to sell or distribute bottled water the following requirements shall be met:

1. The applicant shall complete a registration form provided by the Department and provide all information requested. The registration application shall be signed by the owner or operator responsible for the facility.

2. A letter of certification shall be submitted from the appropriate regulatory agency having jurisdiction over the operation verifying that the facility has been inspected and approved.

3. A copy of each product label shall be submitted for each size and type of bottled water that will be sold or distributed. This requirement does not apply to bulk water.

4. A complete microbiological, physical, chemical, radiological, and hazardous contaminants analysis as listed in N.J.A.C. 8:21-5.14 above must be performed on each finished bottled water product to be distributed in New Jersey. A copy of the required analyses shall accompany the application and shall be forwarded to the Department at the frequency prescribed in N.J.A.C. 8:21-5.14 except that microbiological sample results need only be submitted every six months.

5. All analyses required shall be conducted at an approved laboratory certified by the New Jersey Department of Environmental Protection in accordance with N.J.A.C. 7:18, Rules Governing Laboratory

Certification and Standards of Performance, and the laboratory shall be certified for the specific method for which the water is being analyzed.

6. All analyses shall be performed within six months prior to the date of application for registration.

(c) In order to obtain a valid registration to sell or distribute bulk water, the following requirements shall be met:

1. The applicant shall comply with (a) and (b) above as they relate to bottled water registration;

2. The establishment shall comply with all of the requirements of N.J.A.C. 8:21-5.12;

3. A complete microbiological, physical, chemical, radiological, and hazardous contaminants analysis must be performed on each source of water that is used in accordance with the standards established under N.J.A.C. 8:21-5.14. Sample results must be submitted initially with the application for registration and annually thereafter; and

4. The bulk water establishment shall submit a new registration form to the Department any time there is a change in the source of bulk water. The establishment shall meet all of the criteria of this section before he can resume bulk shipments of water into New Jersey.

(d) A registration will be issued to the bottled water and/or bulk water facility upon submission, review and approval of all the information required.

(e) Failure to comply with the bulk and bottled water registration requirements may result in the prohibition of the distribution, sale, or offering for sale of the bottled water products in New Jersey.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. FROZEN DESSERTS

8:21-7.1 Definitions

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

. . .

"Optional ingredients" means Grade A dry milk products, concentrated milk, concentrated fluid milk products, flavors, sweeteners, stabilizers, emulsifiers, acidifiers, vitamins and minerals. Similar ingredients may be added to frozen desserts when approved by the Food and Drug Administration.

"Wholesale frozen desserts manufacturer" means any place, premises or establishment or any part thereof where frozen desserts are assembled, manufactured, processed, frozen or converted in form, for distribution or sale at the wholesale level.

8:21-7.2 Ice cream and frozen custard

(a) Rules concerning descriptions of ice cream and frozen custard are as follows:

1. Ice cream is a food produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients specified in (b) below, and may contain one or more of the optional caseinates specified in (c) below subject to the conditions hereinafter set forth, and other safe and suitable nonmilk-derived ingredients; and excluding other food fats, except such as are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Ice cream is sweetened with nutritive carbohydrate sweeteners **or other sweetening agents approved by the U.S. Food and Drug Administration for use in frozen desserts** and may or may not be characterized by the addition of flavoring ingredients.

2.-3. (No change.)

(b) The optional dairy ingredients referred to in (a) above are: [Cream] **cream**, dried cream, plastic cream[,] (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweetcream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate[,] **and** whey[, condensed whey, dry whey, and modified whey products,] **and those modified whey products** (for example, reduced lactose whey, reduced minerals whey, and whey protein concentrate) that [has] **have** been determined by the Food and Drug Administration (F.D.A.) to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term "milk" as used in this section means cow's milk. And whey[, condensed whey, dry whey,] and modified whey[s (partially delactosed whey, partially demineralized whey, demineralized whey and whey protein concentrate)] **products** used contribute, singly or in combination, not more than 25 percent by weight of the total nonfat milk solids content of the finished food. The modified skim milk, when adjusted with water to a total solids content of nine percent is substantially free of lactic acid as determined by titration with 0.1N NaOH, and it has a pH value in the range of 8.0 to 8.3.

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

(e) Rules concerning nomenclature of ice cream and frozen custard are as follows:

1. (No change.)

2. If the food contains no artificial flavor, the name on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, for example, "vanilla", in letters not less than one-half the height of the letters used in the words "ice cream".

i. If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the natural flavor predominates, the name on the principal display panel or panels of the label[s] shall be accompanied by the common name of the characterizing flavor, in letters not less than one-half the height of the letters used in the words "ice cream", followed by the word "flavored", in letters not less than one-half the height of the letters in the name of characterizing flavor, for example, "Vanilla flavored", or "Peach flavored", or "Vanilla flavored and Strawberry flavored".

ii. (No change.)

3.-6. (No change.)

(f) (No change.)

8:21-7.3 Ice milk; identity; label statement

(a) (No change.)

(b) The name of the food is "ice milk". Ice milk [shall] **may** be offered for sale, sold or served [only] in properly labeled factory-filled containers, **from a dispensing freezer or may be dipped from a factory-filled container** [if the ice milk or any of its ingredients contain added color or any ingredients added for the purpose of imparting a characterizing flavor, except ice milk may be served and sold at retail from a dispensing freezer].

(c) When ice milk is sold at retail, direct from a frozen dessert dispensing freezer **or hand-dipped from a factory-filled container,** as provided in (b) above, a sign must be prominently and conspicuously displayed not more than 18 inches above each dispensing freezer, where it can be clearly read by customers under normal condition of purchase, stating "ICE MILK SOLD HERE". The letters on such sign shall be bold face capitals in contrasting color to the background. When ice milk is sold at retail, only in properly labeled factory-filled containers, no such sign shall be required.

1.-2. (No change.)

8:21-7.4 Sherbet; identity; label statement

(a) (No change.)

(b) The optional dairy ingredients referred to in (a) above are: [Cream] **cream**, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream

buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate[,] **and** whey[, condensed whey, dry whey, and modified whey products,] **and those modified whey products** (for example, reduced lactose whey, reduced minerals whey, and whey protein concentrate) that [has] **have** been determined by the Food and Drug Administration (F.D.A.) to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaported from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term "milk" as used in this section means cow's milk. The modified skim milk, when adjusted with water to a total solids content of nine percent is substantially free of lactic acid as determined by titration with 0.1N NaOH, and it has a pH value in the range of 8.0 to 8.3.

(c)-(i) (No change.)

8:21-7.5 Water ice; identity; label statement

(a) Water ices are the foods each of which is prepared from the same ingredients and in the same manner prescribed in N.J.A.C. 8:21-7.4 for sherbets, except that the mix need not be pasteurized, and complies with all the provisions of N.J.A.C. 8:21-7.4 (including the requirements for label statement of optional ingredients) except that no milk or milk-derived ingredient and no egg ingredient, other than **pasteurized** egg white, is used.

(b) (No change.)

8:21-7.6 Mellorine; identity; label statement

(a) Rules concerning descriptions of mellorine are as follows:

1.-2. (No change.)

3. When calculating the minimum amount of milkfat and protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit[s] juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4.

(b) Mellorine shall be fortified so that Vitamin A is present in a quantity which will ensure that 40 international units (IU) **(8 ug of retinol equivalence),** are available for each gram of fat in mellorine, within limits of good manufacturing practice.

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

8:21-7.7 and 7.8 (No change.)

8:21-7.9 Frozen yogurt; identity; label statement

[(a) Frozen yogurt is the food which is prepared by freezing while stirring a pasteurized mix consisting of the ingredients permitted for ice cream in N.J.A.C. 8:21-7.2. Such ingredients are cultured after pasteurization by one or more strains of Lactobacillus bulgaricus and Streptococcus thermophilus, provided, however, fruits, nuts, or other flavoring materials may be added before or after the mix is pasteurized and cultured. The standard plate count requirement for frozen desserts as specified in N.J.A.C. 8:21-7.39(a) shall apply to the mix prior to culturing. Frozen yogurt, exclusive of any flavoring, contains not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat. No heat or bacteriostatic treatment (other than refrigeration), which results in destruction or partial destruction of the organisms, shall be applied to the product after such culturing. The finished yogurt shall weigh not less than five pounds per gallon. The name of the food is "frozen yogurt".

(b) The label shall contain a complete list of ingredients in accordance with the provisions of 21 CFR 101.4, and comply with the provisions of 21 CFR 101.22.

(c) On the label of frozen yogurt the strains of bacteria may be collectively referred to as yogurt culture.]

(a) Rules concerning description of frozen yogurt are as follows:

1. Frozen yogurt is the food produced by freezing, while stirring, a mix containing safe and suitable ingredients, including, but not limited to, dairy ingredients, but excluding chemical preservatives. The mix may be homogenized and all of the dairy ingredients shall be pasteurized or ultra-pasteurized. All or a portion of the dairy ingredients shall be cultured with a characterizing live bacterial culture that shall contain the lactic acid-producing bacteria Lactobacillus bulgaricus and Streptococcus thermophilus, and may contain other lactic acid-producing bacteria. The culturing of all or a portion of the dairy ingredients must take place to the extent that the finished, unflavored mix has an increased titratable acidity, calculated as lactic acid, and a decreased pH as a result of the fermentation process. The titratable acidity of the finished, unflavored frozen yogurt mix shall have been increased by a minimum of 0.15 percent, calculated as lactic acid, as a result of the fermentation process. Food grade acids or other acidogens may not be used for the purpose of raising the titratable acidity of the mix or lowering the pH. The frozen yogurt mix shall contain the characterizing live yogurt culture organisms. Sweetener(s), flavoring(s), color additive(s) and/or other characterizing food ingredients may be added to the mix before or after pasteurization or ultra-pasteurization, provided that any ingredient addition after pasteurization or ultra-pasteurization is done in accordance with good manufacturing practices. Any dairy ingredients added after culturing shall have been pasteurized or ultra-pasteurized. The standard plate count requirement for frozen desserts shall apply only to the dairy ingredients prior to culturing.

2. Frozen yogurt, before addition of bulky characterizing ingredient(s) or sweetener(s) shall contain not less than 3.25 percent milkfat and 8.25 percent milk solids not fat. Frozen yogurt shall contain not less than 1.3 pounds of total solids per gallon, and shall weigh not less than 4.0 pounds per gallon.

(b) The name of the food is "frozen yogurt." The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

(c) Each of the ingredients used in the food shall be declared on the label as required by 21 CFR 101.

(d) Frozen yogurt may be sold from a dispensing freezer or may be dipped from a properly labeled bulk container. When frozen yogurt is sold as provided above, a sign shall be displayed in such a location as it can be easily read by customers under normal conditions of sale, stating "Frozen Yogurt Sold Here."

1. Such sign shall be in bold face capitals on a contrasting background. In addition, if items containing frozen yogurt are listed on a menu board the statement "Frozen Yogurt Served Here" shall be included on the menu board in reasonable proximity to the items containing frozen yogurt. The letters in such statement shall be bold face capitals at least as large as the letters used in listing items containing frozen yogurt and on a contrasting background.

2. No such sign or menu board declaration shall be required if the only method of advising customers of what items are being offered for sale is a menu furnished to the customer. In such case, the menu shall contain the statement "Frozen Yogurt Served Here." Such statement shall be in reasonable proximity to the menu items containing frozen yogurt and the letters on such statement shall be bold face capitals at least as large as the letters used in listing items containing frozen yogurt. Any menu listing frozen yogurt or items prepared with frozen yogurt shall conform to the provisions of this paragraph.

8:21-7.10 Frozen yogurt or lowfat frozen yogurt; identity; label statement

[(a) Frozen lowfat yogurt or lowfat frozen yogurt is the food which is prepared by freezing while stirring a pasteurized mix consisting of the ingredients permitted for ice cream in N.J.A.C. 8:21-7.2. Such ingredients are cultured after pasteurization by one or more strains of Lactobacillus bulgaricus and Streptococcus thermophilus, provided, however, fruits, nuts, or other flavoring materials may be added before or after the mix is pasteurized and cultured. The standard plate count requirement for frozen desserts shall apply to the mix prior to culturing. The food, exclusive of any flavoring, contains not less than 0.5 percent milkfat nor more than two percent milkfat and not less than 8.25 percent milk solids not fat. No heat or bacteriostatic treatment (other than refrigeration), which results in

destruction or partial destruction of the organisms, shall be applied to the product after such culturing. The finished food shall weigh not less than five pounds per gallon. The name of the food is "frozen lowfat yogurt" or "lowfat frozen yogurt".

(b) The label on a package of this food, in addition to all other required information shall:

1. Contain a complete list of ingredients in accordance with the provisions of 21 CFR 101.4;

2. Be in accordance with the provisions of 21 CFR 101.9;

3. Be in accordance with the provisions of 21 CFR 101.22.

c. On the label, the strains of bacteria may be collectively referred to as yogurt cultures.]

(a) Frozen lowfat yogurt is the food which is prepared from the same ingredients and in the same manner prescribed in N.J.A.C. 8:21-7.9 for frozen yogurt, and complies with all of the provisions of N.J.A.C. 8:21-7.9, including the requirements for customer notification of product sale by posting, menu board or menu; except that the milkfat level is not less than 0.5 percent nor more than 2.0 percent.

(b) The name of the food is "frozen lowfat yogurt" or, alternatively, "lowfat frozen yogurt".

8:21-7.11 Frozen nonfat yogurt or nonfat frozen yogurt; identity; label statement

[(a) Frozen nonfat yogurt or nonfat frozen yogurt is the food which is prepared by freezing while stirring a pasteurized mix consisting of the ingredients permitted for ice cream in N.J.A.C. 8:21-7.2. Such ingredients are cultured after pasteurization by one or more strains of Lactobacillus bulgaricus and Streptococcus thermophilus, provided, however, fruits, nuts, or other flavoring materials may be added before or after the mix is pasteurized and cultured. The standard plate count requirement for frozen desserts shall apply to the mix prior to culturing. The food, exclusive of any flavoring, contains less than 0.5 percent milkfat and not less than 8.25 percent milk solids not fat. No heat or bacteriostatic treatment (other than refrigeration), which results in destruction or partial destruction of the organisms, shall be applied to the product after such culturing. The finished food shall weigh not less than five pounds per gallon. The name of the food is "frozen nonfat yogurt" or "nonfat frozen yogurt."

(b) The label on the package of this food, in addition to all other required information shall:

1. Contain a complete list of ingredients in accordance with the provisions of 21 CFR 101.4;

2. Be in accordance with the provisions of 21 CFR 101.9;

3. Be in accordance with the provisions of 21 CFR 101.22.

(c) On the label the strains of bacteria may be collectively referred to as yogurt culture.]

(a) Frozen nonfat yogurt is the food which is prepared from the same ingredients and in the same manner prescribed in N.J.A.C. 8:21-7.9 for frozen yogurt, and complies with all the provisions of N.J.A.C. 8:21-7.9, including the requirements for customer notification by posting, menu board or menu; except that the milkfat level is less than 0.5 percent.

(b) The name of the food is "frozen nonfat yogurt" or, alternatively, "nonfat frozen yogurt".

8:21-7.12 through 7.15 (No change.)

8:21-7.16 Non fruit (imitation) sherbet; identity; label statement

(a) (No change.)

(b) The optional dairy ingredients referred to in (a) above are: [Cream] **cream,** dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, **superheated condensed milk,** dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweetcream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate[,] **and** whey[, condensed whey, dry whey, and modified whey products,] **and those modified whey products** ([e.g.] **for example,** reduced lactose whey, reduced minerals whey, and whey protein concentrate) that [has] **have** been determined by the Food and Drug Administration (F.D.A.) to be generally recognized as safe (GRAS) for use in this type of food. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 percent, has a titratable acidity of not more than 0.17 percent, calculated as lactic acid. The term "milk" as used in this section means cow's milk.

(c) (No change.)

(d) In addition to all other required information, the label shall:

1.-4. (No change.)

5. When a sign is used at the point of purchase to advertise non fruit sherbet, it shall contain the same information as required in 3 and 4 above[.];

6. When non fruit sherbet is sold other than in properly labeled factory-filled containers, a sign must be conspicuously displayed on the sale premises or vehicle where it can be clearly read by customers under normal conditions of purchase, stating the name of the food and the information required in 3 and 4 above. The letters on such sign shall be bold face capitals in contrasting color to the background[.];

7. (No change.)

8:21-7.17 Non fruit (imitation) water ice; identity; label statement

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

(c) In addition to all other required information, the label shall:

1.-3. (No change.)

4. The statement required in 3 above shall be followed immediately by the words "contains no fruit or fruit juice" in letters at least half the size of those used in statement 3 above[.];

5. When a sign is used at the point of purchase to advertise non fruit water ice, it shall contain the same information as required in 3 and 4 above[.];

6. When non fruit water ice is sold other than in properly labeled factory-filled containers, a sign must be conspicuously displayed on the sale premises or vehicle where it can be clearly read by customers under normal conditions of purchase, stating the name of the food and the information required in 3 and 4 above. The letters on such sign shall be bold face capitals in contrasting color to the background[.];

7. (No change.)

8:21-7.18 (No change.)

8:21-7.19 Freezer made shake; freezer made milk shake; **freezer made lowfat milk shake;** identity; label statement

(a) (No change.)

(b) Freezer made lowfat milk shake means the same product as (a) above, except that it shall contain not less than 0.5 percent and not more than 2.0 percent milkfat.

[(b)](c) Other freezer made shakes including jumbo shake, thick shake, T.V. shake, or any coined or trade name containing the word "shake" shall meet the requirements of (a) above except that the minimum percent of milkfat may be less than 3.25 percent.

[(c)](**d**) "Shakes" not meeting the requirement for "milk shakes" shall not be advertised, sold or served as milk shake.

[(d)](e) When any freezer made milk shake or other freezer made shake purports to be or is represented for any special dietary use [by man], it shall be sold only in a container labeled in accordance with all applicable provisions of the regulations of the Federal Food and Drug Administration.

8:21-7.20 (No change.)

8:21-7.21 Lo-mel; identity; label statement

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

(d) When any Lo-mel purports to be or is represented for any special dietary use [by man], it shall be sold only in a labeled container. The label shall include the name of the food, a complete list of ingredients in accordance with the provisions of 21 CFR 101.4 and nutrition information as required by 21 CFR 101.9.

8:21-7.22 through 7.26 (No change.)

8:21-7.27 [through 8:21-7.30 (Reserved)] **Generic frozen dessert; identity; label statement**

(a) A generic frozen dessert is a food that in its unfrozen form or state is recognized by consumers by an established common or usual name or, in the absence thereof, by an appropriate descriptive term. The unfrozen food becomes a frozen dessert when it is frozen, with or without agitation, and when the food, in its frozen form, is designed and intended to be consumed in a frozen state. Generic frozen desserts shall be made from safe and suitable ingredients. A generic frozen dessert, whose unfrozen counterpart is subject to a definition and standard of identity, shall comply with that definition and standard of identity, and ingredient provisions, except that safe and suitable ingredients may additionally be used that are necessary in the manufacture of the frozen dessert.

(b) The name of the frozen dessert shall be: "Frozen . . .". The blank shall be filled in with the common or usual name of the unfrozen counterpart of the food or, in the absence thereof, an appropriate descriptive term.

(c) The label on packages of generic frozen dessert shall, in addition to all other required information, include a complete list of all ingredients in accordance with the provisions of 21 CFR 101.4 and 101.22.

8:21-7.28 Other standards of identity

Frozen desserts standards of identity as adopted or amended by the U.S. Food and Drug Administration and published in the latest edition of the Code of Federal Regulations (CFR) shall apply in the State of New Jersey.

8:21-7.29 through 8:21-7.30 (Reserved)

8:21-7.31 Plant records

(a) Each licensee shall keep a true and correct record showing the milk and milk products received and the frozen desserts and special dietary foods manufactured. Such record shall show:

1.-2. (No change.)

3. Date and volume of each class of product manufactured[.]; **and**

4. Results of bacterial analysis of frozen dessert samples.

(b) When applicable the plant shall also maintain records of pasteurization processes and cleaning procedures (CIP charts).

[(b)](c) The records shall be legibly written in English and shall be retained at said plant [or local office] for a period of [six months] **not less than one year from the date of manufacture and at the plant or other reasonably accessible location for an additional year.** [and] **Records** shall be available at all times for examination by the Department.

8:21-7.32 through 7.36 (No change.)

8:21-7.37 Protection from [contaminiation] **contamination**

(a) Frozen desserts plant operations, equipment, and facilities shall be located and conducted to prevent any contamination of frozen dessert products, ingredients, equipment, containers, and utensils. All frozen dessert products or ingredients which have been spilled, overflowed, or leaked shall be discarded. The processing or handling of products other than frozen desserts in the plant shall be performed to preclude the contamination of such frozen dessert products. The storage, handling, and use of poisonous or toxic materials shall be performed to preclude the contamination of frozen desserts and its ingredients and the product-contact surfaces of all equipment, containers and utensils.

(b) Novelty type frozen desserts which employ the use of non-food grade brine solution as a freezing medium shall add a brilliant blue or green food dye to the brine solution in such quantity that the dye would be observable if the frozen dessert product has become contaminated with brine.

8:21-7.38 Pasteurization and cooling

(a) All mixtures used in the manufacture of frozen desserts**, except as noted in the standards of identity above,** shall be pasteurized in a plant and in properly designed and operated equipment, to one of the following temperatures and held continuously at or above that temperature for at least the corresponding specified time:

1. To a temperature of at least 155 degrees F for at least 30 consecutive minutes by the batch (**vat**) process; or

2.-5. (No change.)

(b) (No change.)

8:21-7.39 Bacterial standards

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

(c) During any consecutive six months, each wholesale frozen desserts manufacturer shall collect and have analyzed at least four samples of each frozen desserts product classification as defined in this subchapter. Records of these samples shall be maintained in accordance with N.J.A.C. 8:21-7.31.

8:21-7.40 (No change.)

8:21-7.41 Plant personnel

(a) No person, while affected [by] **with** a disease in a communicable form, or while a carrier of such disease, or while affected with boils, sores, infected wounds, [or other sources of microbiological contamination] **acute respiratory infection, nausea, vomiting, diarrhea which could cause foodborne diseases such as staphylococcal intoxication, salmonellosis, shigellosis or hepatitis,** shall work in **any area of** a frozen desserts plant in any capacity in which there is a reasonable possibility of **such person** contaminating food, food ingredients, or food contact surfaces **with pathogenic organisms,** or transmitting disease to other individuals.

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

8:21-7.42 Supply of milk and fluid milk products

(a) All milk and fluid milk products used in the manufacture of frozen desserts for sale or distribution in New Jersey shall be obtained from milk plants holding permits from the Department of Health; except, frozen dessert plants located outside the geographical boundaries of New Jersey shall receive their dairy ingredients, which are used in the manufacture of frozen desserts, from plants holding a current satisfactory Interstate Milk Shippers rating.

(b) Milk and fluid milk products, including frozen desserts mix, which have overflowed, leaked, been spilled, or improperly handled shall be discarded.

(c) Milk and milk products including frozen desserts mix from damaged, punctured or otherwise contaminated containers, products from out of code containers or packaged milk and milk products which have physically left the control of a milk processing plant shall not be repasteurized for use in frozen desserts mix. However, the repasteurization of milk and milk products shipped in transport tankers which have been pasteurized at another plant and have been handled in a sanitary manner and maintained at 45 degrees Fahrenheit or less is permitted.

8:21-7.43 (No change.)

8:21-7.44 Self service frozen desserts manufacturing machines

(a) Retail frozen desserts manufacturing plants which permit the self service of frozen desserts by the customer shall comply with the following provisions to protect the product from contamination by the public:

1. Hoppers, reservoirs and similar frozen dessert mix holding devices to which the public has easy access shall be secured by a method acceptable to the Department to prevent entry by the public.

2. Dispensing nozzles on dispensing freezers shall be protected from incidental contact by the customer by installation of a barrier or shield in front of the nozzle.

8:21-[7.44]**7.45** Frozen desserts; mobile units

(a) Mobile units shall comply with all applicable provisions of [these regulations] **this subchapter** exclusive of toilet facilities, pasteurization and storage facilities, and in addition thereto, shall comply with the following:

1.-5. (No change.)

6. A refrigerated box to maintain a temperature of 45 degrees F or below shall be provided. The box shall be of ample capacity, of stainless steel or other noncorrosive material, the floor of which shall be pitched towards a center drain. It shall be provided with metal racks or platforms or shelves on which to store products or ingredients and shall be equipped with an indicating thermometer **which is accurate to ± 3 degrees F;**

7.-15. (No change.)

8:21-[7.45]**7.46** (No change in text.)

SUBCHAPTER 8. IMITATION MILK, IMITATION LOW FAT MILK AND IMITATION FLUID MILK PRODUCTS

8:21-8.1 through 8.4 (No change.)

SUBCHAPTER 9. LICENSING OF FOOD AND COSMETIC MANUFACTURING AND WHOLESALE ESTABLISHMENTS

8:21-9.1 Definitions

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

. . .

"Wholesale establishment" means any place engaged in the production, preparation, processing, manufacture, packing, storage or handling of food or cosmetics for sale or distribution to any other person other than the ultimate consumer.

8:21-9.2 Scope of regulations

(a) Every **wholesale** establishment falling within the definitions of N.J.S.A. 24:15-1, must obtain a license from the Department except as hereinafter exempted.

(b) A separate license shall be obtained for each **wholesale** food and cosmetic establishment operated within the State.

8:21-9.4 License requirement

(a) Every person owning or operating a **wholesale** food or cosmetic establishment within the State shall apply annually for a license to operate such establishment on forms provided by the Department.

(b) (No change.)

8:21-9.5 License fees

(a) The [department] **Department** shall collect from each applicant for a license, under the provisions of these [regulations] **rules,** an annual fee in the following amounts:

[1. For each wholesale food or cosmetic establishment having an annual gross business of less than $25,000, $50.00;

2. For each wholesale food or cosmetic establishment with a gross annual business in excess of $25,000 but not in excess of $50,000, $80;]

[3.]**1.** For each wholesale food or cosmetic establishment with a gross annual business [in excess of $50,000 but] not in excess of $100,000, $100.00;

[4. For each wholesale food or cosmetic establishment with a gross annual business in excess of $100,000 but not in excess of $500,000, $150;]

[5.]**2.** For each wholesale food or cosmetic establishment with a gross annual business in excess of [$500,000] **$100,000** but not in excess of [$1,000,000] **$500,000**, $300.00;

[6.]**3.** For each wholesale food or cosmetic establishment with a gross annual business in excess of [$1,000,000] **$500,000**, $500.00.

8:21-9.6 (No change.)

8:21-9.7 Revocation of license

(a) Upon evidence duly ascertained by the Department or furnished to the Department by any local board of health, that the licensee licensed under the provisions of this Act is violating any of the rules, regulations or statutes as hereinbefore provided, the Department shall upon hearing and proof of allegation, revoke the license of such licensee. **The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

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

SUBCHAPTER 10. DESIGNATED FLUID MILK PRODUCTS

8:21-10.1 Definitions [of] **and** product standards

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The following standards of identity conform to the [code] **Code** of Federal Regulations for milk and cream (21 CFR 131).

. . .

["Certified milk" means milk produced in compliance with the laws of this State, the State Sanitary Code, regulations and regulations of the Department, and such methods and standards as may be established by the certifying Medical Milk Commission so empowered by law and shall include certified milk which may have been pasteurized, homogenized or modified in accordance with practices approved by the Department and the Certifying Medical Milk Commission.]

. . .

"Eggnog" means: [the product defined in 21 CFR 131.170.]

1. Description. Eggnog is the food containing one or more of the optional dairy ingredients specified in paragraph 2 below, one or more of the optional egg yolk-containing ingredients specified in paragraph 3 below and one or more of the optional nutritive carbohydrate sweeteners specified in paragraph 4 below or other sweetening agents approved by the U.S. Food and Drug Administration for use in milk or fluid milk products. One or more of the optional ingredients specified in paragraph 5 below may also be added. All ingredients used are safe and suitable. Eggnog contains not less than six percent milkfat and not less than 8.25 percent milk solids not fat. The egg yolk solids content is not less than one percent by weight of the finished food. The food shall be pasteurized or ultra-pasteurized and may be homogenized. Flavoring ingredients and color additives may be added after the food is pasteurized or ultra-pasteurized.

2. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

3. Egg yolk-containing ingredients. Liquid egg yolk, frozen egg yolk, dried egg yolk, liquid whole eggs, frozen whole eggs, dried whole eggs, or any one or more of the foregoing ingredients with liquid egg white or frozen egg white.

4. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

5. Other optional ingredients.

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Salt.

iii. Flavoring ingredients.

iv. Color additives that do not impart a color simulating that of egg yolk, milkfat, or butterfat.

v. Stabilizers.

6. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat-Official Final Action."

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

7. Nomenclature. The name of the food is "eggnog." The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring, as specified in 21 CFR 101.22.

1. The following term shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

(1) The word "ultra-pasteurized" if the food has been ultra-pasteurized.

ii. The following terms may appear on the label:

(1) The word "pasteurized" if the food has been pasteurized.

(2) The word "homogenized" if the food has been homogenized.

8. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Frozen yogurt mix" means the unfrozen fluid mixture from which frozen yogurt is made by freezing and shall contain not less than 3.25

percent milkfat and 8.25 percent milk solids not fat prior to the addition of bulky characterizing ingredients or sweeteners. In addition, the mix shall meet the requirements of N.J.A.C. 8:21-7.9 regarding culturing, titratable acidity and live yogurt culture organisms.

"Frozen lowfat yogurt mix" means the unfrozen fluid mixture from which frozen lowfat yogurt is made by freezing and shall contain not less than 0.5 percent milkfat nor more than 2.0 percent milkfat. In addition, the mix shall meet the requirements of N.J.A.C. 8:21-7.9 regarding culturing, titratable acidity and live yogurt culture organisms.

"Frozen nonfat yogurt mix" means the unfrozen fluid mixture from which frozen nonfat yogurt is made by freezing and shall contain not more than 0.5 percent milkfat. In addition, the mix shall meet the requirements of N.J.A.C. 8:21-7.9 regarding culturing, titratable acidity and live yogurt culture organisms.

"Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.5 percent milkfat and not less than 7.5 percent milk solids not fat. Goat milk shall be produced according to the sanitary standards of these rules. The word "milk" shall be interpreted to include goat milk.

. . .

"Homogenized milk" means milk which has been treated to insure breakup of the fat globules to such an extent that, after 48 hours of quiescent storage at 45[°F.] degrees Fahrenheit (7[°C] degrees Celsius), no visible cream separation occurs on the milk, and the fat percentage of the top 100 milliliters of milk in a quart, or of proportionate volumes in containers of other sizes, does not differ by more than 10 percent from the fat percentage of the remaining milk as determined after thorough mixing.

. . .

"Lowfat yogurt" means: [the product defined in 21 CFR 131.203.]

1. Description. Lowfat yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph 3 below with a characterizing bacterial culture that contains the lactic acid-producing bacteria, Lactobacillus bulgaricus and Streptococcus thermophilus. One or more of the other optional ingredients specified in paragraphs 2 and 4 below may also be added. When one or more of the ingredients specified in subparagraph 4i below are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Lowfat yogurt, before the addition of bulky flavors, contains not less than 0.5 percent nor more than two percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf-life of the food, lowfat yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

2. Vitamin addition (optional).

i. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less then 2,000 International Units (400 μg of retinol equivalence) thereof, within limits of good manufacturing practice.

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 μg) thereof within limits of good manufacturing practice.

3. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

4. Other optional ingredients.

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii. Flavoring ingredients.

iv. Color additives.

v. Stabilizers.

5. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat-Official Final Action".

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

iii. Titratable acidity—"Acidity—Official Final Action."

6. Nomenclature. The name of the food is "lowfat yogurt." The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

i. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(1) The phrase ". . .% milkfat," the blank to be filled in with the fraction 1/2 or multiple thereof closest to the actual content of the food.

(2) The word "sweetened" if nutritive carbohydrate sweetener is added without the addition of characterizing flavoring.

(3) The parenthetical phrase "(heat treated after culturing)" shall follow the name of the food if the dairy ingredients have been heat treated after culturing.

(4) The phrase "vitamin A" or "vitamin A added," or "vitamin D" or "vitamin D added," or "vitamins A and D added," as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

7. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

. . .

"Nonfat yogurt" means: [the product defined in 21 CFR 131.206.]

1. Description. Nonfat yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph 3 below with a characterizing bacterial culture that contains the lactic acid-producing bacteria, Lactobacillus bulgaricus and Streptococcus thermophilus. One or more of the other optional ingredients specified in paragraphs 2 and 4 below may also be added. When one or more of the ingredients specified in subparagraph 4i below are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Nonfat yogurt, before the addition of bulky flavors, contains less than 0.5 percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf-life of the food, nonfat yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

2. Vitamin addition (optional).

i. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units (400 ug of retinol equivalence) thereof within limits of good manufacturing practice.

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 ug) thereof within limits of good manufacturing practice.

3. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

4. Other optional ingredients:

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii. Flavoring ingredients.

iv. Color additives.

v. Stabilizers.

5. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat—Official Final Action".

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

iii. Titratable acidity—"Acidity—Official Final Action."

6. Nomenclature. The name of the food is "nonfat yogurt". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

i. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(1) The word "sweetened" if nutritive carbohydrate sweetener is added without the addition of characterizing flavoring.

(2) The parenthetical phrase "(heat treated after culturing)" shall follow the name of the food if the dairy ingredients have been heat treated after culturing.

(3) The phrase "vitamin A" or "vitamin A added", or "vitamin D" or "vitamin D added", or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

7. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

. . .

"Pasteurization," "pasteurized", and similar terms shall mean the process of heating every particle of milk or milk product in properly designed and operated equipment, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
+145 degrees F (63[°] degrees C)	30 minutes
+161 degrees F (72[°] degrees C)	15 seconds
191 degrees F (89[°] degrees C)	1.0 second
194 degrees F (90[°] degrees C)	0.5 second
201 degrees F (94[°] degrees C)	0.1 second
204 degrees F (96[°] degrees C)	0.05 second
212 degrees F (100[°] degrees C)	0.01 second

+If the fat content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5[°] degrees F (3[°] degrees C). Provided, that eggnog shall be heated to at least the following temperature and time specifications:

Temperature	Time
155 degrees F (69[°] degrees C)	30 minutes
175 degrees F (80[°] degrees C)	25 seconds
180 degrees F (83[°] degrees C)	15 seconds

Provided further, that nothing in this definition shall be construed as barring any other pasteurization process which has been recognized by the Food and Drug Administration to be equally efficient and which is approved by the State Health Department.

. . .

"Yogurt" means: [the product defined in 21 CFR 131.200.]

1. Description. Yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph 3 below with a characterizing bacterial culture that contains the lactic acid-producing bacteria, Lactobacillus bulgaricus and Streptococcus thermophilus. One or more of the other optional ingredients specified in paragraphs 2 and 4 below may also be added. When one or more of the ingredients specified in subparagraph 4i below are used, they shall be included in the culturing process. All ingredients used are safe and suitable. Yogurt, before the addition of bulky flavors, contains not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat, and has a titratable acidity of not less than 0.9 percent, expressed as lactic acid. The food may be homogenized and shall be pasteurized or ultra-pasteurized prior to the addition of the bacterial culture. Flavoring ingredients may be added after pasteurization or ultra-pasteurization. To extend the shelf-life of the food, yogurt may be heat treated after culturing is completed, to destroy viable microorganisms.

2. Vitamin addition (optional).

i. If added, vitamin A shall be present in such quantity that each 946 milliliters (quart) of the food contains not less than 2,000 International Units (400 ug of retinol equivalence) thereof within limits of good manufacturing practice.

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 ug) thereof within limits of good manufacturing practice.

3. Optional dairy ingredients. Cream, milk, partially skimmed milk, or skim milk, used alone or in combination.

4. Other optional ingredients.

i. Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals, to increase the nonfat solids content of the food; provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present shall not be decreased as a result of adding such ingredients.

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii. Flavoring ingredients.

iv. Color additives.

v. Stabilizers.

5. Methods of analysis. Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," current edition.

i. Milkfat content—"Fat—Official Final Action".

ii. Milk solids not fat content—Calculated by subtracting the milkfat content from the total solids content as determined by the method "Total Solids, Method I—Official Final Action."

iii. Titratable acidity—"Acidity—Official Final Action."

6. Nomenclature. The name of the food is "yogurt". The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in 21 CFR 101.22.

i. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(1) The word "sweetened" if nutritive carbohydrate sweetener is added without the addition of characterizing flavoring.

(2) The parenthetical phrase "(heat treated after culturing)" shall follow the name of the food if the dairy ingredients have been heat treated after culturing.

(3) The phrase "vitamin A" or "vitamin A added", or "vitamin D" or "vitamin D added", or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit."

ii. The term "homogenized" may appear on the label if the dairy ingredients used are homogenized.

7. Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of 21 CFR 101.

8:21-10.2 (No change.)

8:21-10.3 Inspection of dairy farms and milk plants

Each dairy farm, milk plant, receiving station, and transfer station whose milk and fluid milk products are intended for consumption within New Jersey or its police jurisdiction and each milk hauler who collects samples of raw milk for pasteurization for bacterial, chemical or temperature standards and hauls milk from a dairy farm to a milk plant, transfer station or receiving station and his bulk milk pickup tanker and its appurtenances shall have an approved inspection prior to the issuance of a permit.

1.-2. (No change.)

3. The health authority shall take immediate action to prevent further processing of milk or milk product when violations of critical processing element(s) have been identified. Should correction of such critical processing elements not be accomplished immediately, the health authority shall take prompt enforcement action. The following will be considered critical processing element violations:

i. Improper pasteurization, whereby every particle of milk or milk products may not have been heated to the proper temperature and held for the required time in properly designed and operating equipment;

ii. A cross connection exists whereby direct contamination of pasteurized milk or milk product is occurring; or

iii. Conditions exist whereby direct contamination of pasteurized milk or milk product is occurring.

[3.]**4.** In the case of dairy plants producing aseptically processed milk and milk products, when an inspection of the dairy plant and its records reveal that the process used has been less than the required scheduled process, it shall be considered an imminent hazard to public health and the health authority shall immediately take enforcement action to abate the hazard.

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

8:21-10.4 Examination of milk and fluid milk products

(a) (No change.)

(b) During any consecutive six months, at least four samples of raw milk for pasteurization shall be [taken] **collected in at least four separate months** from each producer and **at least** four samples of raw milk for pasteurization, ultra-pasteurization or aseptic processing, shall be [taken] **collected in at least four separate months,** from each milk plant after receipt of the milk by the milk plant and prior to pasteurization, ultra-pasteurization or aseptic processing. **During any consecutive six months, at least four samples of heat-treated milk products, from plants offering such products for sale, shall be collected in at least four separate months.** [In addition, during] **During** any consecutive six months, at least four samples of pasteurized milk, **flavored milk, flavored lowfat milk, flavored skim milk, each fat level of lowfat milk** and at least four samples of defined fluid milk product except aseptically processed, shall be [taken] **collected in at least four separate months** from every milk plant. Samples of milk and fluid milk products shall be taken while in the possession of the producer or distributor at any time prior to delivery to the store or consumer. Samples of milk and fluid milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and fluid milk products are sold shall be examined periodically as determined by the health authority; and the results of such examination shall be used to determine compliance with standards, labeling and cooling requirements. Proprietors of such establishments shall furnish the health authority, upon request, with the names of all distributors from whom milk or fluid milk products are obtained.

(c) (No change.)

(d) Whenever two of the last four consecutive bacteria counts (except those for aseptically processed milk and milk products), somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk and/or milk products, the health authority or a representative so designated shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. Any additional sample shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit and/or court action shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, cooling temperatures, or somatic cell counts. The Department shall offer to the person concerned a hearing pursuant to N.J.S.A. 24:10-57.8.

The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

(g) Whenever a test indicates that milk from a producer is unsafe due to an antibiotic, the permit holder or Department shall immediately notify and suspend the producer for two days. The Department shall offer to the producer concerned a hearing pursuant to N.J.S.A. 24:10-57.8. A test shall be made of the subsequent milking after suspension, and it must be free of antibiotic before offering that milk for sale.

The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(h)-(i) (No change.)

8:21-10.5 Animal health

(a) (No change.)

(b) All milk for pasteurization shall be from herds under a brucellosis eradication program which meets one of the following conditions:

1.-3. (No change.)

4. Participating in a milk ring [test] **testing** program [which is conducted on a continuing basis at intervals of not less than every three months or more than every six months] **at least four times per year, at approximately 90-day intervals,** with individual blood tests on all animals in herds showing suspicious reactions to the milk ring test; or

5. (No change.)

(c) (No change.)

8:21-10.6 Standards for milk and fluid milk products

(a) (No change.)

(b) No process or manipulation other than pasteurization, ultra-pasteurization or aseptic processing methods integral therewith, and appropriate refrigeration shall be applied to milk and fluid milk products for the purpose of removing or deactivating microorganisms[: Provided] ; **provided,** that in the bulk shipment of [raw] cream, skim milk, or lowfat milk, the heating of the raw milk, **one time,** to temperatures [no] greater than 125 degrees Fahrenheit (52 degrees Celsius) **but less than 161 degrees Fahrenheit (72 degrees Celsius)** for separation purposes is permitted when the resulting bulk shipments of cream, skim milk, and/**or** lowfat milk are labeled heat-treated.

(c) The chemical, bacteriological, and temperature standards for milk and fluid milk products are as follows:

1. Raw milk for pasteurization, ultra-pasteurization or aseptic processing.

i. Temperature—Cooled to 45 degrees Fahrenheit (seven degrees Celsius) or less within two hours after milking, provided that the blend temperature after the first and subsequent milkings does not exceed 50 degrees Fahrenheit (10 degrees Celsius).

ii. Bacterial limits—Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk.

iii. Not exceeding 300,000 per ml. as commingled milk prior to pasteurization.

iv. Antibiotics—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method.

v. Somatic Cell Count—Individual producer milk not to exceed 1,000,000 per ml. [Effective July 1, 1986.]

2. Pasteurized milk and fluid milk products.

i. Temperature—Cooled to 45 degrees Fahrenheit (seven degrees Celsius) or less and maintained thereat at the plant. A maximum of [50] **45** degrees Fahrenheit ([10] **seven** degrees Celsius) [will be allowed] on delivery vehicles.

ii. Bacterial limits [+] **(not applicable to cultured products)**—Milk and fluid milk products—20,000 per ml.—At processor level prior to delivery.

iii. Coliform limits—Not exceeding 10 per ml. prior to delivery; provided, that in the case of bulk milk transport tank shipments, shall not exceed 100 per ml.

iv. Phosphatase **(not applicable to bulk shipped, heat-treated milk products)**—Less than 1 ug phenol per ml. by Scharer Rapid Method (or equivalent by other means).

v. Antibiotics—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method.

3. Aseptically processed milk and fluid milk products.

i. Temperature—None.

ii. Bacterial limits—No growth by test specified in N.J.A.C. 8:21-10.4.

iii. Antibiotics—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method.

4. Pasteurized mixes for frozen desserts.

i. Temperature—Same as pasteurized milk and fluid milk products above.

ii. Bacterial limits **(not applicable to cultured products)**—50,000 bacteria per gm.

iii. Coliform limits—Not exceeding 10 per gm.

iv. Phosphatase—Less than 1 ug phenol per ml. by Scharer Rapid Method (or equivalent by other means).

[+Not applicable to cultured products]

(d) Sanitation requirements for raw milk for pasteurization, ultra-pasteurization or aseptic processing are as follows:

1. Item 1r.—Abnormal Milk: Cows which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgement of the health authority, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the health authority may direct.

i. (No change.)

ii. Whenever a herd milk sample exceeds any of the following screening test results, a confirmatory count, using a Direct Microscopic, Electronic or Optical Somatic Cell counting technique, shall be made on that sample and the results of this count shall be the official result:

(1)-(2) (No change.)

(3) Wisconsin mastitis test—18 mm [effective July 1, 1986].

iii. (No change.)

2. Item 2r.—Milking Barn, Stable, or Parlor Construction: A milking barn, stable, or parlor shall be provided on all dairy farms in which cows being milked shall be housed during milking operations. The areas used for milking purposes shall:

i. Have floors constructed of concrete or equally impervious material; **provided, convalescent (maternity) pens located in milking areas of stanchion-type barns may be used when they comply with the guidelines specified in Appendix B.V. of the Grade A Pasteurized Milk Ordinance (1978) (United States Public Health Service—FDA Publication 229);**

ii.-vii. (No change.)

3.-13. (No change.)

14. Item 14r.—Milking, Flanks, Udders, and Teats: Milking shall be done in the milking barn, stable, or parlor. The flanks, udders, bellies, and tails of all milking cows shall be free from visible dirt and clipped as necessary. All brushing shall be completed prior to milking. The udders and treats of all milking cows shall be cleaned and treated with a sanitizing solution just prior to the time of milking, and shall be [relatively] **wiped** dry before milking. Wet hand milking is prohibited.

15.-21. (No change.)

(e) Sanitation requirements for pasteurized, ultra-pasteurized and aseptically processed milk and fluid milk products.

1.-6. (No change.)

7. Item 5p.—Separate Rooms: There shall be separate rooms for:

i.-v. (No change.)

vi. Designated areas or rooms shall be provided for the receiving, handling and storage of returned packaged milk and milk products.

8.-18. (No change.)

19. Item 17p.—Cooling of Milk: All raw milk and fluid milk products shall be maintained at 45 degrees Fahrenheit (seven degrees Celsius) or less until processed. All pasteurized milk and milk products, except those to be cultured, shall be cooled to a temperature of 45 degrees Fahrenheit (seven degrees Celcius) or less immediately in approved equipment prior to filling and packaging. All pasteurized milk and fluid milk products shall be stored at a temperature of 45 degrees Fahrenheit (seven degrees Celsius) or less. On delivery vehicles, the temperature of milk and fluid milk products shall not exceed [50] **45** degrees Fahrenheit ([10] **seven** degrees Celsius). Every room or tank in which milk or fluid milk products are stored shall be equipped with an accurate thermometer. Provided, that aseptically processed milk and milk products to be packaged in hermetically sealed containers shall be exempt from the cooling requirements of this item.

20.-24. (No change.)

8:21-10.7 Transferring; delivery containers; cooling

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

(c) It shall be unlawful to sell or serve any pasteurized milk or fluid milk product which has not been maintained at a temperature of 45 degrees Fahrenheit (seven degrees Celsius) or less[, except as allowed in Item 17p. above]. If containers of pasteurized milk or fluid milk products are stored in ice, the storage container shall be properly drained.

8:21-10.8 through 10.10 (No change.)

8:21-10.11 Future dairy farms and milk plants

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

(c) The certified industry inspector or Department shall review these plans and respond accordingly within 30 days of the date of submission. **The certified industry inspector shall send a copy of the plans for any milk house, milking barn, stable or parlor to the Department after approval is granted.**

(d) (No change.)

8:21-10.12 Dating of milk and fluid milk products

(a) All packages or containers of:

1. White whole milk, [certified milk,] Vitamin D milk, homogenized milk, lowfat milk, protein fortified lowfat milk, skim milk, protein fortified skim milk, nonfat milk, protein fortified nonfat milk and flavored milks shall be legibly marked with a "shelf-life expiration date" which shall be no later than nine days following the date of pasteurization; except, when the above products are ultra-pasteurized the dating shall comply with (a)2[.] below.

2. (No change.)

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

8:21-10.13 Temporary marketing permit

Any person holding a current New Jersey milk plant license who wishes to manufacture a fluid milk product for which a standard of identity has not been promulgated, may make application to the Department for a temporary marketing permit to market such a product. The application shall be on a form furnished by the Department and shall contain such information as the Department may require, including, but not limited to: name, address, and telephone number of applicant; brand name of product; estimated amount of product to be produced; product description and specific difference(s) between the standardized fluid milk product and the product for which the temporary marketing permit is being requested. Such permit shall be for a period not to exceed one year; however it may be renewed pending action by the Department.

SUBCHAPTER 11. DENTED CANS; SALVAGE OR DISTRESSED FOODS, ALCOHOLIC AND NONALCOHOLIC BEVERAGES AND INDUSTRIAL MISHANDLING

[FOREWORD]

[The Department of Health of the State of New Jersey, pursuant to authority vested in it under Title 24 of the revised statutes and supplements thereto, hereby establishes the following rules and regulations concerning the handling, control and disposition of dented cans; and methods for handling and disposition of salvaged and distressed food, alcoholic and nonalcoholic beverages. Any rules and regulations in these matters which have been adopted by the Depart-

ment prior to the effective date of these regulations are hereby rescinded. (N.J.S.A. 24:2-1.)]

8:21-11.1 Scope

The following [regulations] **rules** shall be met by all establishments used in the production, preparation, manufacture, packaging, storage, transportation or handling of food intended for sale or distribution at the wholesale or retail levels.

Recodify existing N.J.A.C. 8:21-11.1 through 11.4 as **11.2 through 11.5** (No change in text.)

8:21-[11.4]**11.5** Salvage of food, drugs, devices or cosmetics associated with natural or local disasters or distressed food conditions or industrial mishandling

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

(d) Rules concerning malt, fermented or distilled alcoholic beverages are as follows:

1. (No change.)

2. [Whiskies, wines] **Whiskeys** and liquors[, and so forth, can] **shall** only be salvaged for redistillation to commercial grade alcohol. (See N.J.A.C. 8:21-11.5(a)1, 4, 5 and 6.)

3. [No contaminated] **Contaminated** containers of alcoholic beverages [are to be destroyed without permission of State Department of Health. (Hasty destruction may result in inability to recover taxes or replacement of stock).] **shall be retained under embargo whenever possible in order to provide an opportunity for the owner to seek possible tax reimbursement.**

(e)-(i) (No change.)

8:21-[11.5]**11.6** (No change in text.)

SUBCHAPTER 12. MANUFACTURING, STORAGE, DISTRIBUTION, AND HANDLING OF NONALCOHOLIC BEVERAGES AND BOTTLED WATER

(AGENCY NOTE: The Department is proposing to repeal this subchapter and is simultaneously proposing new regulations for the handling of bottled water under subchapter 5 of this proposal. The regulation governing nonalcoholic beverages are being incorporated as amendments to subchapter 13.)

SUBCHAPTER 13. RULES GOVERNING WHOLESALE FOOD ESTABLISHMENTS

8:21-13.1 Scope

The following rules shall apply to all wholesale food establishments, including establishments bottling nonalcoholic beverages. For the purpose of these rules, the term "food" used throughout these rules shall also include "nonalcoholic drink" as defined under N.J.S.A. 24:12-1.

8:21-[13.1]**13.2** (No change in text.)

8:21-[13.2]**13.3** Definitions

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

. . .

"Color additive" means a material which is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and when added or applied to a food, drug, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that the term does not include any material which the Commissioner, by regulation, determines is used (or is intended to be used) solely for a purpose or purposes other than coloring and nothing herein contained shall be construed to apply to any pesticide chemical, soil, or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. The term "color" includes black, white, and intermediate grays.

. . .

"Food" means:

1. Articles used for food or drink for man or other animals;
2. Chewing gum; and
3. Articles used for components of any such article.

The term also includes any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part of food.

. . .

"Local Health Authority" means the local board or local board of health of any municipality or the boards, body, or officers in such a municipality lawfully exercising any of the powers of the local board of health under the laws governing such municipality, and includes any consolidated board of health, local or county board of health created and established pursuant to law.

"Lot" means a collection of primary containers or units of the same size, type, and style containing a finished product produced under conditions as nearly uniform as possible and designated by a common container, code, or marking; and, in any event, "lot" means no more than one day's production or 24 hours.

. . .

"Nonalcoholic drink" means beverages as defined under N.J.S.A. 24:12-1.

"Nontoxic materials" means materials for food contact surfaces utilized in the transporting, processing, storing, or packaging of food which are free of substances which may render the food injurious to health or which may adversely affect the flavor, color, odor, or bacteriological quality of the food.

"Person" means an individual, a firm, partnership, company, corporation, trustee, association, or any public or private entity.

. . .

"Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, storage, processing, packaging, labeling, or handling of food **and nonalcoholic drinks** which is not sold or distributed directly to the ultimate consumer (retail).

"Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs, or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.

. . .

8:21-[13.3]**13.4** Facilities and procedures for the storage, distribution, handling, and processing of food **and nonalcoholic drink**

(a)-(b) (No change)

Recodify existing N.J.A.C. 8:21-13.4 and 13.5 as **13.5 and 13.6** (No change in text.)

8:21-[13.6]**13.7** Equipment and procedures

(a) General: All plant equipment and utensils shall be suitable for their intended use, so designed and of such material and workmanship as to be adequately cleanable[,] and properly maintained. The design, construction, and use of such equipment and utensils shall preclude the adulteration of food with lubricants, fuel metal fragments, contaminated water, or any other contaminants. All equipment shall be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces.

1-.10. (No change.)

11. Equipment used to bottle, cap, and sanitize multiuse containers in a nonalcoholic drink bottling plant shall conform to the requirements set forth under N.J.A.C. 8:21-5.7(f) and (g), and N.J.A.C. 8:21-5.11.

Recodify existing N.J.A.C. 8:21-13.7 through 13.9 as **13.8 through 13.10** (No change in text.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Renal Disease Services

Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services

Proposed Repeal and New Rule: N.J.A.C. 8:33F-1.1
Proposed Amendments: N.J.A.C. 8:33F-1.2, 1.6 and 1.7

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1990-432.

Submit comments by September 19, 1990 to:

John J. Gontarski, Chief
Health Systems Review
New Jersey State Department of Health
CN 360, Room 604
Trenton, NJ 08625

The agency proposal follows:

Summary

End-Stage Renal Disease (ESRD) services have historically been included among those health care services which the Department of Health has required to be provided on a regional basis. Services are regionalized to assure that all residents of the State have access to quality, cost efficient and effective ESRD services. The rules contained herein have been in effect since 1977 and continue to serve as a basis for the orderly regional development of ESRD services throughout the State.

Chapter 33F contains sections (at N.J.A.C. 8:33F-1.1(a) and 1.2(a)) dealing with renal transplantation that are no longer required as a result of the proposal regarding organ transplantation services that appears elsewhere in this issue of the New Jersey Register as N.J.A.C. 8:33Q-1. The Department of Health is, therefore, proposing the deletion of the existing criteria contained in the ESRD rule dealing with kidney transplantation services in order to consolidate all criteria for transplant services into a single chapter. The deletion of these kidney transplant references in these sections of the existing ESRD rule (at N.J.A.C. 8:33F-1.2(a)1) will not affect the regional policies that continue to prevail in the distribution of ESRD services.

The Department is also proposing the deletion of references to the New Jersey Renal Disease Network's goals for self-dialysis (N.J.A.C. 8:33F-1.2(a)3ii(4)), which are outdated and therefore no longer appropriate. This also includes deletion of Appendix A, which contains the Network's self-dialysis goals. References to self-dialysis goals contained in the New Jersey State Health Plan, however, are to be retained in this section of the rule.

The Department is also proposing minor technical changes to these rules to more accurately reflect the appropriate title of local health planning agencies (as opposed to the former title of health systems agencies).

Social Impact

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

It is anticipated that the service needs of renal patients will be more quickly and appropriately addressed through the consolidation of all organ transplant service requirements into a single chapter (N.J.A.C. 8:33Q). No change in the existing Statewide ESRD policies are being proposed by the new rule and amendments.

Economic Impact

The proposed new rule and amendments are not expected to add additional financial burden on patients, ESRD providers, the State or the Federal government. Chronic ESRD services are reimbursed through the Medicare program. The proposed new rule and amendments will not affect the volume of patients receiving reimbursement under this program.

The existing rules will permit the Department of Health to continue to evaluate the orderly development of dialysis services on the basis of documented community need as required in the remaining standards and criteria contained at N.J.A.C. 8:33F.

Regulatory Flexibility Statement

The proposed new rule and amendments will, for the most part, be applicable to hospitals which employ well over 100 employees. Smaller entities that are not specifically affiliated with hospitals are providing ESRD services. The requirements contained in these proposed amendments do require personnel to perform a number of functions at a dialysis facility in order to provide a safe and effective dialysis service. An ability to perform some degree of recordkeeping, reporting or other compliance requirements are being proposed by this readoption. Such recordkeeping and data reporting will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules are necessary to preserve the public health by ensuring that capital expenditures are made only for needed health care facilities and resources. Varying compliance of these rules solely upon facility size would be at odds with this statutory purpose.

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

8:33F-1.1 Adoption of Federal regulations by reference

[(a) The Federal government published final regulations for "Renal Disease: Implementation of Coverage of Suppliers of End Stage Services" in the Federal Register for June 3, 1976 (Vol. 41, No. 108). These regulations became effective on September 1, 1976. In addition, the End-Stage Renal Disease Amendments of 1978—Public Law 95-292 were enacted on June 13, 1978. Final regulations implementing Public Law 95-292 are divided into several parts and have been published in the Federal Register with different effective dates. Those published regulations adopted by the State of New Jersey are: "Requirements for Self-Dialysis Units and Self-Dialysis Services" (Vol. 43, pp. 48948-953), "Coverage of Dialysis Supplies, Equipment, and Support Services" (Vol. 43, pp. 49720-723), "Reimbursement for Organ Procurement and Histocompatibility Testing and for Home Dialysis Equipment" (Vol. 43, pp. 58370-76), and any other appropriate Federal regulations published pursuant to Public Law 95-292 including "Kidney Transplant Centers" (Vol. 43, pp. 35698-699) and "Schedule of Target Reimbursement Rules for Institutions Furnishing Home Dialysis Supplies, Equipment and Support Services" (Vol. 44, pp. 60287-290 and 60412-414 and Vol. 46, pp. 3985-989).

(b) The State of New Jersey adopts these rules and the definitions contained therein for purposes of planning and certificate of need reviews for end stage renal disease (ESRD) services with the additions defined herein.]

(a) The Department incorporates herein by reference the following Federal regulations regarding renal disease services:

1. 42 CFR 405.2100 through 2184; and

2. 42 CFR 410.52.

(b) Copies of the Federal regulations may be obtained by contacting the Department.

8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services.

[1. Renal transplantation center:

i. Each application for a Certificate of Need for a renal transplantation center must provide written evidence of a minimum proposed utilization rate of seven transplants performed during the first year of its operation and at least 20 transplants performed annually by the end of the second year of operation.

ii. Each ESRD facility which proposes to offer renal transplantation services must submit a written plan detailing how it ex-

pects to meet minimum utilization rates contained herein by the conclusion of the second year of its operation.

iii. Each plan must contain minimally:

(1) ESRD caseload projections and a description of the methodology by which projections were determined;

(2) The number of transplants performed at existing centers already providing the service during the preceding 12 months and anticipated impact upon these numbers.

iv. The Department will require impact statements from approved area renal transplant centers already providing the service, describing the anticipated effects of the proposed service upon the type(s), scope, cost or organization of health care services within the proposed service area.]

Recodify existing 1 and 2 as **2 and 3** (No change in text.)

[4.] **3.** Self-dialysis facilities/services:

i. (No change.)

ii. Each applicant for a certificate of need from an ESRD approved facility which proposes to offer a self-dialysis service must provide written evidence of:

(1)-(3) (No change.)

(4) Plans to meet the self-care level of the goals proposed [by the New Jersey Renal Disease Network (see Appendix A), the Health Systems Plans and] **in** the State Health Plan;

(5)-(6) (No change.)

iii. (No change.)

[5.] **4.** Self-care and home dialysis training:

i. Each application for a certificate of need from an approved ESRD facility which proposes to offer self-care and home dialysis training for all forms of chronic hemodialysis and chronic peritoneal dialysis, including continuous ambulatory peritoneal dialysis (CAPD) must provide written evidence of:

(1)-(2) (No change.)

(3) Plans to meet the self-care level of the goals proposed [by the New Jersey Renal Disease Network (see Appendix A), the Health Systems Plan and] **in** the State Health Plan; and

(4) (No change.)

ii. (No change.)

Recodify existing 6 through 8 as **5 through 7** (No change in text.)

(b) Existing renal services have two years from [the date of adoption of this regulation] **October 25, 1977** to meet the minimum utilization rates contained herein. For Certificates of Need issued after [the date of adoption of this regulation] **October 25, 1977**, approved services will have two years from the date of initiation of service(s) to meet the utilization standards defined herein. If the minimum utilization rates defined herein have not been attained within the aforementioned time periods, the Commissioner of Health may cancel an approved application. Prior to rendering such a decision, the Commissioner of Health will notify the institution and the appropriate [Health Systems Agency] **local health planning agency** that such action is under consideration. The Commissioner will request a recommendation from the appropriate [Health Systems Agency] **local health planning agency** in this regard. The Commissioner will take into account substantive data provided to the department by the institution and/or the [Health Systems Agency] **local health planning agency**.

8:33F-1.7 General criteria

(a) As part of the application for provision of regional end-stage renal disease services, each applicant must meet each of the following minimum general criteria:

1. Provide written documentation of need as expressed by minimum proposed patient caseload [and show evidence that the proposed action is consistent with both the facility's approved long-range plan, submitted to the Department under requirements of N.J.A.C. 8:31-16.1, where applicable].

2.-8. (No change.)

9. Provide written assurances that facilities will follow the patient's rights policy as adopted by the [New Jersey] **Transatlantic** Renal Disease Network and guarantee that it will obtain the informed consent of patients subjected to medical experiments. Patients, proposed to be subject of medical experimentation, who do not give informed consent, may not be refused treatment or continued care if the facility has the medical capacity to perform such care or treatment.

10.-11. (No change.)

12. Department of Health approved hospital ESRD dialysis centers and ESRD dialysis facilities, as well as those non-ESRD approved facilities performing chronic back-up dialysis, and/or acute dialysis either alone or as part of an Inter-Hospital Hemodialysis Outreach Program, are required to report utilization data on a quarterly basis directly to the Department of Health's Health [Planning Services] **Systems** Review Unit.

[APPENDIX A]

[1983 Goals: ESRD Network No. 32†]

[I. QUALITY ASSURANCE

GOAL A (High Priority): Encourage the use of home dialysis and transplantation by the maximum practical number of ESRD patients who are medically, socially, and psychologically suitable candidates for such treatments.

OBJECTIVE 1: Monitor and evaluate trends in the use of home dialysis and transplantation by facility and make recommendations when indicated.

Network Activity a: Determine the proportion of all dialysis patients who are dialyzed in the home, at pre-selected intervals of time.

Network Activity b: Determine the proportion of all dialysis patients who are transplanted, at pre-selected intervals of time.

OBJECTIVE 2: Assure access to all treatment modalities. Assure that patients are informed of and participate in the selection of their treatment modalities.

Network Activity a: Assure the periodic reevaluation of patient needs as they relate to the appropriate treatment setting and modality.

GOAL B (High Priority): Assure the quality and appropriateness of patient care.

OBJECTIVE 3: Conduct ongoing assessment of patient care delivery.

Network Activity a: Establish criteria and standards for quality patient care services. Measure the adequacy of service delivery in the Network area and institute appropriate reforms.

Network Activity b: Conduct special analyses/develop profiles of care as needed to assure quality and medically appropriate services.

GOAL C (Medium Priority): Encourage the maximum level of patient participation in the ESRD system.

OBJECTIVE 4: Maintain an effective patient grievance system.

†This document may be obtained upon written request to:
New Jersey Renal Network Council, Inc.
330 Milltown Road
East Brunswick, New Jersey 08816

OBJECTIVE 5: Assure patient participation in Network activities.

II. PROGRAM MANAGEMENT

GOAL A (High Priority): Participate in a Network-based patient registry that permits continual and consistent assessment of the national ESRD patient population for improving program and policy decision making.

OBJECTIVE 6: Establish and maintain the common minimum data set required by HCFA for each ESRD patient receiving care in a certified facility.

Network Activity: Establish and document the existence of a mechanism, automated or manual, to follow patients through facility and modality changes. Reconcile the data at least semi-annually, coinciding with the period covered by the facility survey, HCFA-2744.

OBJECTIVE 7: Establish and maintain an information system that contains, or will allow the Network to calculate, the following (using standard definitions and formulae issued by HCFA:

a. patient outcome by treatment modality
b. mortality rates (calculated by Network, facility, and modality)
c. incidence
d. prevalence
e. demographic data (age, sex, race)

Network Activity: Calculate the above items at least annually for the preceding calendar year.

Joint HCFA-Network Activity a: Issue common national definitions for patient treatment events by December 1982 for use by each Network and certified ESRD facility.

Joint HCFA-Network Activity b: Distribute comparative Network data on a regular basis.

OBJECTIVE 8: Ensure facility compliance with Medical Information System reporting requirements.

Joint HCFA-Network Activity: Explore ways to improve the MIS forms and instructions.

Network Activity a: Establish and document procedures for the review of all MIS forms for completeness, accuracy, and timeliness.

Network Activity b: Document contact with facilities to obtain missing forms or correct discrepancies.

Network Activity c: Report problems with individual facility reporting compliance, not rectified at the Network level, to HCFA in writing for appropriate action (with copy of the notification sent to the facility) within 90 days following the close of the semi-annual facility survey period.

HCFA Activity a: Contact the facilities or take other actions as necessary to assure compliance with reporting requirements.

HCFA Activity b: Inform Networks semi-annually of all MIS forms accepted by HCFA.

Network Activity d: Compare the appropriate fields from the HCFA-2744 (ESRD Facility Survey) against the number of HCFA-2728s (Chronic Renal Disease Medical Evidence Report), HCFA-2746s (ESRD Death Notification), and HCFA-2745-U3s (ESRD Transplant Information) to determine the level of compliance for every 6-month period covered by the HCFA-2744.

OBJECTIVE 9: Ensure the validity of the MIS data submitted to HCFA.

Network Activity a: Perform the prescribed MIS edit checks.

Network Activity b: Rectify inconsistencies between the Network patient data base and MIS reporting forms.

GOAL B: Disseminate results of program analysis.

OBJECTIVE 10: Provide recommendations and information with respect to Network performance and the need for additional or alternative services, especially self-dialysis training, transplantation, and organ procurement facilities.

Network Activity a (Medium Priority): Provide HCFA with this information in quarterly reports and in an annual report before July 1, 1983.

Network Activity b (Low Priority): Provide similar information to interested parties, when requested.

III. OTHER ACTIVITIES (Low Priority)

Joint HCFA-Network Activity a: Explore modification in Network data base to allow Networks to monitor ESRD patient rehabilitation. Define data elements necessary for ongoing monitoring of ESRD patient rehabilitation.

Joint HCFA-Network Activity b: Design and carry out a national cooperative project.

NOTES:

MEASURES OF PERFORMANCE

Objective 1: (Home Dialysis): Calculate the number of patients treated at home as a percentage of total "dialysis patients receiving care" at the end of the following survey periods:

July 1, 1982-December 31, 1982
January 1, 1983-June 30, 1983
July 1, 1983-December 31, 1983

Document and explain trends in each successive reporting period in the total home patients (Fields 21 + 22 + 23) divided by the total number of dialysis patients receiving care at the end of survey period (Field 24).

(Transplantation): Calculate the number of ESRD patients receiving transplants as a percentage of total "patients receiving care" at the end of the following survey periods:

July 1, 1982-December 31, 1982
January 1, 1983-June 30, 1983
July 1, 1983-December 31, 1983

Demonstrate an increase in each successive reporting period in the total "losses during survey period receiving transplant" (Fields 10A + 10B) divided by: "patients receiving care at beginning of survey period" (Field 03) PLUS "patients started for the first time ever" (Fields 04A + 04B) PLUS "restarted" (Fields 05A + 05B) PLUS "returned after transplantation" (Fields 07A + 07B). Do the same for patients 0-55 years old for the survey periods ending June 30, 1983 and December 31, 1983.

Objective 2: (Access): Network has a mechanism to assure that a meaningful patient program planning process exists.

Objective 3: (Patient Care Assessment): Demonstrates progress toward improving care through the approved studies.

Objective 4: (Grievance System): Demonstrate that the patient grievance mechanism is being used (i.e.: number, sources, how handled) or explain why it is not being used.

Objective 5: (Patient Participation): Demonstrate a mechanism to assure patient participation in Network activities.

Objective 6: (Minimum Data Set): The information system of the Network contains, at a minimum, the following data elements (if changes to this list are made, we will notify you in the near future):

1. Patient's Name
2. State/County of Residence
3. Zip Code of Residence
4. HIC Number
5. Date of Birth (MM/YY)
6. Race (B, W, O, U)
7. Sex (M, F, U)
8. Primary Diagnosis (Code?)
9. Initial Date of Dialysis (MM/YY)
10. Primary Provider (number)
11. Transplant Provider (number)
12. Status (date, event)
13. Events, Tx, Dx, Restart, Recovered Function, Discontinued Treatment, etc.
14. Transfer (place, date)
15. Date of Death (MM/YY)
16. Cause of Death

Objective 7: (Reporting Compliance): 95% of each of the required forms are submitted to HCFA within the time frame specified by HCFA.

Objective 8: (Data Validity): Less than 2% of all fields on each type of form submitted to HCFA contain errors.

Objective 9: (Reporting): Acceptable quarterly/Annual reports are submitted. In addition to documenting activities and efforts to achieve goals and objectives, these reports should document that Networks are not using resources to carry out project review activities not specifically requested, in writing, by a HCFA Regional Office.]

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Services for the Transplanation of Human Kidneys, Hearts, Livers and Pancreata.

Proposed New Rules: N.J.A.C. 8:33Q-1

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1990-431.

Submit comments by September 19, 1990 to:

Theodore C. Seamans, Director
Organ Transplantation Program
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625-0360

The agency proposal follows:

Summary

The rules contained in this subchapter set forth the certificate of need requirements for any new kidney, heart, liver or pancreas transplantation service, as well as criteria for the continued certification of existing transplantation services. A separate subchapter will be proposed in the near future at N.J.A.C. 8:33Q-2 which will apply to allogeneic and autologous bone marrow transplants.

Transplantation of human organs is now widely available and of proven effectiveness. Advances in medical and surgical techniques, including the development of immunosuppressive drugs, have made it possible to transplant a growing number and variety of organs to enhance or to extend life.

As this highly specialized and technical field has matured, several issues of importance to patients, their health care teams, medical institutions, health care insurers, the government, and the public have arisen.

The National Task Force on Organ Transplantation created by the National Organ Transplant Act (P.L. 98-507) concluded that an overriding problem common to all is the "serious gap between the need for organs and the supply of organs available for transplantation." The Task Force recommended that, because of the scarcity of donor organs, the diffusion of transplantation technology be regulated. They recommended that transplant centers be designated by an explicit, formal process using well-defined, published criteria, and that these centers be continually evaluated to ensure that only those institutions with requisite capabilities are certified.

In 1988, the Commissioner of Health appointed the New Jersey Advisory Council on Organ Transplantation to make recommendations regarding public policy, planning and certificate of need criteria for transplantation services. The rules that follow contain criteria recommended by that council. The criteria include minimum volume, personnel and credentialing standards, together with data reporting, necessary support services and access requirements. These criteria are intended to assure the orderly development of needed organ transplant services of the highest quality, efficiently provided and utilized.

Social Impact

Last year (1989) there were 15 liver transplants and 93 kidney transplants in New Jersey hospitals. Fifty residents received kidney transplants out-of-state, while 336 remained on waiting lists at the three New Jersey kidney transplant centers. The proposed rules contain service and staffing requirements intended to ensure the effective utilization of scarce resources, minimize mortality rates and post-transplant complications and maximize the quality of life of transplant recipients.

The public will benefit by the accessibility of quality organ transplantation services. Some transplant services are currently provided only outside of New Jersey, where the weight given to ability to pay and the transplant center's willingness to accept patients unable to pay or with limited resources for the treatment, varies from center to center. The proposed new rules contain provisions that will promote transplant services in New Jersey hospitals, where there would be no financial barriers to treatment, under current reimbursement policies.

Social Impact

Transplantation has been found to be advantageous both in terms of quality of life and economics.

Considerable data have been accumulated on the survival of transplant recipients; heart, kidney, bone marrow, and selected liver transplant recipients enjoy protracted lives that in the absence of organ transplantation would have been impossible. With the introduction of new immunosuppressive drugs and techniques, survival rates have improved dramatically. For example, it is estimated by the United Network for Organ Sharing that overall one-year graft survival rates range from 85 percent for hearts, 77 percent for kidneys and 60 percent for pancreata and livers. Eighty-five percent of all heart transplant recipients will live one year, 50 percent will live five years, and nearly 25 percent will live 10 years or longer.

When compared with other life-saving treatment approaches, organ transplantation has been found to be equally, if not more, cost effective when treating the critically ill patient with end-stage disease. Procedures such as heart and liver transplants produce quality of life and longevity outcomes that are equivalent to treatments generally covered by public and private insurance (for example, treatment of patients with certain malignancies, or serious burns).

Pancreas transplants, currently considered investigational and not yet covered by Medicare, are covered by most commercial insurers when preauthorized. Because they are commonly carried out in conjunction with a kidney transplant, the cost of a pancreas transplant is relatively moderate.

While many factors make costs different from patient to patient and from organ to organ, transportation is a costly procedure that includes expenses before and after transplantation and requirements that must be adhered to by recipients for the rest of their lives. Hospital charges, physician fees, and organ acquisition charges in a recent survey of heart transplants averaged about $115,000 per patient in 1987. Hospital charges accounted for 80 percent of the transplant costs.

The National Task Force on Organ Transplantation adopted the widely accepted principle within surgery that the volume of surgical procedures performed is positively associated with outcomes and inversely related to cost and recommended that this principle be used to guide the planning of organ transplantation services. Therefore, minimum volume criteria are established herein, together with other criteria defining the minimal requirements for both institutional and professional support.

The objective of these criteria is to impose access to and the quality of health care, and it is expected that these gains will more than offset any costs or potential adverse consequences for affected entities.

Regulatory Flexibility Statement

In order to promote the orderly development of transplantation services, the Department must assure that the proposed new rules will be equitably and uniformly applied regardless of the type or size of health care institution. However, since all affected facilities will be hospitals employing more than 100 full-time workers, the impact on small businesses as defined in Section 2 of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., should be negligible.

Full text of the proposed new rules follows:

CHAPTER 8:33Q
TRANSPLANTATION SERVICES

SUBCHAPTER 1. ORGAN TRANSPLANTATION SERVICES

8:33Q-1.1 Purpose and scope

The purpose of this subchapter is to set forth certificate of need requirements for new and existing kidney, heart, liver or pancreas transplantation services in the State of New Jersey, in accordance with Federal and State law and policy. The requirements were developed by the Department, in accordance with recommendations made by the New Jersey Advisory Council on Organ Transplantation, for the purpose of assuring the orderly development of needed organ transplant services of the highest quality, efficiently provided and utilized.

8:33Q-1.2 General criteria

(a) Applicants for organ transplantation services shall have a formal graduate medical education program with accredited residencies and/or fellowships already in place for internal medicine and general surgery. Heart transplant centers shall have cardiology residencies and preference will be given to those who also have a cardio-thoracic fellowship program. The applicant shall document the ability to implement a program of continuing education and training for the following groups: nurses, technicians, service personnel, and other hospital staff.

(b) A new transplantation program shall achieve and maintain institutional membership in the national Organ Procurement and Transplantation Network currently operating as the United Network for Organ Sharing (UNOS) within one year of Certificate of Need approval.

(c) New programs will be reviewed by the Department of Health within two years of Certificate of Need approval. If minimum performance standards of this subchapter are not met within one additional year, the certificate of need may be rescinded.

(d) Priority consideration will be given to applicants that propose to provide organ transplantation service within the facility's current capacity.

8:33Q-1.3 Performance standards

(a) The applicant for a kidney, heart, liver or pancreas transplant service shall have an institutional plan with the capability and commitment to perform the following minimum transplant procedures annually by the end of the second full year of operation:

1. Kidney: a minimum of 25 procedures;
2. Heart: a minimum of 12 procedures;
3. Liver: a minimum of 15 procedures; and
4. Pancreas: a minimum of 15 procedures.

(b) Each institutional plan for a transplantation service must contain, at a minimum:

1. The basis for projecting the performance rate to be achieved by the end of the second year of operation that is considered reasonable by the Department of Health, which shall include, but not be limited to, availability of donor organs and patient needs;

2. The number of transplants performed during the previous 12 months at similar centers in the local region of the Organ Procurement and Transplantation Network and New York State; and

3. Impact statements on the quality, cost, access and organization of existing transplantation services of the type being applied for in the local region of the Organ Procurement and Tranplantation Network and New York State, describing anticipated effects of the proposed service on such existing programs.

8:33Q-1.4 Personnel

(a) The transplant program shall have on site at least one transplant surgeon and one transplant physician who are clinical members of the National Organ Procurement Transplantation Network, currently operating as the United Network for Organ Sharing (UNOS), for the applicable organ, who are qulified as follows:

1. The transplant surgeon shall have a minimum of one year formal training or equivalent experience during residency, and one year of experience at a transplant program meeting UNOS membership criteria in the area of transplantation in which he or she plans to practice. In lieu of one year formal training and one year of experience, three years of experience with a transplant program meeting criteria for institutional membership in UNOS is acceptable. For kidney transplantation, the surgeon shall have certification by either the American Board of Surgery, the American Board of Urology or its equivalent. For liver and pancreas transplantation, the surgeon, shall have American Board of Surgery certification or its equivalent. For heart transplantation, the surgeon shall be certified by the American Board of Thoracic Surgery or its equivalent. The transplant surgeon must have been the primary surgeon on a minimum of 10 transplants performed within the past two years.

2. The transplant physician shall be a physician with an M.D. or D.O. degree, or equivalent degree from another country, who is licensed to practice medicine in New Jersey and has been accepted on the medical staff of the applicant hospital. He or she shall be Board Certified in internal medicine or pediatrics. He or she shall have at least one year of specialized formal training in transplantation medicine or a minimum of two years documented experience in transplantation medicine with a transplant program that meets the qualifications for membership in UNOS. For renal transplantation, the transplant physician shall be Board Certified or Board Qualified in the subspecialty of nephrology. In general, a transplant physician shall be Board Certified or Board Qualified in the subspecialty of the transplanted organ. However, a transplant physician with extensive experience in transplantation of one organ may qualify as a transplant physician for another organ if organ-specific subspecialists also participate in patient selection and post-transplant patient care.

(b) The applicant shall have on-site a full-time transplant coordinator who has one year of related experience in a transplant program.

8:33Q-1.5 Certification of nondiscriminatory practices

(a) The applicant shall provide written certification of compliance with nondiscriminatory practices to the effect that patients for transplants and all associated services will not be subject to discrimination on the basis of race, sex, or ability to pay.

(b) The applicant shall establish written procedures for selecting transplant candidates and distributing organs in a fair and equitable manner. Selection criteria shall incorporate and comply with national Organ Procurement and Transplantation Network organ allocation priorities that are based on objective medical criteria, including medical urgency and time on the waiting list. These criteria shall be included in the certificate of need application.

8:33Q-1.6 Physical requirements

(a) The transplant beds shall be located in an environment that will afford the patient privacy, quiet, and protection from infection while providing visual access. An isolation room, designed to minimize infection hazards of or from the patient shall be made available for each transplant patient. Each isolation room shall contain only one bed and shall comply with acute-care patient room standards (Guidelines for Construction and Equipment of Hospitals and Medical Facilities, 1987 edition, American Institure of Architects), incorporated herein by reference as well as the following:

1. Room entry shall be through a work area that provides for aseptic control, including facilities that are separate from patient areas for hand washing, gowning, and storage of clean and soiled materials;

i. Separate enclosed anteroom(s) for isolation rooms are not required as a minimum but, if used, viewing panel(s) shall be provided for observation of each patient by staff from the anteroom;

ii. One separate anteroom may serve several isolation rooms; and

2. Toilet, bathtub (or shower), and hand washing facilities shall be provided for each isolation room. These shall be arranged to permit access from the bed area without the need to enter or pass through the work area of the vestibule or anteroom.

8:33Q-1.7 Institutional commitment

(a) Applicants shall document that the following services will be provided by the hospital in such numbers and types to adequately meet the objectives of the proposed transplantation service:

1. Applicants shall demonstrate in the application the allocation of sufficient operating and recovery room resources, intensive care resources, surgical beds and personnel to the transplant program;

2. Each applicant shall show evidence that the following ancillary health support services, that include board certified physicians, nurses and technicians, are available on-call 24-hours daily:

i. Pediatrics, where younger recipients may be involved;

ii. Infectious disease;

iii. Nephrology with approved end stage renal disease dialysis capability;

iv. Pulmonary medicine with respiratory therapy support;

v. Pathology;

vi. Immunology;

vii. Anesthesiology;

viii. Physical therapy;

ix. Pharmacology;

x. Radiology; and

xi. Nutrition;

3. Each center shall have access to the services of a laboratory certified under the National Organ Transplant Act, or a written agreement that such services will be available within 90 days of certificate of need approval;

4. The applicant shall have immediate access on site, or by contract, within 90 days of certificate of need approval, to laboratory facilities capable of virology, cytology, microbiology and monitoring of immunosuppressive drugs;

5. The applicant shall document blood bank support with the capacity to supply blood components for the number of transplants that are projected, the ability to irradiate blood components, and to ensure the availability of a blood separator and central blood repository;

6. The applicant shall document the availability on site or by contractual arrangement of the psychiatric and social support services essential for the total care of transplant recipients and for helping families cope with the transplant experience; and

7. As part of the hospital's quality assurance program, the transplantation service shall present and implement a system for evaluating the quality and appropriateness of patient care and patient outcomes, including survival rates and any complications.

8:33Q-1.8 Compliance

(a) Certificate of need applicants for new transplantation services shall document ability to meet minimum standards and criteria contained in this subchapter within three years from the initiation of the service. Failure to achieve the minimum level by the end of the second year of operation will result in notification of Department of Health

intention to rescind Certificate of Need approval and move for licensing sanctions that may include closure of the service. The inability to achieve minimum utilization levels during the third year of operation or thereafter may result in rescission of the certificate of need or licensing sanctions.

(b) Existing transplantation services shall meet the minimum criteria and standards contained in this subchapter. Existing providers failing to achieve the minimum utilization standards specified in this subchapter within one year following the effective date of this subchapter and each year thereafter will be subject to licensing or reimbursement sanctions that may include closure of the service.

8:33Q-1.9 Performance data reports

(a) Because transplant activity and outcome data for each center will be a means of determining continuing certification, each service shall maintain performance reports for submission to the Department of Health annually.

(b) Minimum data maintained should describe transplants performed, including, but not limited to:

1. Age, race, sex, and ability to pay of those on the waiting list;
2. Numbers and types of procedures;
3. Patient and graft survival rates over varying periods of time by age, sex and race;
4. Patient charges; and
5. Source(s) of payment.

8:33Q-1.10 Advisory Council on Organ Transplantation

(a) An advisory council of 15 members shall be established under the authority of the Commissioner to:

1. Review State standards and criteria for services relating to transplantation at least annually; and
2. Develop public policy recommendations to facilitate human organ and tissue donation and to ensure the accessibility and quality of retrieval and transplantation services.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Residential Health Care Facilities

Proposed Readoption: N.J.A.C. 8:43

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1990-433.

Submit comments by September 19, 1990 to:

Robert J. Fogg
Director, Standards and Quality Assurance
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

N.J.A.C. 8:43, Residential Health Care Facilities, contains rules for the licensure of residential health care facilities. These rules are scheduled to expire on January 21, 1991, pursuant to the "sunset" provisions of Executive Order No. 66(1978). Following a review of the rules by the Department and by an advisory committee consisting of providers of residential health care as well as representatives from other State and county agencies involved in the regulation of residential health care facilities, the Department proposes to readopt this chapter, without change, for an additional one-year period.

N.J.A.C. 8:43, Residential Health Care Facilities, became effective October 27, 1965, and was promulgated by the New Jersey Department of Institutions and Agencies, which is no longer in existence. The responsibility for the licensure and regulation of health care facilities was transferred from the New Jersey State Department of Institutions and Agencies to the New Jersey State Department of Health in 1971 by the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. All provisions of this chapter were adopted pursuant to authority of N.J.S.A. 26:2H-1 et seq. and were filed and became effective November 19, 1974, as R.1974 d.319 (see 9 N.J.R. 396(c), 6 N.J.R. 472(e)).

Internal review and evaluation by the Department and by the Residential Health Care Advisory Committee indicated that this chapter has been effective in assisting the Department to carry out the functions mandated by the Health Care Facilities Planning Act. These rules are necessary for the Department to effect its legal mandate to protect the health, safety and well-being of the residents in the residential health care facilities in New Jersey. The rules in N.J.A.C. 8:43 are essential for the regulation of residential health care facilities to assure the minimum quality of care and the provision of required services.

The Department, with the assistance of the Residential Health Care Advisory Committee, is in the process of fully revising N.J.A.C. 8:43 to incorporate newer terminology and more specific language to render the rules more objective, measurable, and enforceable, while also reflecting current trends in the provision of residential health care. Due to the Department's commitment to consider all recommendations proposed by the advisory committee, it will not be possible to complete the revision of the rules prior to the expiration date of January 21, 1991. It is therefore imperative that the text of N.J.A.C. 8:43 be maintained until the revisions to the chapter are completed. The Department needs the existing rules to accomplish its legal mandate of assuring that all residential health care providers offer a safe and effective level of care to their residents.

N.J.A.C. 8:43-1, Introduction, contains six sections: Definitions, Objectives of residential health care facility, Qualifications of operator, applicant or administrator, Application procedure, Denial of application, and Name of residential health care facility. Some of the terms which are used in Chapter 43 are defined in this section. Among the objectives of a residential health care facility which are delineated is the requirement for the facility to provide a substitute home for all residents, with continuous supervision. Personal and financial requirements for an operator are specified, and the licensure application approval process is detailed, as well as reasons for denial of application and action against a license. The requirement for the facility to implement all the conditions imposed in the Certificate of Need approval letter is also contained in subchapter 1.

Building requirements are included in N.J.A.C. 8:43-2. The subchapter addresses location of a suitable site for the residential health care facility, structural requirements, local approvals which must be obtained, and floor plans. An office conference with the Department must take place after local approvals are secured, and representatives of the Department must inspect the building prior to occupancy. Detailed requirements for resident bedrooms, toilets and baths, living and recreation rooms, dining rooms, corridors and stairways, and adequate storage space are specified. The subchapter also addresses environmental issues, including requirements for heating, lighting, ventilation, and physical maintenance of the facility.

The importance of effective fire protection measures is emphasized in subchapter 3, Fire Protection. Each residential health care facility must have an approved automatic fire detection system. Specifications for horizontal fire zoning, dividing the building into separate areas by horizontal smoke and fire partitions, are listed. Two satisfactory and easily available means of egress must be provided for residents, in accordance with the rules in this subchapter. Specifications for stair enclosures, dumbwaiter and laundry chutes, elevators and elevator shafts are listed. Requirements for fire prevention in such hazardous areas as the kitchen and laundry are spelled out. Fire escape specifications are detailed. Guidelines for patient or resident smoking are included in the subchapter. Residential health care facilities must cooperate with local fire departments and request their assistance in periodic fire and safety inspections as well as fire drills which are conducted at specified intervals. Advice or interpretation of fire protection standards of the chapter is to be obtained from the State fire marshall. Automatic fire alarm and detection systems must be comprised of components listed by either Underwriter's Laboratory, Inc., or Factory Mutual Engineering Laboratories, and so labeled, and every installation must be inspected by the State fire marshall's office.

N.J.A.C. 8:43-4 delineates requirements for administration of the facility. Admission policies are stated, including rules concerning the type of residents suitable for admission to the residential health care facility. Recreation and diversion activities must be provided by the facility. Policies for privacy, privileges, visiting, mail service, and telephone service are also delineated. Personnel policies are detailed, including a requirement for at least one responsible person to be on the premises at all times to provide necessary supervision. In facilities with 24 or more licensed

beds, a person must be on the premises to provide active supervision of all residents 24 hours per day, with a minimum of one hour of supervision for each resident during a 24-hour period. Each facility must maintain records and information regarding each resident. Any major occurrence or incident must be reported to the Department as specified. Provisions for storage of medications and drugs in a suitable cabinet must be made by the facility. Requirements for accident prevention, housekeeping, sanitation, and laundering of residents clothing and linens are given. Distribution of monthly personal needs allowance to each resident who receives Supplemental Security Income or General Public Assistance must take place in accordance with the rules specified in this subchapter, and written records of disbursements must be maintained.

Personal care services which each resident must receive are listed in N.J.A.C. 8:43-5. Rules for assuring that each resident maintains personal hygiene, is assisted as needed, and has appropriate and sufficient clothing are included. Each resident must be provided with an appropriately furnished sleeping area. Arrangements are to be made at the time of each resident's admission to ensure that a designated physician and dentist can be called in case of illness. The resident may be cared for during an illness for up to one week in the facility. Each resident must have an annual medical examination. The use and storage of prescription medicines must be supervised.

N.J.A.C. 8:43-6 contains rules for the provision of dietary services to residents. The facility has the responsibility to develop policies and procedures for planning, preparing, and serving meals, purchasing food, supervising residents at mealtime, and providing therapeutic diets in accordance with the admission policy of the facility. The administrator is responsible for providing food and drink with regard for the nutritional and therapeutic needs of residents. Requirements for menus, meal times, assistance of residents, recipes, work schedules and a plan for kitchen cleaning operations are listed. A daily food guide is included, to assist the facility to prepare nutritionally adequate meals.

The rights of each resident are delineated in N.J.A.C. 8:43-7. The facility is responsible for establishing and implementing written policies regarding the rights of residents. Resident rights are to be conspicuously posted in the facility and each resident is to be informed of these rights. Resident rights must include the right to privacy, the right to be treated with consideration and respect, and the right to exercise civil and religious liberties.

N.J.A.C. 8:43-8 describes the health maintenance and monitoring services which are to be provided to residents. A professional nurse must direct the health maintenance and monitoring services. At least one professional nurse must be available at all times. Each resident is to be provided with a minimum of 0.20 hours of registered professional nursing care per week.

Social Impact

The readoption of N.J.A.C. 8:43 will have social impacts on the Department, residents and residential health care facilities. In accordance with the Health Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., the Department has the responsibility to promote the health and safety of the residents of the State. Licensure rules are one of the means by which the Department monitors the quality of the health care services provided to residents in residential health care facilities. The quality of health care, to a great extent, depends upon the organization and effectiveness of the health care services provided. N.J.A.C. 8:43 contains essential definitions and qualifications of residential health care providers, building requirements, fire protection rules, requirements for administration of the facility, personal care services to be provided to residents, rules for dietary services, resident rights, and requirements for health maintenance and monitoring services. These rules promote and support quality care and continuity of care for residents.

If these rules were not readopted, the social impact resulting from the loss of this rule would have serious consequences for residents of residential health care facilities. For example, without licensure rules the nature and purpose of residential health care facilities would be fundamentally altered. Without definitions, as specified in N.J.A.C. 8:43, rules could be misinterpreted, which might adversely affect the life and safety of residents. The absence of rules regarding the required services of a residential health care facility could have serious consequences for residents because essential services would not be ensured. Elimination of the rules relating to the qualifications of the administrator and staff could have a deleterious effect both on the safety of the residents and on the quality of care provided. Failure to retain qualified, competent staff capable of discharging their responsibilities in a timely, conscientious manner might jeopardize the welfare of residents.

Residential health care facilities represent a relatively low-cost means by which adults 18 years of age or over can be cared for in a home-like environment. The current trend toward de-institutionalization of chronically ill, long-term patients to a more home-like milieu has greatly enhanced the importance of residential health care facilities as an alternative in the health care delivery system. Continuation of the rules for licensure of residential health care facilities will therefore result in the availability of needed facilities for those residents who require this type of care. Failure to readopt N.J.A.C. 8:43 could jeopardize the quality of services provided in residential health care facilities because there would be no regulatory mechanism. The readoption of N.J.A.C. 8:43 would help to ensure that residents are being provided with adequate care in a home-like atmosphere suited to their needs and requirements and conducive to the maintenance of their self-respect and dignity. Readoption would also allow sufficient time for the Department, with the assistance of the Residential Health Care Advisory Committee, to revise the current rules and to make them clearer, more specific, more responsive to the needs of residents and providers of residential health care, more consistent with current trends in residential health care, and more enforceable.

Economic Impact

The readoption of N.J.A.C. 8:43 will not have any additional economic impact on providers of care since the rules are now in existence and compliance is required of the residential health care facilities. There will be no additional economic impact on the Department, again as these rules are in existence now and facilities are presently being surveyed using these rules. There are over 11,000 beds in the 171 residential health care facilities now licensed in New Jersey.

Failure to adopt N.J.A.C. 8:43, however, could have serious consequences with a concomitant economic impact. For example, the definitions provided in N.J.A.C. 8:43-1 define the residents who may be admitted to a residential health care facility, thus preventing the admission of patients who require a high level of care who may be in jeopardy and, as a result, experience higher health care costs. Without rules regarding the required services in a residential health care facility and the qualifications of the administrator and staff there would be no assurance that the required services will be provided in an organized and efficient manner by competent staff and would be cost-effective.

Furthermore, without rules for residential health care facilities, residents might be placed in facilities providing more intensive and more expensive health care than that provided in a residential health care facility. Without residential health care facilities, potential residents might receive fragmented care or no care, which would ultimately increase the cost of care. Inadequate care to residents in residential health care facilities would increase the cases of illness and disease requiring costly care. Therefore, it is imperative that these rules be readopted.

Regulatory Flexibility Statement

The Department acknowledges that most of the 171 residential health care facilities presently licensed have fewer than 100 full-time employees and may, therefore, be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The proposed readoption will not change the recordkeeping, reporting and compliance requirements already placed upon small businesses by the current rules, N.J.A.C. 8:43. The facility must, for example, maintain a register which contains a current census of all residents. A record must be kept for each resident, which includes an admission record, a medical certification, a record of physician's visits and a death record when applicable. Any major occurrence or incident of an unusual nature must be reported immediately to the Department. The Department of Health has determined that compliance with the proposed readoption is necessary for all facilities which provide residential health care services, in the interest of public health and safety, and that there should be no differentiation based on business size.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:43.

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council,
Robert Kowalski, Chairman.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1990-434.

A **public hearing** concerning these proposed amendments will be held on September 11, 1990 at 2:00 P.M. at the following address:

Department of Health
Room 804, Eighth Floor
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by September 19, 1990 to:

Sol Mendell, R.Ph.
Drug Utilization Review Council, Room 807
New Jersey Department of Health
CN 360
Trenton, N.J. 08625-0360
609-984-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed digoxin tablets could then be used as a less expensive substitute for Lanoxin, a branded prescription medicine. Similarly, the proposed carbamazepine chewable tablets could be substituted for the more costly branded product, Tegretol Chewable.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by the proposed amendments because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or record keeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or record keeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Albuterol Sulf tabs 2, 4 mg	Purepac
Albuterol Sulf 2, 4 mg tabs	W-C
Amiloride/HCTZ tabs 5/50	Cord
Amoxapine tabs 25, 50, 100, 150 mg	Watson Labs
Benzoyl peroxide gel 2.5%, 5%, 10%	Syosset
Butalbital, codeine, ASA caps	J. Stevens
Cafergot-PB tabs substitute	Anabolic
Carbamazepine 100 mg chewable tabs	W-C
Carbinoxamine/pseudoephedrine/DM drops	Tri-Med Labs
Carbinoxamine/pseudoephedrine/DM syrup	Tri-Med Labs
Chlorpropamide tabs 100, 250 mg	Lederle
Clonidine 0.1, 0.2, 0.3 mg tabs	W-C
Clonidine tabs 0.1, 0.2, 0.3 mg	Lederle
Clorazepate tabs 3.75, 7.5, 15 mg	W-C
Comhist LA caps substitute	Time-Cap
Digoxin tabs 0.125, 0.25 mg	Zenith Labs
Digoxin tabs 0.125, 0.5 mg	Pioneer
Doxepin HCl caps 10, 25, 50 mg	Purepac
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Erythromycin ER tabs 250, 333 mg	Abbott Labs
Erythromycin ethylsuccinate tabs 400 mg	Abbott Labs
Erythromycin soln 2%	Syosset
Fenoprofen caps 200, 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Hydrocortisone suppositories	Able Labs
Indomethacin 25, 50 mg caps	W-C
Iodinated glycerol elixir 60 mg/5 ml	Halsey
Iodinated glycerol tabs 30 mg	Able Labs
Iodinated glycerol tabs 30 mg	Biopharm.
Iodinated glycerol/DM liquid	Silarx Pharm
Iodochlorhydroxyquin 3%/HC 1% cream	Syosset
Isometheptene/dichloralphen./APAP caps	Biopharm., J. Stevens
Leucovorin 2 mg tab	W-C
Levothyroxine inj 200, 500 mcg	Steris
Lidocaine HCl inj 1%, 2%	Steris Labs
Loperamide 2 mg caps	Lemmon, W-C
Lorazepam 0.5, 1, 2 mg tabs	W-C
Methyldopa/HCTZ tabs 500/30, 500/50	W-C
Methyldopa tabs 125, 250, 500 mg	Roxane
Methyldopa/HCTZ tabs 250/15, 250/25	W-C
Minocycline 50, 100 mg tabs	W-C
Morphine Sulfate ER tabs 30 mg	Roxane
Naldecon Ped. syrup substitute	Hi-Tech
Naldecon Ped. drops substitute	Hi-Tech
Naldecon syrup substitute	Hi-Tech
Neostigmine methylsulfate inj 1:1000	Steris Labs
Neostigmine methylsulfate inj 1:2000	Steris Labs
Nifedipine caps 20 mg	Purepac
Organidin elixir substitute	Hi-Tech
Organidin soln substitute	Hi-Tech
Orphenadrine Citrate inj 30 mg/ml	Steris Labs
Phenazopyridine tabs 100, 200 mg	Able Labs
Phenylephrine/PPA/guiafenesin liq	Silarx Pharm
Pilocarpine HCl 0.5% ophth sol	Optopics
Podophyllum resin 25%	Syosset
Polyvitamins/F soln 0.25, 0.5 mg	Tri-Med Labs
Potassium chloride ER caps 10 mEq	Adria Labs
Probenecid tabs 500 mg	Zenith
Prochlorperazine edisylate 5 mg/ml	Steris Labs
Promethazine & codeine syrup	Halsey
Propranolol tabs 10, 20, 40, 60, 80 mg	W-C

Propoxyphene HCl/APAP tabs 65/650	Cord
Propranolol tabs 10, 20, 40, 60, 80 mg	W-C
Propranolol HCTZ 40/25, 80/25 tabs	W-C
Propranolol tabs 60, 90 mg	Watson Labs
Quinidine gluconate ER tabs 324 mg	Mutual
Quinine Sulfate tabs 260 mg	Mutual Pharm
Rynatan tabs formula	Biopharm.
Salsalate tabs 500, 750 mg	Able Labs
Salsalate tabs 500, 750 mg	Chelsea Labs
Selenium sulfide lotion 2.5%	Syosset
Sulindac tabs 150, 200 mg	Purepac
Sulindac tabs 150, 200 mg	W-C
Tetracycline 250, 500 mg caps	W-C
Theophylline tabs ER 100, 200, 300 mg	Sidmak Labs
Theophylline/guaifenesin 150/90/15 ml	Halsey
Timolol Maleate tabs 5, 10, 20 mg	Mylan Pharm
Timolol Maleate tabs 5, 10, 20 mg	W-C
Tolmetin sodium caps 400 mg	Cord, W-C
Tolmetin tabs 200 mg	W-C
Triamcinolone oint 0.025, 0.1, 0.5%	Syosset
Trimethobenzamide HCl suppos 100, 200 mg	Able Labs
Tropicamide ophth soln 0.5, 1.0%	Optopics
Tussi-Organidin DM substitute	Hi-Tech
Urised formula	Able Labs
Verapamil HCl tab 40 mg	Cord, Purepac
Verapamil tabs 80, 120 mg	Lederle
Vitamins ADC/Fluoride 0.25, 0.50 soln	Esquire, Tri-Med

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Agricultural Liming Materials

Adopted New Rules: N.J.A.C. 2:70

Proposed: May 21, 1990 at 22 N.J.R. 1411(a).
Adopted: July 25, 1990 by Arthur R. Brown, Jr., Secretary, Department of Agriculture; and State Board of Agriculture.
Filed: July 26, 1990, as R.1990 d.414, **without change.**
Authority: N.J.S.A. 4:9-21.1 et seq., specifically 4:9-21.11.
Effective Date: August 20, 1990.
Expiration Date: August 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 70
AGRICULTURAL LIMING MATERIALS

SUBCHAPTER 1. PHYSICAL CLASSIFICATION (FINENESS)

2:70-1.1 Limestone classified "pulverized"
Limestone shall be classified as "pulverized" when at least 98 percent passes through a number 20 sieve, 70 percent through a number 60 sieve and 55 percent through a number 100 sieve.

2:70-1.2 Limestone labeled "ground"
Limestone shall be labeled as "ground" when it fails to meet the standards set forth in N.J.A.C. 2:70-1.1, but when at least 98 percent passes through a number 20 sieve, 60 percent through a number 60 sieve and 40 percent through a number 100 sieve.

2:70-1.3 Limestone labeled "granular"
Limestone shall be labeled as "granular" when it fails to meet either of the standards set forth in N.J.A.C. 2:70-1.1 and 1.2; but when at least 98 percent passes through a number 20 sieve, 55 percent through a number 60 sieve and 30 percent through a number 100 sieve.

2:70-1.4 Limestone failing to meet standards
Materials failing to meet any of the standards set forth in N.J.A.C. 2:70-1.1, 1.2 and 1.3, may not be sold as agricultural limestone.

2:70-1.5 Burnt limes
All burnt limes shall be of such fineness that 75 percent will pass through a number 20 sieve, 50 percent through a number 60 sieve and 30 percent through a number 100 sieve.

2:70-1.6 Hydrated limes
All hydrated limes shall be of such fineness that 98 percent will pass through a number 20 sieve, 95 percent through a number 60 sieve and 80 percent through a number 100 sieve.

2:70-1.7 Inspection fee
(a) In assessing the inspection fee for any licensee pursuant to N.J.S.A. 4:9-21.8, the department shall collect payment only from the producer for any liming material sold for use in New Jersey.
(b) Producers of any liming material who pay the inspection fee should advise purchasers and inform the Department of Agriculture to avoid double assessment.

2:70-1.8 Slurries and suspensions
Agricultural liming materials when offered for sale in slurry or suspension form shall be derived from agricultural liming materials whose composition meets the requirements of the act and must be additionally labeled so as to disclose the composition (calcium oxide and magnesium oxide) of the slurry. The minimum total oxide content of the slurry that may be offered for sale is 15 percent total oxides.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction
Uniform Construction Code
N.J.A.C. 5:23

Take notice that the Department of Community Affairs has requested, and the Office of Administrative Law has agreed to allow, corrections to various sections of the Uniform Construction Code, N.J.A.C. 5:23. These corrections are to rectify typographic misspellings, correct Department addresses and responsible units and to revise cross-references to other Code provisions in light of past recodifications. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

5:23-2.2 Matter covered
(a) (No change.)
(b) A building or structure shall not be [construed] **constructed**, extended, repaired, removed or altered in violation of these provisions, except for ordinary repairs as provided herein, and except further that the raising, lowering or moving of a building or structures on the same lot, as a unit, necessitated by a change in legal grade or widening of a street shall be permitted, provided the building or structure is not otherwise altered or its use or occupancy changed.
1. (No change.)
(c)-(e) (No change.)

5:23-2.10 Applications for variations
(a) An application for a variation pursuant to this section shall be filed in writing with the construction official and shall [set] **state** specifically:
1.-4. (No change.)

5:23-2.14 Construction permits when required
(a)-(c) (No change.)
(d) The Construction Official, upon review of the application may issue or deny an annual construction permit in whole or in part. The construction permit [(Form F-170)] (**Form F-170A**) shall state that the permit is an annual permit and indicate the technical subcodes in which the facility is approved to do work under the annual permit. A copy of the annual permit shall be forwarded by the Construction Official to the Department of Community Affairs Training Section along with the appropriate training registration fee.
(e) (No change.)

5:23-2.15 Construction permits—application
(a) (No change.)
(b) In addition, the following information shall be required on any application for a constructtion permit when such information is available, but not later than the commencement of work.
1. The names and addresses of all contractors engaged or planned for engagement by the owner in the [prosecution] **execution** of the work.
i. (No change.)
2.-3. (No change.)
4. In the event of any change of contractor or person in charge of work under [(a)] (**b**)1, 2 and 3 above, such change shall be filed as an amendment to the application.
(c)-(e) (No change.)

5:23-2.37 Decision of the board

(a) Procedure:

1. The board shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefor with the enforcing agency from which the appeal has been taken not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the appellant. Such decision shall also be filed with the [State Division of Housing and Urban Renewal, Bureau of Construction Code Enforcement, Attention: Uniform Construction Code Appeals File, 363 West State Street.] **Construction Code Element, Bureau of Regulatory Affairs, CN 816,** Trenton, New Jersey 08625. Decisions of the board shall be available for public inspection at both the offices of the bureau and the enforcing agency during normal business hours.

2.-7. (No change.)

(b) (No change.)

5:23-3.9 Interpretations and opinions

(a) (No change.)

(b) In response to a written inquiry or request setting forth a specific factual situation, or upon its own initiative, the [Bureau of Construction Code Enforcement] **Construction Code Element** may issue a formal technical opinion to clarify provisions of the adopted subcodes. Such formal technical opinion shall be signed by the [Chief or the Asssistant Chief of the Bureau] **Assistant Director of the Element** and shall be binding upon the [Bureau] **Element** and upon other code enforcement agencies and licensed officials. Formal technical opinions shall be prospective in nature, shall be based upon adopted subcodes or upon authoritative test results or standards incorporated by reference into an adopted subcode and shall not alter the ruling of a licensed official already rendered in a specific instance relating to a specific permit or structure, except that any such formal technical opinion may be considered in the context of an appeal from any such ruling.

(c) In response to a written or oral inquiry or request setting forth a specific factual situation, a staff member of the [Bureau of Construction Code Enforcement] **Construction Code Element** may issue an informal opinion as to the proper application of the regulations if the issue is one with which he has authority to deal. Such informal opinion shall only be in writing if it is issued in response to a written inquiry or request and shall not be binding upon the [Bureau] **Element** or any other party.

5:23-3.11 Enforcement activities reserved to the [State] **Department**

(a)-(f) (No change.)

5:23-3.11A Enforcement activities reserved to other State agencies

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

(c) The Department of Education shall be the sole enforcing agency, except as provided by [section 12 of the act] **N.J.S.A. 52:27D-13D,** for the following structures:

1. (No change.)

(d) (No change.)

5:23-4.3 Municipal enforcing agencies—establishment

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

(d) Establishment by ordinance:

1.-3. (No change.)

4. Such ordinance shall, if the municipality has so chosen, establish a board of appeals in accordance with N.J.A.C. 5:23-[4.26] **4.40.** The municipality may permit the board to hire new staff or to utilize existing municipal staff in addition to such staff as is provided for in section 26 of this subchapter as it may deem appropriate.

5.-7. (No change.)

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

5:23-4.9 State enforcing agencies—establishment

(a) Department of Community Affairs:

1. The [Bureau of Construction Code Enforcement of the Division of Housing and Urban Renewal] **Construction Code Element of the Division of Housing and Development** is constituted as the enforcing agency for the purpose of administering and enforcing the regulations in those municipalities which have decided, pursuant to N.J.A.C. 5:23-3, not to enforce the regulations.

i. (No change.)

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

5:23-4.10 State enforcing agencies—organization

(a) Department of Community Affairs: The [Bureau of Construction Code Enforcement] **Construction Code Element** shall be organized, insofar as is practicable, in the same manner as are municipal enforcing agencies.

1. The [bureau] **Element** shall employ persons qualified and certified in accordance with N.J.A.C. 5:23-5.

(b) (No change.)

5:23-5.2 [Office] **Unit** established; hearings

(a) Rules concerning Office of Code Enforcement Official Licensure are:

1. Established: There is hereby established in the Bureau of [Construction Code Enforcement] **Technical Services,** Division of Housing and [Urban Renewal, an Office of Code Enforcement Official Licensure] **Development, a Licensing Unit.** The office shall consist of such employees of the Department of Community Affairs as may be required for the efficient operation of this subchapter.

2. (No change.)

(b) Rules concerning hearings are:

1. (No change.)

2. Rules concerning hearing procedures are:

i. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being appealed. The request should be mailed to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, [CN 804] **CN 802,** Trenton, New Jersey 08625-[0804] **0802.** The request for hearing should raise all issues that will be set forth at the hearing.

5:23-5.4 Licenses required

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

(d) Enforcing agencies, including private on-site inspection and plan review agencies, may establish code enforcement trainee positions subject to the following rules.

1. (No change.)

2. Persons applying for a trainee position with an enforcing agency must be officially registered with the Department of Community Affairs on the form provided by the Licensing [Section] **Unit** of the Bureau of [Construction Code Enforcement] **Technical Services** prior to being hired as a trainee.

i. Trainees shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of [Construction Code Enforcement, Licensing Section] **Technical Services, Licensing Unit,** of any change in employment status or address within one month of any change. A non-refundable processing fee of $10.00 is required for the initial Trainee Registration Request and for each subsequent renewal request.

3.-8. (No change.)

(e) (No change.)

5:23-5.5 General license requirements

(a) Any candidate for a license of any type issued pursuant to this subchapter shall submit an application to the [Office of Code Enforcement Official Licensure] **Licensing Unit, Bureau of Technical Services,** accompanied by the required application fee established in N.J.A.C. 5:23-[5.12] **5.22.** The application shall include such information and documentation as the Commissioner may require pursuant to this subchapter.

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

5:23-5.6 Construction official requirements

(a) A candidate for a license as a construction official shall meet the following qualifications:

1. (No change.)

2. Successful completion of an approved construction official educational program as required by N.J.A.C. 5:23-[5:21] **5.20** prior to application.

3. (No change.)

5:23-5.7 Subcode official requirement

(a) A candidate for a licensee as a building, electrical, fire protection or plumbing subcode official shall meet the following qualifications:

1. (No change.)

2. Successful completion of an approved subcode official educational program established in N.J.A.C. 5:23-[5.21] **5.20** prior to application; and

3.-7. (No change.)

5:23-5.20 Standards for educational programs

(a) To carry out their responsibilities, code enforcement officials must be fully knowledgeable about code standards and adequately prepared to administer and enforce them properly. Code enforcement officials have the necessary technical and administrative training to effectively enforce the Uniform Construction Code at the local level. This article adopts explicit guidelines and standards for code enforcement official educational programs. Procedures governing the approval of such educational programs **are** set forth in N.J.A.C. 5:23-[5.10] **5.24**.

(b) This section covers the organizational, administrative, and operational functions that support the code enforcement educational programs.

1. (No change.)

2. Organization: Sound educational programs can be operated effectively only when supported by adequate institutional arrangements. Accordingly, only programs offered by or under the auspices of institutions of higher education, licensed by the New Jersey Department of Higher Education can be considered by approval. The Commissioner, however, may approve other training programs such as those conducted by an approved inplant inspection agency, where the students are solely code enforcement officials employed by the agency or by national model code organizations. The educational program proposal by the inplant agency must be submitted to the department with the application for approval as required in N.J.A.C. 5:23-4.13(b) and in the form specified in N.J.A.C. 5:23-[5.9] **5.24**.

3.-4. (No change.)

5. Faculty: Faculty members should be competent in their fields and have contacts with code enforcement environments and other sources so their teaching and research are current and relevant.

i. (No change.)

ii. Part-time faculty: The institution, recognizing that an appropriate faculty is one of the major determinants of the quality of its educational programs, should make provision for the use of part-time or adjunct faculty.

(l) No individual who has ever had a license suspended for a period of six months or more or has ever had a [licensed] **license** revoked for any reason set forth in N.J.A.C. 5:23-[5.11] **5.25** shall be eligible to instruct code enforcement educational programs.

iii. (No change.)

6. (No change.)

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

5:23-5.21 Renewal of license

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

(d) Continuing education requirements:

1. The following continuing education requirements are based upon the type(s) of license(s) held, and not upon employment positions held. Continuing Education Units (CEU's) will be approved by the Bureau of [Construction Code Enforcement] **Technical Services**. (1.0 CEU 10 contact hours.) CEU's will be awarded for technical and administrative licenses.

i.-iii. (No change.)

2-.3. (No change.)

(e) (No change.)

(f) After revocation of a license upon any of the grounds set forth in these regulations, the [office] **Licensing Unit** may not renew or reinstate such license; however, a person may file a new application for a license with the department.

(g) (No change.)

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a fee as specified herein.

1.-2. (No change.)

3. Persons rejected for one or more licenses, and who subsequently reapply, are subject to the fee schdule as defined in [N.J.A.C. 5:23-5.12](a)1i, ii and iii **above**.

4.-6. (No change.)

5:23-5.23 Examination requirements

(a) Examinations shall be held, at least twice annually, to establish eligibility for the following license specialties: building inspector R.C.S., building inspector I.C.S., building inspector H.H.S., electrical inspector I.C.S., electrical inspector H.H.S., fire protection inspector I.C.S., fire protection inspector H.H.S., facility fire protection supervisor, plumbing inspector I.C.S., plumbing inspector H.H.S., elevator inspector and inplant inspector. In instances where more than one license level within a given subcode area requires the successful completion of one or more examination modules, award of the higher level license specialty will be dependent upon successful completion of the educational program in accordance with N.J.A.C. 5:23-[5.6] **5.20** and the examination module(s) required for the lower level license or possession of the applicable lower level license. Applicants for licenses listed above shall demonstrate competence by successful completion of the relevant examination modules of the National Certification Program for Construction Code Inspector administered by the Educational Testing Service for the department.

1.-12. (No change.)

(b)-(e) (No change.)

5:23-5.24 Procedure for approving educational programs

(a) Any licensed institution of higher education may submit any credit or noncredit course for approval as a component of the educational programs required by N.J.A.C. 5:23-[5.6 herein] **5.20**. The application should be in letter form, be submitted at least 60 days prior to the first class session of the course, and contain all the information specified herein.

(b) Each application should be submitted in the name of the institution by a person authorized to do so. It should contain the following minimum information.

1.-7. (No change.)

8. A statement that the institution will conduct the course or program in accordance with N.J.A.C. 5:23-[5.6 herein] **5.20** and will maintain such records as are therein required.

9. (No change.)

(c) (No change.)

(d) An institution may conduct a program which satisfies only a portion of the requirements established in N.J.A.C. 5:23-[5.6] **5.20** or may establish a series of courses designed to fulfill all the requirements for the educational program of that article.

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

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development Full Disclosure Exemptions

Adopted Amendment: N.J.A.C. 5:26-2.2

Proposed: June 18, 1990 at 22 N.J.R. 1872(a).

Adopted: July 19, 1990 by William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

Filed: July 23, 1990 as R.1990 d.408, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:22A-35.

Effective Date: August 20, 1990.

Expiration Date: March 1, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: A comment was received from the New Jersey Tenants Organization (NJTO) expressing concern that the amended rule would exempt projects in which there is no guarantee of continued affordability or for which an untrue claim of affordability is made, and, furthermore, that "low-income" and "moderate-income" are not defined.

RESPONSE: In response, the Department has changed the rule upon adoption to make reference to the Fair Housing Act in order to incorporate the statutory definitions of "low-income" and "moderate-income" by reference and to require that the units be legally restricted to assure continued affordability in accordance with the rules of the Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency and/or the Council on Affordable Housing.

COMMENT: The NJTO is also concerned that the amended rule does not, in its exemption of 100 percent affordable projects, differentiate between new construction and conversions and that tenants in some conversions will therefore no longer get full, truthful disclosure.

RESPONSE: In response, the Department points out that it has not encountered any 100 percent affordable conversions, which is not surprising given the unlikelihood that any profit-motivated developer would have any interest in any such conversion. If there were to be any conversion of a rental building to a 100 percent affordable cooperative or condominium, it is most likely that it would be done by the tenants themselves or by a nonprofit organization working in their behalf. In such a case, it would be in the tenants' own interest not to have to pay the cost of preparing a public offering statement. In the Department's view, the items listed in N.J.A.C. 5:26-2.2(a)10 i. through xii. would provide the tenants with the information that they would need to know. However, this list is specifically stated to be "without limitation" and the Department would be able to add further disclosure requirements in order to protect the interests of the tenants in any unusual situation that might arise.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***).

5:26-2.2 Exemptions

(a) Unless the method of disposition is adopted for purposes of evasion, the provisions of these rules shall not apply to offers or dispositions:

1.-9. (No change.)

10. Where the offering is not part of a larger offering and consists of fewer than 10 lots, parcels, units or interests, or where the offering consists entirely of units affordable to persons of low or moderate income ***, as determined in accordance with the "Fair Housing Act," P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.), and legally restricted to assure continued affordability in accordance with N.J.A.C. 5:14-4, N.J.A.C. 5:80-26, and/or N.J.A.C. 5:92-12,*** or where the Agency otherwise finds that the enforcement of the Act is not necessary in the public interest or for the protection of purchasers by reason of the small amount of the purchase price, or the limited character of the offering, or the limited nature of the common or shared elements; provided, however, that as a condition of any exemption granted under this paragraph, the developer shall disclose to prospective purchasers, in a format acceptable to the Agency, such information and documentation as the Agency may deem appropriate, including, without limitation, the following:

i. The name, address and telephone number of the developer and of any designated agent;

ii. The total number of units proposed for the entire development and the scheduled completion dates;

iii. The total number of units currently being offered and the date by which the current phase of construction is scheduled to be completed;

iv. The types of units being offered (for example, detached homes, townhouses, apartments, non-residential units) and the number of units being offered in each category;

v. Whether or not there is a flood hazard zone on or adjacent to the site;

vi. Information as to who will control the association and when control by the homeowners will begin;

vii. A statement as to who may use common facilities;

viii. Information as to how a prospective purchaser may review the declaration of covenants and restrictions, the by-laws of the association, and the rules and regulations, if any, governing the operation of the development;

ix. A list of management contracts that are or will be in effect and information as to how a prospective purchaser may review any current managment contract or proposed maintenance agreement;

x. A statement of the relationship of the developer to the service provider, if any;

xi. The amount that it is reasonably anticipated that a prospective purchaser would be required to pay, currently and in the near future, for the operation and maintenance of the common facilities, including the amount set aside for reserves, and information as to how a prospective purchaser may review the current budget; and

xii. Information as to how a prospective purchaser may review a copy of the final plat plan, as approved and signed by the local planning board, showing all amenities, facilities and improvements.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Application and Review Process

Readoption: N.J.A.C. 8:33

Proposed: May 21, 1990 at 22 N.J.R. 1494(a).

Adopted: July 26, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: July 27, 1990 as R.1990 d.417, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: July 27,1990.

Expiration Date: July 27, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:33.

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Standards and Criteria for the Demonstration of Extracorporeal Shock Wave Lithotripsy (ESWL) Services

Readoption: N.J.A.C. 8:33B

Proposed: May 21, 1990 at N.J.R. 1495(a).

Adopted: July 26, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with the approval of Health Care Administration Board).

Filed: July 27, 1990 as R.1990 d.418, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: July 27, 1990.

Expiration Date: July 27, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:33B.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Ambulatory Care Facilities Standards for Licensure

Readoption with Amendments: N.J.A.C. 8:43A

Proposed: May 21, 1990 at 22 N.J.R. 1496(a).

Adopted: July 26, 1990, by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: July 27, 1990 as R.1990 d.416, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the amendments to N.J.A.C. 8:43A-12 not adopted but still pending.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically N.J.S.A. 26:2H-5.

Effective Date: July 27, 1990, Readoption; August 20, 1990, Amendment.

Expiration Date: July 27, 1995.

Summary of Public Comments and Agency Responses:

The Department received 51 letters of comment. With the exception of the two comments addressed below, all of the comments and recommendations received concern the proposed amendments to N.J.A.C. 8:43A-12—the subchapter entitled "Surgical Services." These amendments were proposed on the basis of the Department's commitment to add anesthesia-specific rules to the licensure standards for ambulatory care facilities which provide surgical and anesthesia services to patients, thereby bringing the ambulatory care licensure standards into agreement with hospital standards addressing the provision of similar anesthesia services. Given the volume, scope, and complexity of the comments submitted, the Department is deferring action on the proposed amendments to N.J.A.C. 8:43A-12 while readopting, as proposed, all of N.J.A.C. 8:43A. This readoption will avert the scheduled September 3, 1990, expiration of the licensure rules. The Department continues to plan a comprehensive revision of the rules in the near future.

The following is a summary of the comments submitted in reference to the proposed readoption and the corresponding Departmental responses.

COMMENT: The New Jersey State Nurses Association remarked that the current N.J.A.C. 8:43A-12.2(a) should require both the medical staff and the nursing staff to develop and implement written bylaws, rules, regulations, policies, and procedures for surgical and anesthesia services, since the nurse anesthetist functions as part of the anesthesia team.

RESPONSE: In order to allow for input of the nursing staff into the development of surgical and anesthesia policies and procedures, the rule has been revised so as to assign responsibility to the "facility" rather than to a particular discipline.

COMMENT: With regard to the current N.J.A.C. 8:43A-12.2(a)12, Planned Parenthood of Monmouth County, Inc., stated that a physician qualified in resuscitative techniques should be present until patients are stable and that a staff person trained in resuscitative techniques should be present as long as patients remain in the facility. The rule currently requires that the physician qualified in resuscitative techniques be present in the facility during all surgical procedures and as long as any postoperative patients are in the facility.

RESPONSE: As indicated in the notice of proposal, the Department intends to delete N.J.A.C. 8:43A-12.2(a)12 but to add the proposed amendment N.J.A.C. 8:43A-12.3(b), which would require that a physician and a registered professional nurse, at least one of whom is certified in advanced cardiac life support by the American Heart Association, be present during all surgical procedures and be present in the facility as long as any patient remains in the facility. The Department will reconsider proposed N.J.A.C. 8:43A-12.3(b) prior to adoption of the proposed amendments to N.J.A.C. 8:43A-12.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:43A.

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 12. SURGICAL SERVICES

8:43A-12.1 Services

(a) If the facility provides surgical services in an operating room and recovery area, the surgical and anesthesia services provided shall be limited to those procedures approved by the governing authority and the medical staff.

(b) (No change.)

8:43A-12.2 Policies and procedures

(a) The *[medical staff]* ***facility*** shall develop and implement written bylaws, rules, regulations, policies, and procedures for surgical and anesthesia services, in accordance with the governing authority and medical staff bylaws. The policies and procedures shall be reviewed and revised as specified in the facility's policy and procedure manual(s), and shall include at least the following:

1.-3. (No change.)

4. Policies and procedures to ensure that every patient is examined by physician immediately prior to surgery;

5. Policies and procedures for use of analgesia and anesthesia, including types which may be used for each procedure, safety regulations, and persons responsible for administration;

i. A physician shall be immediately available in the facility when anesthesia is administered by a nonphysician (for example, by a podiatrist, dentist, or certified registered nurse anesthetist);

ii. Surgical procedures shall be performed only by practitioners who are licensed to perform such procedures in New Jersey and who have been granted privileges to perform those procedures by the governing body of the organization, upon the recommendation of the medical staff, after medical review of each practitioner's documented education, training, experience, and current competence;

6. Delineation of responsibilities, qualifications, and supervision required for persons responsible for administering anesthesia;

7. Policies and procedures for the recording of vital signs (blood pressure, temperature, respiration rate, and pulse) prior to surgery and before discharge;

8. Pre and postoperative observation and care required for each type of procedure;

9. Methods to ensure that gross and microscopic tissue removed surgically or by any other procedure, including termination of pregnancy in accordance with the regulations of the New Jersey State Board of Medical Examiners, N.J.A.C. 13:35-4.2, is examined by a pathologist and a report of the findings is documented in the patient's medical/health record:

i. The facility shall ensure that the tissue is disposed of in accordance with N.J.A.C. 8:43A-14.6 of this chapter whether it is examined on the facility's premises or off the facility's premises.

10. Duration of time the patient shall remain in the facility after surgery. If the patient received anesthesia, he or she shall be evaluated by a physician after recovery from anesthesia and before discharge;

11. (No change in text.)

12. Designation of a physician qualified in resuscitative techniques to be present during all surgical procedures and to remain in the facility as long as any postoperative patients are in the facility;

13. Provision of written instructions to the patient (multilingual, if indicated) on pre- and postsurgical care, including, but not limited to, restrictions on food and beverages before surgery and procedures for obtaining help in the event of postoperative problems; and

14. Procedures for a systematic review and evaluation of patient care and surgical and anesthesia practices and techniques, as part of the audit and quality assurance (evaluation) system.

8:43A-12.3 Records

The facility shall maintain a record of all surgical procedures performed which shall include the type of procedure performed, operative diagnosis, type of anesthesia used, personnel participating, postoperative diagnosis, and any unusual or untoward occurrence.

LABOR

(a)

DIVISION OF EMPLOYMENT SECURITY

Scope

Adopted Readoption with Amendment: N.J.A.C. 12:15

Proposed: June 18, 1990 at 22 N.J.R. 1895(b).
Adopted: July 30, 1990 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: July 30, 1990 as R.1990 d.419, **without change.**

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.

Effective Date: July 30, 1990, Readoption; August 20, 1990, Amendments.
Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:15.

Full text of the proposed amendment follows.

12:15-1.2 Definitions

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

"Controller" means the Controller of the Department of Labor.

(b)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

UI Benefit Payments; Registration for Work and Claim for Benefits

Adopted Repeal and New Rules: N.J.A.C. 12:17-2.1

Proposed: March 19, 1990 at 22 N.J.R. 901(a).
Adopted: July 30, 1990 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: July 30, 1990 as R.1990 d.420, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21 et seq., specifically 43:21-11.

Effective Date: August 20, 1990.
Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:17-2.1 Claims and registration

(a) Each individual who desires to claim benefits shall report to an unemployment insurance claims office and file a claim during the week for which he or she desires to claim the benefits and not after that week has passed. The effective date of the new claim establishes the period of time during which wages can be used for determining the monetary entitlement.

1. Each individual shall report in person to file an initial claim for benefits. The effective date of the claim for benefits shall be the Sunday of the week in which the claim is filed.

(b) Each individual shall report in person to the local employment service office as directed by the Division to register for work and for other job related activities. Failure to report without good cause shall render the individual ineligible for benefits for the week in which such failure to report occurs. For purposes of this section, good cause means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from reporting as required by the Division.

(c) To maintain continuing eligibility for benefits, an individual shall continue to file weekly claims in person or by mail in accordance with instructions from the Division. No weekly claim for benefits will be allowed until the claimant has signed and furnished to the Division a claim for benefits on the prescribed form.

(d) Each individual shall file a weekly claim as soon as possible after the last week ending date shown on the claim. The Division shall consider that a weekly claim for benefits has been filed timely if postmarked or received by the Division within 14 days after the last week ending date shown on the claim. The Division shall accept claims received after the deadline if good cause has been shown by the individual for late filing, provided that the individual reports by mail or in person as soon as possible thereafter.

1. Each individual, when directed by the Division, shall report in person to the local unemployment insurance claims office for scheduled interviews. Failure to report in person without good cause shall result in ineligibility for the week in which the failure occurs.

(e) Each individual may reopen his or her claim any time during the 52-week period after first filing a claim, by reporting to a local unemployment insurance office in person as outlined in (a)1 above.

1. Each individual who fails to report by mail for four consecutive weeks of benefits must report to the unemployment insurance office in person to reopen the claim.

2. Each individual who returns to full employment during more than one calendar week in a reporting cycle must report in person to reopen the claim.

(f) The Division shall deny benefit rights to each individual who fails to report as directed by the Division except when the failure to report is due to reemployment and the claimant has notified, in writing, the local unemployment insurance claims office at which he or she has been reporting of the reason for the failure to report within 14 days after the last week ending date being claimed.

(g) Each individual who, without good cause, reports before the designated reporting time may be required to report at the designated time. Each individual who, after being warned, and without good cause, has reported after the designated reporting time may be required to report again at a future day and time.

(h) The Division may permit an individual to report to any other local unemployment insurance claims office if the individual demonstrates to the satisfaction of the Division that he or she is unable to continue to report to the local office where he or she originally filed the claim.

(i) During periods when unusual unemployment conditions prevail, or in the case of a temporary mass separation with a specific date of recall, the Division, through the Director, may, subject to the approval of the Employment and Training Administration of the United States Department of Labor, direct individuals to report on any periodic basis deemed to be in the best interests of all concerned.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Alcoholic Beverage Control Regulations

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

Proposed: June 18, 1990 at 22 N.J.R. 1811(a).
Adopted: July 23, 1990 by Alexander P. Waugh, Jr., Assistant Attorney General in Charge, Division of Alcoholic Beverage Control.
Filed: July 24, 1990 as R.1990 d.412, **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. 33:1-1 et seq.

Effective Date: July 24, 1990, Readoption; August 20, 1990, Amendment.
Expiration Date: July 24, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
In the course of processing the readoption with amendments of N.J.A.C. 13:2, the following changes, which do not require further public notice and comment, were made:

1. N.J.A.C. 13:2-1.6—a typographical error in the ninth line of the rule as proposed will be corrected changing "or" to "of" before the word "any".
2. N.J.A.C. 13:2-2.1—in the published proposal, the Division included in the fourteenth line an unnecessary word "and" between the words "overall" and "room". This rule concerns the requirements for submitting plans of proposed licensed premises to be constructed and should only require indication of ". . . the overall room dimensions" not ". . . the overall and room dimensions" as noted in the proposal. This adoption change will retain the consistent long-standing language use of this language.
3. N.J.A.C. 13:2-2.13—a typographical error in the second line of the rule as proposed will be corrected changing "adpted" to "adopted".
4. N.J.A.C. 13:2-2.15—a duplication in the ninth line of the rule as proposed, where reference is made to both the numerical "10" and the prose "ten", will be corrected. The prose reference of "ten" will be deleted in the adoption.
5. N.J.A.C. 13:2-7.4(a)—at the end of this paragraph a change is made to close the quotations after the last word "law" of the paragraph.
6. N.J.A.C. 13:2-7.4(b)—the last sentence in this paragraph which reads, "A copy of such notice shall be filed with the division at the time of first publication and shall be available for inspection as a public record" was intended for deletion but a closing bracket was mislocated in publication. This concept is covered in N.J.A.C. 13:2-7.5(d). The adoption will delete the sentence.
7. N.J.A.C. 13:2-16.11—for purposes of recognizing gender references and format consistency, the words "or her" will be added in this adoption after "his" and before "employer" as now appears in the fourth line of the rule as proposed.
8. N.J.A.C. 13:2-17.10—a typographical error in the third line of the rule as proposed will be corrected changing "removal" to "renewal".
9. N.J.A.C. 13:2-23.10—an inaccurate reference to another regulatory subchapter, N.J.A.C. 13:2-22, at the third line of the rule as proposed will be deleted in the adoption. This reference is no longer applicable since the provisions of subchapter 22 have been deleted and the relevant concepts are retained and referenced in subchapters 20 and 21.
10. N.J.A.C. 13:2-23.15—in the seventh line of the rule as proposed, the reference to N.J.A.C. 13:2-39.2 will be changed to reflect the correct citation to N.J.A.C. 13:2-39.1. The provisions of N.J.A.C. 13:2-39.2 have been deleted. The concepts remain similar in the corrected citation to N.J.A.C. 13:2-39.1 to be adopted herein.
11. N.J.A.C. 13:2-26.1(a)6—in the fourth line of the paragraph, an inaccurate reference to N.J.A.C. 13:2-39 will be deleted in the adoption. The substance of the regulation remains unchanged.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2.

Full text of the amendments to the readoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 1. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION FOR STATE LICENSE

13:2-1.1 Filing of application; advertising

(a) Application for license must be filed on forms promulgated by the Director, Division of Alcoholic Beverage Control, in duplicate with the Division at or before the first insertion of advertisement and accompanied by the full annual license fee. If the application is to include as the licensed premises a building not yet constructed, plans for the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material, and the overall room dimensions.

13:2-1.2 Corporate or partnership applicant; building not yet constructed

(a) If an applicant is a corporation, insert in the Notice of Application the names and residences of all officers and directors, and the names and residences of all stockholders holding one percent or more of any of the stock of said corporation. If in listing those stockholders, another corporation, partnership or other legal entity is noted, the Notice must also contain the required information concerning the officers, directors, stockholders, or partners of that corporation, partnership or other legal entity. If the applicant is a partnership, insert the names and residences of all general partners and any limited partner holding an interest of one percent or more.

(b) If the application is to include as the licensed premises a building not yet constructed, also insert in the Notice the following: "Plans of building to be constructed may be examined at the Office of the Director of the Division of Alcoholic Beverage Control, TRW Complex, Bldg. 20, 200 Woolverton Street, Trenton, New Jersey 08625."

13:2-1.3 Publication of notice of application

(a) Notice of application shall be published by all applicants for State licenses, except Transportation, Public Warehouse or Warehouse Receipts licenses, in the following form:

—NOTICE—
ALCOHOLIC BEVERAGE LICENSE

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to the Director, Division of Alcoholic Beverage Control, for a State-issued _____ license for
(Type of License)

premises situated at _____.
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:
See *
(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to: Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If applicant is a corporation, insert the names and residence address of all officers and directors, and the names and residences of all stockholders holding one percent or more of any stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the names and residence address of all general partners and any limited partners holding an interest of one percent or more.

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of the building to be constructed may be examined at the Office of the Director, Division of Alcoholic Beverage Control, 200 Woolverton Street, Trenton, New Jersey 08625.

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under its license, insert in the Notice the following: "The applicant intends to engage in the retail sale of _____
(Alcoholic Beverage Type)
at _____
(No.) (Street)
_____ under the terms and conditions
(Municipality)
allowed by law."

(b) Where the premises sought to be licensed are located in the State of New Jersey, the notice of application shall be published once a week for two weeks successively, at least seven days apart, in a newspaper printed in the English language, published and circulated in each municipality in which the premises or any portion thereof, for example, office, warehouse, salesroom, are located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county or counties in which the licensed premises or any portion thereof are located.

(c) Where applicant does not maintain any licensed premises in the State of New Jersey, notice of application shall be published in the manner above described in the municipality wherein the duly authorized agent within the State upon whom service of process may be made is located.

13:2-1.4 Proof of publication

Proof of publication of notice of application for a license shall be furnished after second publication with copy of the dated advertisements attached.

13:2-1.5 Applicants for renewal of annual State license

Applicants for renewal of annual State licenses issued by the Director are not required to advertise notice of application. In lieu thereof, the Director shall cause a general notice of application to be published once a week from the week of April 1 through the week of June 1 in a newspaper printed in the English language and published and circulated in the counties in which the premises of applicants for such renewals are located. The notice shall be published in the following form:

NOTICE OF
APPLICATION FOR RENEWAL OF
ALCOHOLIC BEVERAGE LICENSES

Notice is hereby given that applications to renew all annual alcoholic beverages licenses will be filed with the Director of the Division of Alcoholic Beverage Control or the municipal local license issuing authority and may be approved on or after May 1st of this year. Objection to any renewal should be made immediately in writing to the Municipal Clerk of the municipality where the license is located if that license sells alcoholic beverages to consumers or to the Director Div. of ABC, CN 087, Trenton, NJ 08625 for any other type alcoholic beverage license. No individual notices will be published with respect to license renewal applications.

13:2-1.6 Objections; hearing

The Director, upon receipt of a timely written objection duly signed by an objector, shall provide a hearing and all parties shall be notified of the date, hour and place thereof. No hearing need be held if no objection shall be lodged unless the Director deems one necessary in order to make his or her determination on the application. The Director shall not deny issuance, renewal or transfer *[or]* *of* any license without first stating the reasons therefor and affording applicant the opportunity to be heard.

13:2-1.7 Changes in facts; application

(a) Whenever any change shall occur in the facts as set forth in any existing filed application concerning a State-issued license, the licensee shall file with the Director an amendment to the license application in a form prescribed by the Director reflecting the change not later than 10 days after the occurrence.

(b) Corporate licensees shall file an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in limited partners shall be treated in the same manner as a stockholder change of a corporate licensee.

13:2-1.8 Publication of notice of change in corporate structure; form

(a) Every corporate licensee shall, in addition to filing written notice with the Director of changes in stockholdings, cause to be published in the following form a notice of change in corporate structure not later than 10 days after the occurrence whenever the stockholder change involves a new individual acquiring one percent or more of the stock.

—NOTICE—

Take notice that on _____ a change

occurred in the stockholdings of _____ ,
(Licensee)

trading as _____ holder of
(Trade Name, if any)

_____ for premises located
(Type of License)

at _____
(No.) (Street) (Municipality)

resulting in the following persons, each acquiring one percent or more of the corporate licensee's stock:

Name	Residence Address

Any information concerning the qualifications of any of the above stockholders should be communicated in writing to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

_____
(Name of Licensee)

(b) The notice of change in corporate structure shall be published once in a newspaper printed in the English language, published and circulated in each municipality in which the licensed premises is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises is located.

(c) Proof of publication of such notice shall be furnished by the licensee to the Director within 10 days after the date of publication with copy of the dated advertisement attached.

13:2-1.9 Rules of general application; relaxation

The procedural rules in this chapter concerning application for licenses, type of forms required, notices to be utilized and specific information to be listed represent provisions of general applicability that may be relaxed by the Director upon a showing of good cause, except where specifically required by law.

SUBCHAPTER 2. FILING OF APPLICATIONS AND ADVERTISING NOTICE OF APPLICATION FOR MUNICIPAL LICENSE

13:2-2.1 Application forms

Application for license must be filed with the issuing authority, in triplicate, on forms promulgated by the Director, Division of Alcoholic Beverage Control at or before the first insertion of advertisement together with the full annual license fee and an additional $50.00 filing fee payable to the Division of Alcoholic Beverage Control. One copy of the application and the non-returnable filing fee of $50.00 shall be forwarded by the issuing authority to the Director immediately upon receipt thereof, and a second copy returned to the applicant. If the application is to include as the licensed premises a building not yet constructed, plans of the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material and the overall *[and]* room dimensions.

13:2-2.2 Form of notice of application

(a) Notice of application shall be published in the following form:

—NOTICE—
ALCOHOLIC BEVERAGE LICENSE

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to _____
(Name of Issuing Authority)

of _____
(Municipality)

for a _____ license for premises situated
(Type of License)

at _____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are: See *
(See ** to insert other information if applicable)
Objections, if any, should be made immediately in writing to:

_____ , of _____
(Municipal Clerk) (Municipality and Mailing Address)

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, insert the names and residence addresses of all officers and directors and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the names and residence addresses of all partners and any limited partners holding an interest of one percent or more.

If the applicant is a club, insert the names and residence addresses of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

13:2-2.3 Issuing authority defined

(a) "Issuing authority" in the form of notice in N.J.A.C. 13:2-2.2 usually means the governing board or body of the municipality, whatever the name may be, for instance the mayor and council, the township committee, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority.

(b) If the application is made by a member of the issuing authority or by a corporation, organization or association (except a club license) in which any member of the issuing authority is interested, directly or indirectly, the Director of the Division of Alcoholic Beverage Control is the issuing authority in the form of notice and the notice must state that any objections should be addressed to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

13:2-2.4 Type of license defined

"Type of license" in the form of notice in N.J.A.C. 13:2-2.2 requires the name or kind of license that is involved in the application. It must be worded strictly in accordance with the statutory language, for instance, "plenary retail consumption license", "plenary retail distribution license", "club license", and so forth.

13:2-2.5 Publication of notice of application

(a) The notice of application shall be published once a week for two weeks successively, in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premise is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premise is located.

(b) Proof of publication of the notice of application for license shall be furnished after the second publication with copies of the dated advertisements attached.

13:2-2.6 Applicants for renewal of municipal licenses

Applicants for renewal of municipal licenses, other than seasonal retail consumption licenses, issued by municipal issuing authorities are not required to advertise notice of application. In lieu thereof, the Director shall cause a general notice of application to be published in the form set forth in N.J.A.C. 13:2-1.5 once a week from the week of April 1 through the week of June 1 in a newspaper printed in the English language and published and circulated in the counties in which the premises of applicants for such renewals are located.

13:2-2.7 Objections; hearing

Each municipal issuing authority, upon receipt of a timely written objection duly signed by an objector shall set the matter down for a hearing and all parties shall be notified of the date, hour and place thereof. Said hearing shall be stenographically or electronically recorded.

13:2-2.8 Date of hearing

The date fixed for hearing shall not be sooner than five days (excluding Saturdays, Sundays and legal holidays) after the second publication and should not be later than 14 days thereafter. For good cause, each issuing authority in the exercise of sound and fair discretion may, subject to appeal to the Director by the applicant if he proves that he is aggrieved by the delay, fix a date for hearing later than said 14 days or may adjourn the hearing, upon notification to all parties.

13:2-9 Hearing not required; reasons

(a) If there is no timely written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

1. The submitted application form is complete in all respects;

2. The applicant is qualified to be licensed according to all standards established by the New Jersey Alcoholic Beverage Control Act, the regulations promulgated thereunder, as well as any pertinent local ordinances or Division-approved conditions; and

3. The applicant has disclosed and the authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business.

(c) No application shall be disapproved without the issuing authority first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type, and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

13:2-2.10 Decision on application; ad interim (temporary) permit

(a) A municipal issuing authority must render a decision within 45 days from the date of a duly filed application for issuance of a new license unless the applicant consents to an extension. Failure to act may be deemed a denial of application by the applicant for the purpose of allowing the applicant to appeal to the Director.

(b) If no action is taken on an application for renewal of license prior to the expiration of its term, the applicant may apply to the Director for issuance of an ad interim (temporary) permit authorizing the applicant to continue to conduct the licensed business until the application has been acted upon. If no action is taken on an application for renewal of a license within 90 days after the expiration of its term, the applicant may file an appeal with the Director from such failure to act on the renewal application.

13:2-2.11 Denial of application; refund of fees

If the application for new or renewal license is denied for any reason whatsoever or withdrawn, a statutory refund of 90 percent of the fee deposited with the municipality shall be made by the municipality to the applicant. The remaining 10 percent shall be deemed an investigation and processing fee and shall be retained by the municipality. The State filing fee required to accompany such applications shall be retained by the Director as a processing fee.

13:2-2.12 Application granted; proration of fee; refund

If the application for a new license is granted, except in connection with the issuance of a new license upon failure to timely renew under N.J.S.A. 33:1-12.18, the license fee shall be prorated from the effective date of the license; and where the amount deposited exceeds the prorated fee, the applicant shall be entitled to a refund of the excess. Any new license issued for failure to timely renew pursuant to N.J.S.A. 33:1-12.18 will be effective immediately following the last day of the preceding license term, and no prorating of fee is warranted.

13:2-2.13 Special conditions

If a resolution granting an application for license is *[adpted]* ***adopted*** sooner than five business days (excluding Saturdays, Sundays and legal holidays) after publication of the second notice of application, the resolution shall set forth in a special condition that the license will not be issued until the five business days have elapsed. If a written objection to issuance of the license is filed within such period, the license shall not be issued pending hearing and further determination of the issuing authority.

13:2-2.14 Changes in facts; application

(a) Whenever any change shall occur in the facts as set forth in any application for a retail license, the licensee shall file with the municipal issuing authority an amendment to the license application on a form promulgated by the Director reflecting the change and not later than 10 days after the occurrence.

(b) Corporate licensees shall file an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in limited partners shall be treated in the same manner as a stockholder change of a corporate licensee.

13:2-2.15 Publication of notice of change in corporate structure; form

Every corporate licensee shall, in addition to filing written notice with the municipal issuing authority of changes in stockholdings, cause to be published a notice of change in corporate structure in the following form, not later than 10 *[ten]* days after the occurrence whenever the stockholder change involves a new individual acquiring one percent or more of the stock.

—NOTICE—

Take notice that on _____ a change occurred in the stockholdings of _____ , trading as _____
(Licensee)

_____ holder of _____
(Trade Name, if any)

_____ for premises located at
(Type of License and Number)

_____
(No.) (Street) (Municipality)

resulting in the following persons, each acquiring in the aggregate one percent or more of the corporate licensee's stock:

_____
Name Residence Address

Any information concerning the qualifications of any of the above current stockholders should be communicated in writing to:

_____ of _____
(Municipal Clerk) (Municipality)

(Name of Licensee)

13:2-2.16 Publication of notice of change in corporate structure

(a) The notice of change in corporate structure shall be published once in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premises is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises is located.

(b) Proof of publication of such notice shall be furnished by the licensee to the municipal issuing authority within 10 days after the date of publication with a copy of the dated advertisement attached.

SUBCHAPTER 3. ISSUANCE OF RETAIL LICENSES BY MUNICIPAL ISSUING AUTHORITIES; SPECIAL REVIEW OF ATLANTIC CITY LICENSES

13:2-3.1 License certificate; form

The Director, Division of Alcoholic Beverage Control shall establish the form and content of all license certificates and shall make certificates for licenses available to the municipal issuing authority in each municipality issuing licenses.

13:2-3.2 Required records

The municipal issuing authority shall maintain full and complete records concerning each license in its municipality, including information relative to the license's issuance, renewal, transfer, disciplinary sanctions, special conditions, extension of license to a fiduciary, payment of fees and any other matter the director or municipal issuing authority may deem appropriate.

13:2-3.3 Numbering license certificates

All license certificates shall bear a 12-digit State-assigned license number that will identify the license's county and municipality, license type, sequential license number in that community and license generation number.

13:2-3.4 License certificate signed by issuer

Each license certificate shall be signed either in the name of the municipality or its municipal board, whichever is the issuing authority. It shall also bear the actual signature, at the place indicated, of such municipal officer or agent as the governing board or body of the municipality or the municipal board, as the case may be, shall have designated to sign and to deliver such certificate on its behalf.

13:2-3.5 Issuance of a license certificate; resolution of issuing authority

(a) (No change.)

(b) Unless another specific date is identified in the resolution concerning an application for issuance or transfer of a license, the effective date shall be the date of the adoption of the resolution by the issuing authority.

13:2-3.6 Certification of license activity

(a) Each municipal issuing authority shall make or cause to be made daily certification to the Director of all licenses granted during the preceding business day, which certification shall include any license application filings or amendments, any fees to be remitted to the Director, and any resolutions adopted.

13:2-3.7 Atlantic City; alcoholic beverage licenses

(a) The Municipal Board of Alcoholic Beverage Control of the City of Atlantic City shall forward to the Division of Alcoholic Beverage Control a copy of all applications for issuance, renewal or transfer of any alcoholic beverage license.

(b) No action shall be taken by the Board with respect to any application until completion of an appropriate investigation by the Division of Alcoholic Beverage Control or its designees.

(c) Upon completion of the investigation, the Division of Alcoholic Beverage Control shall certify whether granting of the application is in the public interest.

(d) Upon a finding by the Division that granting of the application will not be contrary to the public interest, the Board may act upon the application in any way consistent with its legal authority.

(e) Upon a finding by the Division that the granting of the application would be contrary to the public interest, the Board shall deny the application.

(f) The applicant shall retain the right conferred by N.J.S.A. 33:1-22 to appeal to the Director from the denial of an application by the Board and shall be afforded a hearing.

SUBCHAPTER 4. ISSUANCE OR TRANSFER OF MUNICIPAL RETAIL LICENSES (OTHER THAN CLUB LICENSES) BY THE DIRECTOR

13:2-4.1 Interest in issuance or transfer of license; application made to the Division

(a) No municipal issuing authority may issue or transfer a license to or from any of its members, or issue or transfer a license (other than a club license) to or from any corporation, organization, or association in which any of its members is interested directly or indirectly.

(b) No municipal issuing authority may transfer to other premises a license of any of its members, or transfer to other premises a license (other than a club license) of any corporation, organization or association in which any of its members is interested, directly or indirectly.

(c) Whenever the municipal issuing authority is prohibited from acting by this section, application must be made to the Director of the Division of Alcoholic Beverage Control and shall be governed by this subchapter.

13:2-4.2 Application to the Director

(a) Application to the Director shall be made upon the same application forms used in all applications for municipal licenses (copies are obtainable from the clerk of the municipality wherein the premises sought to be licensed are situated).

(b) The application shall be fully executed and submitted in triplicate.

13:2-4.3 New or renewal license fees; certification by issuing authority

(a) Applications for a new license or for a renewal of an existing license shall be accompanied by a fee of $50.00 in cash, money order or certified check drawn to the order of the Division of Alcoholic Beverage Control.

(b) A certification shall also be submitted from the municipal clerk, board secretary, or other responsible municipal official stating that the appropriate municipal fee has been paid and the amount of such fee.

13:2-4.4 Fee for license transfer to other persons or other premises; certification

(a) Applications for transfer of license to other persons only, or applications for transfer of license to other premises only (not combined), shall be accompanied by:

1. A fee of $50.00 in cash, money order or certified check drawn to the order of the Division of Alcoholic Beverage Control and retained by the Director whether or not the transfer is granted, and accounted for as are other license fees.

2. A certification shall be submitted from the municipal clerk, board secretary, or other responsible municipal official that 10 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

13:2-4.5 Fee for combined transfers; certification

(a) Transfers of license both as to person and place may be applied for simultaneously and in a single application, accompanied by a fee of $50.00 in cash, money order or certified check drawn to the order of the Division of Alcoholic Beverage Control.

(b) A certification shall also be submitted by the municipal clerk, board secretary or other responsible municipal official stating that 20 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

(c) Where there is a combined transfer application, the Director shall not approve a person-to-person transfer of the license if the place-to-place transfer is denied.

13:2-4.6 Submission of issuing authority's resolution

There shall also be submitted to the Director a certified copy of a resolution adopted by the issuing authority of the municipality wherein the premises sought to be licensed are situated, setting forth that said issuing authority has no objection to the issuance or the transfer, as the case may be, of the license applied for and consents thereto, and, furthermore, is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance or the transfer, as the case may be, of the license.

13:2-4.7 Advertising notice of application

The rules applicable to the application, advertising and hearing rights concerning a municipal license or the transfer thereof (N.J.A.C. 13:2-2 and N.J.A.C. 13:2-7) shall apply when application is made to the Director. However, the notice of application, as published, shall state that such application has been made to, and objections if any should be addressed to: Director of the Division of Alcoholic Beverage Control, TRW Complex, 200 Woolverton Street, CN 087, Trenton, New Jersey 08625.

13:2-4.8 Refund of fees

If the application for license issuance or transfer is denied for any reason whatsoever or withdrawn, a statutory refund of 90 percent of the fee deposited with the municipality shall be made by the municipality to the applicant. The remaining 10 percent shall be deemed an investigation and processing fee and shall be retained by the municipality. The $50.00 State fee required to accompany the application shall be retained as a processing fee by the Director.

13:2-4.9 Proration of fee

If the application for a new license is granted, except in connection with the issuance of a new license upon failure to timely renew under N.J.S.A. 33:1-12.18, the license fee shall be prorated from the effective date of the license and where the amount deposited exceeds the prorated license fee, the applicant shall be entitled to a refund of the excess. Any renewal or new license issued pursuant to N.J.S.A. 33:1-12.18 will be effective immediately following the last day of the proceeding license term, and no prorating of fee is permitted.

13:2-4.10 Notice of change in facts in application

The rules applicable to filing a notice of change in the facts set forth in the application for a retail license and to publishing a notice of change in corporate structure and furnishing proof thereof (N.J.A.C. 13:2-2.14 through 2.16) shall apply to all retail licensees holding licenses issued by the Director. However, the licensee shall file such notice with and furnish such proof directly to the Division; and where the notice concerns a change in corporate structure, the notice as published shall state that information concerning the qualifications of any of the stockholders of the corporate licensee shall be addressed to the Director of the Division of Alcoholic Beverage Control, TRW Complex, 200 Woolverton Street, CN 087, Trenton, New Jersey 08625.

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

13:2-5.1 Social affair permit

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

(c) Applications for a social affair permit shall be made on forms promulgated by the Director and endorsed by the chief of police (or his or her designee) and the clerk of the municipality wherein the affair is to be held.

(d) No more than 12 social affair permits shall be issued to any one applicant per 12 months, nor shall any such permit be granted for premises at which 25 prior social affair permits have been issued within the same calendar year.

(e) A social affair permittee shall be entitled to purchase alcoholic beverages to be dispensed at social affairs from a New Jersey licensed wholesaler distributor or retailer only, and to resell said alcoholic beverages, for on-premises consumption only.

(f) Within 10 days after the social affair, the permittee shall file with the Director a signed inventory report on forms promulgated by the Director showing all purchases of alcoholic beverages and the source and disposition thereof. Failure to file the inventory report shall be cause for denial of future applications for a social affair permit.

(g) A social affair permittee must abide by all the provisions of the New Jersey Alcoholic Beverage law, Division rules and regulations, and municipal ordinances. Failure to do so may result in said permittee being denied future applications for social affair permits.

(h) A social affair permit shall be required for the sale or service of alcoholic beverages to those attending an affair at which there is any charge in connection with the affair, whether the charge be a direct one for drinks, imposed through the sales of tickets or charging of admissions, requiring donations or special assessments, or where the charge is made ostensibly for food, entertainment or anything else.

(i) The rules in this section shall be considered general rules governing the issuance of a social affair permit, and may be relaxed or dispensed with by the Director in any case where a strict adherence to them will result in hardship.

13:2-5.2 Special concessionaire permit

(a) Application for a special concessionaire permit may be made to the Director by any individual, partnership, or corporation who has entered into a contract with the State of New Jersey, or any political subdivision thereof, whereby said person or organization is authorized to sell alcoholic beverages for immediate consumption in any public building or on any property owned by or under the control of the State of New Jersey or any political subdivision thereof. Such permit may also authorize the sale of alcoholic beverages in original containers for off-premises consumption, provided the applicant, with the consent of the governmental agency, establishes to the satisfaction of the Director that there is good cause for such sales.

(b) The term of a special concessionaire permit shall be from July 1 through June 30 unless otherwise specified. The fee for the permit shall be fixed by the Director, and must be paid with the application in either cash, certified check or money order payable to the Division of Alcoholic Beverage Control.

(c) Application must be supported by the following documents before permit will be issued by the Director:

1. Letter of authorization from, and copy of agreement with, the State, county, or municipal official or body charged with responsibility over public buildings or lands at which the sale of alcoholic beverages is sought;
2. Letter of applicant detailing manner and method of proposed operation under permit;
3. Plan or sketch of premises to be used in accordance with permit;
4. If applicant is incorporated—copy of certificate of incorporation; if an association—copy of charter; and
5. Affidavit of publication by newspaper in which notice of application has appeared, as hereinafter provided.

(d) Within 10 days subsequent to the filing of application with the Director, applicant shall cause to be published a notice of application once, in a newspaper printed in the English language, published and circulated in the municipality in which the premises sought to be authorized are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which said premises are located.

(e) Notice of application shall be published in the following form:

NOTICE
ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT _____ has applied to the
(Name of Applicant)
DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL for a SPECIAL CONCESSIONAIRE PERMIT for premises situated at

_____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:
See *
See ** to insert other information applicable
Objections, if any, should be addressed to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If applicant is a corporation, insert the names and residence address of all officers and all directors, and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the name of the partnership and the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If applicant is a club, insert the names and residence address of the officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Director

of the Division of Alcoholic Beverage Control, TRW Complex, Bldg. 20, Woolverton Street, Trenton, New Jersey 08625."

(f) Upon timely receipt of a duly signed written objection to the issuance of a special concessionaire permit, the Director will afford a hearing to all parties and notify the applicant and the objector of the date, hour and place thereof.

1. No hearing need be held if no objection shall be lodged, but the application shall not be denied without first affording the applicant an opportunity to be heard.

(g) The holder of a special concessionaire permit shall be entitled to purchase alcoholic beverages only from the holders of New Jersey wholesale licenses. Said permittee is expressly prohibited from purchasing alcoholic beverages from retail licensees and from selling or offering for sale alcoholic beverages for off-premises consumption, unless specifically authorized in the permit issued by the Director upon a showing of good cause therefor.

(h) The Director may, in his or her discretion, impose special conditions on any permit.

(i) The holder of a special concessionaire permit must abide by all provisions of the New Jersey Alcoholic Beverage Control Act, Division rules and regulations and municipal ordinances as they pertain to retail licensees. Failure to do so may result in disciplinary proceedings against the permittee. Hours of sale shall not exceed those permitted in the municipality in which the public building or land is located.

(j) The rules in this section shall be considered as general rules governing the issuance of a special concessionaire permit and may be relaxed or dispensed with by the Director in any case where a strict adherence to them will result in hardship.

13:2-5.3 Special permit for the sale or purchase of alcoholic beverages

(a) The Director, for good cause shown, may issue a special permit to authorize the sale of alcoholic beverages by a receiver, trustee, executor, or other court appointed or authorized person, or judgment creditors or secured parties where such sale is authorized in accordance with law or a specific court order.

(b) An application for such special permit shall be filed with the Division at least seven days before the proposed sale on forms to be promulgated by the Director and accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than $5.00 nor more than $500.00.

(c) Upon issuance of the special permit, the temporary storage and transportation of alcoholic beverages pending sale shall be authorized, as well as the sale to and transportation by the purchaser.

(d) Within 10 days after the sale, the permittee shall file with the Director a signed inventory report on forms prescribed by the Director identifying the type and quantity of all alcoholic beverages sold, the name and address of the purchaser, the State-assigned license number of the purchaser if it was a New Jersey licensee, and the sales price per item or lot. Failure to file the inventory report shall be cause for denial of future special permit applications.

13:2-5.4 Temporary miscellaneous contingency permits; fees

(a) The Director, for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and consonant with the spirit of the Alcoholic Beverage Control Act.

(b) Application for such permits shall be on forms promulgated by the Director and shall be accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than $5.00 nor more than $500.00.

(c) The Director may impose special conditions or requirements on any such permit.

SUBCHAPTER 6. EXTENSION OF LICENSE

13:2-6.1 Petition for extension of license

(a) In case of death, bankruptcy, receivership or incompetency of a licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the licensed business may not be operated unless the license is extended by the issuing authority which issued the license.

(b) An application for extension of a license for a limited time not exceeding its term must be made in the form of a petition executed by the executor, administrator, trustee, receiver or other person upon whom operation of the business covered by the license shall have devolved by operation of law.

(c) Said petition shall be addressed to and acted upon by the authority which issued the license sought to be extended. An amendment of the license application to reflect the extension of the license shall be filed at the same time. No fee is required to be paid for an extension of the license and the petitioner is not required to publish a notice of application.

13:2-6.2 Special permit to operate licensed business

Where an application for extension of license cannot be made immediately because the fiduciary has not yet qualified, the Director, Division of Alcoholic Beverage Control, may issue a special permit to allow the licensed business to continue operations temporarily until the license is formally extended. The issuance of any special permit shall not indicate any opinion as to the merits of the formal petition to extend the license.

13:2-6.3 (No change.)

13:2-6.4 Endorsement of licenses

If the petition for extension is granted, the license shall be endorsed as follows:

"This license is hereby extended, subject to all its terms and conditions to _____ , (Executor, or as the case may be) until _____ , 19___".

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

13:2-7.1 Transferability of license

Any license issued under the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., may be transferred either from person-to-person or place-to-place, or both, in accordance with the provision of said law and these regulations.

13:2-7.2 Application for place-to-place license transfer

(a) Application for transfer of license to other premises, signed and sworn to by the licensee, must be filed with the Director or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms promulgated by the Director.

(b) (No change.)

13:2-7.3 Application for person-to-person license transfer

Application for transfer of license to another person, or other persons and other premises, signed and sworn to by the person who seeks the transfer, and bearing the consent in writing to such transfer by the current licensee, must be filed with the Director, or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms promulgated by the Director.

13:2-7.4 Notice of transfer application, form

(a) Notice of application for transfer of a license shall be published in the following form:

—NOTICE—
ALCOHOLIC BEVERAGE CONTROL

Take notice that application has been made to _____

_____ of _____
(Name of Issuing Authority) (Address)

to transfer to _____
(Name of transferee)

trading as _____ for premises located at
(Trade Name, if any)

_____
(Address of premises to which transfer is sought)

the _____ heretofore issued to
(Type of License and Number)

_____, trading as _____
(Name of Licensee in full) (Trade Names, if any)

for the premises located at _____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

_____
(Name(s))

See *
(See ** to insert other information if applicable)
Objections, if any, should be made immediately in writing to:

_____, of _____
(Municipal Clerk or Director, Division of Alcoholic Beverage Control) (Address)

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, insert the names and residence of all officers and directors and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If the applicant is a club, insert the names and residence address of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

**If the application is for transfer of a municipal license to a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk".

If the application is for a State license for a building not yet constructed, insert "Plans of building to be constructed may be examined at the office of the Division of Alcoholic Beverage Control".

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under a State issued license, insert in the Notice the following: "The applicant intends to engage in the retail sale of _____

_____ at _____,
(Alcoholic beverage type) (No.) (Street)

_____ under the terms and conditions
(municipality)
allowed by law.*"*

(b) "Name of issuing authority" in the form in N.J.A.C. 13:2-7.4(a), usually means the governing board or body of the municipality, whatever the name may be, for instance, the mayor and common council, the township council, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority. If application is made by a member of any issuing authority, or by a corporation, organization or association (except a club license) in which any member of an issuing authority is interested directly or indirectly, or if the license sought to be transferred was issued in the first instance by the Director, he or she is the "issuing authority" and in that event the notice must state that objections be addressed to the Director of the Division of Alcoholic Beverage Control, CN-087, Trenton, New Jersey 08625. *[A copy of such notice shall be filed with the Division at the time of first publication and shall be available for inspection as a public record.]*

(c) The notice of application shall be published once a week, for two weeks successively, at least seven days apart, in a newspaper printed in the English language published and circulated in the municipality in which the licensed premises are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises are located.

(d) Proof of publication of notice of application for transfer of a license shall be furnished after second publication with a copy of the dated advertisements attached.

13:2-7.5 Objections; hearing

Each issuing authority, immediately upon receipt of a written objection duly signed by an objector, shall set the matter down for a hearing and notify all parties of the date, hour and place thereof. Said hearing shall be stenographically or electronically recorded.

13:2-7.6 Date of hearing

The date fixed for hearing shall not be sooner than five days after the second notice was published (excluding Saturdays, Sundays and legal holidays) and should not be later than 14 days thereafter. For good cause, each issuing authority in the exercise of sound and fair discretion may fix a date for hearing later than said 14 days and may adjourn the hearing, upon notification to all parties.

13:2-7.7 Hearing not required; reasons

(a) If there is no written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

(b) No application shall be approved unless the issuing authority affirmatively finds and certifies that:

1. The submitted application form is complete in all respects;
2. The applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, the regulations promulgated thereunder as well as the pertinent local ordinances and conditions imposed consistent with Title 33; and
3. The applicant has disclosed and the issuing authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business.

(c) No application shall be disapproved without first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

(d) In the event no action is taken on an application for transfer of a municipally issued license within 60 days of the date of filing of the application, the applicant may file an appeal with the Director from such failure to act on the transfer application.

13:2-7.8 Application for place-to-place license transfer

Applications for transfers of licenses to other premises shall be on forms promulgated by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

13:2-7.9 Application for person-to-person transfer

Applications for transfers of licenses to other persons shall be on forms promulgated by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

13:2-7.10 Combined transfer

Transfers of license both as to person and place may be applied for simultaneously and in a single application; but if there is such combined application for person-to-person and place-to-place transfer, the person-to-person application shall not be approved unless the place-to-place transfer is also granted.

13:2-7.11 Fee for license transfer to other premises or to another person

Applications for transfers of license to other premises only, or applications for transfer of license to another person only (not combined, shall be filed in triplicate and accompanied by a fee of 10 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether or not the transfer is granted, and is to be accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of $50.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

13:2-7.12 Fee for combined license transfer

(a) Applications for transfer of license to other premises and other persons shall be filed in triplicate and accompanied by a fee of 20 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of $50.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

13:2-7.13 Special condition for early grant

If a resolution or certification granting application for transfer is adopted sooner than five business days (excluding Saturdays, Sundays and legal holidays) after publication of the second notice of application, the resolution or certification shall set forth a special condition that the transfer shall not be effective until five business days have elapsed. If within such period a written objection to the transfer is filed, the transfer shall not be effective pending the further determination of the issuing authority.

13:2-7.14 License certificate

(a) Upon the grant of a transfer, the Director or other issuing authority as the case may be shall cause the following written endorsement to be made upon the face of the license certificate:

This license, subject to all of its terms and conditions is hereby transferred, effective _____ , 19__,
(Date)

from _____
(Name) and/or (Address)

to _____
(Name) and/or (Address)

(Name of Issuing Authority)

By:_____
(Duly authorized official)

Dated: _____ , 19____

(b) Unless another specific date is identified in the resolution approving the transfer of license, the effective date for municipally issued licenses shall be the date of adoption of the resolution by the issuing authority, and for State issued licenses, the date the Director certifies on the license certificate.

13:2-7.15 Certification of license transfers

(a) Each municipal issuing authority shall make or cause to be made certification to the Director of all license applications filed, transferred, denied or withdrawn during the preceding business week, which certification shall include the original of the filed application, any fees to be remitted to the Director and any resolution adopted.

SUBCHAPTER 8. CLUB LICENSES

13:2-8.1 Definitions

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

. . .

"Guest of club member" means an individual who is expressly invited to the club licensed premises by an individual member of the club and who is sponsored by and personally attended by the member at such premises. An individual club member may have as his guest no more than nine individuals on any one occasion unless such individuals are attending a private affair, such as a wedding, anniversary, confirmation, bar mitzvah or birthday party, honoring a spouse, child, parent, brother or sister of a club member.

13:2-8.2 and 8.3 (No change.)

13:2-8.4 Previous period of possession and use of club quarters

Except as provided herein or in N.J.A.C. 13:2-8.5, no license shall be issued to any club unless it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application for a license. A bona bide club which has been in active operation in this State for the period of time required as aforesaid, but which has been deprived of continuous possession and use of its clubhouse or club quarters by reasons of foreclosure, loss of lease, eminent domain, fire, casualty or other removal for a cause other than the violation of the laws of the State or of municipal ordinance, shall not be prevented thereby from obtaining a club license upon presenting to the satisfaction of the issuing authority proof of said facts and proof that possession of suitable premises has been obtained.

13:2-8.5 Exceptions to eligibility requirements

(a) Any constituent unit, chartered or otherwise duly enfranchised chapter or member club of a national or state order, organization or association, which is in possession of suitable premises, shall not be prevented from obtaining a club license by reason of the fact that the unit, chapter or member club has not been in active operation in this State for at least three years continuously or has not been in exclusive continuous possession and use of a clubhouse or club quarters for the same period of time, provided said unit, chapter or member club obtains from the Director, and presents to the issuing authority at or before the issuance of the license, a certificate stating that satisfactory proof has been submitted to the Director that said unit, chapter or member club has been duly credentialed by a national or state order, organization or association which has been in active operation in this State for at least three years continuously immediately prior to submission of the application for a license.

(b) Nothing in N.J.A.C. 13:2-8.3 or 8.4 shall prevent the issuance of a club license to a bona fide club provided that special cause for such issuance is shown in writing to the Director and provided that the Director's written approval of such issuance is first obtained.

13:2-8.6 Qualifications of officers and members

(a) No club license shall be issued nor renewal granted to any corporation, association or organization in which an officer or member of the governing body has been convicted of a disqualifying offense pursuant to Title 33 unless the statutory disqualification resulting from such conviction has been removed by order of the Director. Application for removal of the disqualification may be made by verified petition to the Director when the unlawful situation is corrected.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

1. The submitted application form is complete in all respects, including requirements of N.J.A.C. 13:2-8.7;
2. The officers and directors of applicant club are qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, regulations promulgated thereunder as well as pertinent local ordinances or conditions consistent with Title 33; and
3. The club maintains all records required pursuant to N.J.A.C. 13:2-8.8 and 8.12.

13:2-8.7 Submission of club member list and club charter
(a) (No change.)
(b) Nothing in this section shall prevent the renewal of a license to a club not qualified by reason of a lack of requisite number of members, provided that special cause for such renewal is shown in writing to the Director and further provided that the Director's written approval for such renewal is first obtained.

13:2-8.8 Sales restricted to club members
(a) (No change.)
(b) All club licensees shall have and keep on the licensed premises a true record, in the form promulgated by the Director (set forth below), of all scheduled dinners, luncheons, receptions, dances, parties, catered events and similar affairs held at the club licensed premises and attended by non-club members.

Date of affair .....

Type of affair .....

Sponsored by .....

Was affair conducted under authority of a special permit? .....

If so, give number of permit .....

Were alcoholic beverages supplied by the club licensee? .....

(Signature of authorized officer)

(c) No club licensee shall allow, permit or suffer any such affair to be held at the club licensed premises at which any charge is made to a non-club member or non-bona fide guest in connection with the affair, whether the charge be a direct one for drinks, imposed through the sales of tickets or charging of admission, requiring donation or special assessments, or where the charge is made ostensibly for food, entertainment or anything else unless a special permit is first obtained from the Director.

13:2-8.9 Sales for on-premises consumption only
No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverages in original containers for off-premises consumption.

13:2-8.10 (No change.)

13:2-8.11 Social affairs permittees
No club licensee shall sell, serve or deliver any alcoholic beverages to the holder of any special permit authorizing sale of alcoholic beverages at a social affair to be conducted by a permittee other than the club licensee itself, or to any person attending such social affair on the club licensed premises unless such person is, in fact, a bona fide member of the licensee-club or a bona fide guest of such member.

13:2-8.12 Books of account
All club licensees shall have and keep for a five year period a true book or books of accounts wherein there shall be entered a record of all moneys received in the ordinary course of business; a record of the source and amount of all moneys received other than in the ordinary course of business; a record of all moneys expended from such receipts; and the name of the person receiving such moneys and the purpose for which such expenditures were made. All books and records pertaining to such receipts or expenditure, as well as other records required by N.J.A.C. 13:2-8.8, shall be made available for inspection by the Director of the Division of Alcoholic Beverage Control and the other issung authority, by his or her or its deputies, inspectors, investigators and agents and other officers defined by N.J.S.A. 33:1-1(p).

13:2-8.13 Advertising prohibition
No club licensee shall advertise, directly or indirectly, or allow, permit or suffer any advertising, to non-club members the availability of alcoholic beverages at its licensed premises; provided, however, that the prohibition herein shall not apply to the holder of any special permit issued by the Director and authorizing the sale of alcoholic beverages at a social affair to be conducted at the club's licensed premises, with respect to such particular affair providing the social affair permit number is indicated in the advertisement.

13:2-8.14 Violations
A club license is a restricted type of retail license and therefore its holder must comply with not only the rules set forth in this subchapter, but with all the relevant provisions applicable to retail licenses. In disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the club licensee, to show the violation was committed by an agent, servant, employee of the club licensee or a member of the club. The fact that the licensee did not participate in the violation or that its agent, servant, employee or member acted contrary to instructions given to him by the club licensee, or that the violation did not occur in the presence of the licensee's agent, servant, employee or member, shall constitute no defense to the charges preferred in such disciplinary proceedings.

SUBCHAPTER 9. WAREHOUSE RECEIPTS LICENSES

13:2-9.1 Application for license; form
Application to the Director for a warehouse receipts license shall be made on forms promulgated by the Director, Division of Alcoholic Beverage Control, and accompanied by the full amount of the required license fee. No publication of notice of application shall be required.

13:2-9.2 Sale of warehouse receipts to manufacturers and wholesalers
The holders of warehouse receipts licenses may sell receipts thereunder only to New Jersey licensed manufacturers and wholesalers authorized to sell the beverages covered by the receipts. Sales of receipts not in accordance with the foregoing may be made only pursuant to special permit issued by the Director.

13:2-9.3 Sale of receipts to retailers and consumers prohibited
No holder of a warehouse receipts license may sell receipts thereunder to any New Jersey licensed retailer, or to any consumer in this State.

13:2-9.4 Solicitor's permit required
No individual shall sell or offer for sale or solicit any order for the purchase or sale of any receipt, certificate, contract or other document given upon the storage of alcoholic beverages unless such individual is the holder of a solicitor's permit issued pursuant to N.J.A.C. 13:2-16. This prohibition shall not apply to any individual licensee or the individual members of a partnership if the license is issued to and held by the individual or partnership.

13:2-9.5 Tax compliance
Warehouse receipts licensees shall comply with all regulations promulgated by and all requirements pertaining to bonds and reports imposed by the Division of Taxation, Department of Treasury.

SUBCHAPTER 10. PLENARY WINERY LICENSES; WINE BLENDING LICENSES; RETAIL PRIVILEGES; PARCEL DELIVERY SERVICE

13:2-10.1 Application for plenary winery license; statement of intent
(a) All applicants for a plenary winery license shall comply with the application, advertising and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a description of the intended activities to be conducted under the authority of the license. The statement of intent shall include, at a

minimum, the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage in respect to the proposed licensed premises; type of products to be produced (for example, naturally fermented wines, fortified wines, treated wines); intent to sell products to wholesalers, retailers, or consumers; and intent to utilize other premises for retail sales.

(b) Any application for license which seeks permission for an off-winery retail sales premises shall be accompanied by a sketch of the proposed licensed premises depicting the area to be included under the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business including, as a minimum, a copy of the lease agreement; a statement of how the winery will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and an identification of whether any sampling will take place, and if so, how this will be controlled.

13:2-10.2 Certificate endorsement

Whenever the holder of a plenary winery license is granted the privilege of selling wine at retail at a premises other than the winery licensed premises, the license certificate shall be appropriately endorsed by the Director to set forth the retail privileges conferred thereunder, and no plenary winery licensee whose certificate does not bear such endorsement shall sell or deliver or allow, permit or suffer the sale or delivery at retail of wine at other than the winery licensed premises.

13:2-10.3 Labeling wine sold at retail

Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each plenary winery licensee having the privilege of selling wine at retail shall attach a label to each container in which wine is sold to consumers, which label shall bear the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net contents of the container, and name or trade name and address of the licensee.

13:2-10.4 Hours of retail sales

No plenary winery licensee privileged to sell at retail shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any wine at retail during any hours where the retail sale of alcoholic beverages is prohibited in the municipality where the winery retail sale would occur.

13:2-10.5 Application for wine blending license; form

Applicants for a wine blending license shall comply with the application, advertising, and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a description of the intended activities to be conducted under the authority of the license. Such statement of intent shall include, at a minimum, the following information: type of process to be implemented, for example, blending, treating, mixing, or bottling; products to result from process; and intended sales to wholesalers or retailers.

13:2-10.6 Combination enterprise retail salesroom

(a) A "combination enterprise retail salesroom" is defined as a jointly controlled and operated retail salesroom by at least five plenary or farm winery licensees, at which premises, the alcoholic products produced under the licenses of such licensees may be sold at retail for consumption off the licensed premises and for consumption on the licensed premises for sampling purposes only.

(b) Only one combination enterprise salesroom shall be licensed per county and the fee therefor shall be $500.00.

(c) Applicants for a combination enterprise retail salesroom permit shall comply with the application, advertising, and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a sketch of the proposed licensed premises depicting the area to be included within the scope of the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business including, at a minimum, a copy of the lease agreement; a statement of how the winery sales outlet will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and a description of any sampling to take place including how this will be controlled.

(d) "Sampling" as authorized under N.J.S.A. 33:1-10 means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one half ounces of any wine.

13:2-10.7 Parcel delivery service

(a) The holder of a New Jersey issued plenary winery license with retail privileges or a farm winery license may, on forms promulgated by the Director, Division of Alcoholic Beverage Control, apply for authorization to ship within this State wine products by parcel delivery service to customers resulting from sales from the winery premises or off winery premises sales locations, or from mail or telephone orders. Wine which is ordered by mail or telephone may be shipped by parcel delivery only if the licensee has a signed authorization by the person placing the order to ship wine upon his order by mail or telephone. In such case, the wine shall be shipped as a restricted delivery and may be delivered only to the residence of the person who placed the order.

(b) The annual fee for a permit to authorize parcel delivery service is $150.00 for a plenary winery licensee and $50.00 for a farm winery licensee.

(c) No delivery shall be completed by a parcel delivery service until the delivering agent shall determine that, at the time of delivery of wine, the party signing the delivery receipt is of legal age to purchase and consume alcoholic beverages.

SUBCHAPTER 11. FARM WINERY LICENSES AND RETAIL PRIVILEGES

13:2-11.1 Application for farm winery license; statement of intent

(a) Applicants for a farm winery license shall comply with the application, advertising and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a description of the intended activities to be conducted under the authority of the license. The statement of intent shall include, at a minimum, the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage with respect to the proposed licensed premises; means by which acreage is under the applicant's control; plan under which New Jersey grown fruit will constitute at least 51 percent of wine product initially with plans to increase that percentage over five years; intent to sell products to wholesalers, retailers, and/or consumers; number of gallons projected to be produced annually; and intent for off winery premises retail sales locations.

(b) Any application which seeks permission for an off-winery retail sales premises shall be accompanied by a sketch of the proposed licensed premises depicting the area to be included under the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business including, at a minimum, a copy of the lease agreement; a statement of how the winery will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and an identification of whether any sampling will take place, and, if so, how this will be controlled.

13:2-11.2 Certificate endorsement

Whenever the holder of a farm winery license is granted the privilege of selling wine at retail at premises other than the winery licensed premises, the license certificate shall be appropriately endorsed by the Director to set forth the retail privileges conferred thereunder; and no farm winery licensee whose certificate does not bear such endorsement shall sell or deliver or allow, permit or suffer the sale or delivery at retail of wine at other than the winery licensed premises.

13:2-11.3 Labeling wine sold at retail

Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each farm winery licensee shall attach a label to each container in which wine is sold to consumers, which label shall bear the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net

contents of the container, and the name and address of the licensee. Every container's label must indicate that it is "New Jersey Wine"; and, for the first five years of the winery's operation, all fermented wines and juices shall be manufactured from at least 51 percent grapes or fruit grown in New Jersey; and that thereafter they shall be manufactured from grapes or fruit grown in this State at least to the extent required for labeling as "New Jersey Wine" under applicable Federal laws and regulations.

13:2-11.4 Hours of retail sales

No farm winery licensee privileged to sell wine at retail shall sell or deliver, or allow, permit or suffer the sale or delivery of any wine at retail during any hours where the retail sale of alcoholic beverages is prohibited in the municipality where the winery retail sale would occur.

13:2-11.5 Combination enterprise retail salesroom

A farm winery licensee may participate in a combination enterprise retail salesroom in accordance with N.J.A.C. 13:2-10.6.

13:2-11.6 Parcel delivery service

A farm winery licensee may arrange for delivery of products to consumers by a parcel delivery service in accordance with N.J.A.C. 13:2-10.7.

SUBCHAPTER 12. WINE PERMITS

13:2-12.1 Special wine permit

(a) Wine for personal consumption may be manufactured only under the provisions of a special wine permit, issuable by the Director, Division of Alcoholic Beverage Control, which authorizes the permittee to manufacture within the home of the permittee or other premises used in connection therewith, and during the permit period, wine in quantities of not more than 200 gallons.

(b) Wine manufactured under the authority of such permit may not be sold under any circumstances, nor may it be used for any purpose other than personal consumption at the permittee's home by the permittee and his family and bona fide guests. The fee for this permit is $3.00.

13:2-12.2 Ineligibility of licensees

No permit shall be issued to the holder of any alcoholic beverage license.

13:2-12.3 Ineligibility of licensed premises

No permit shall be issued for the manufacture of wine on premises that are also licensed for the retailing, wholesaling or manufacturing of alcoholic beverages.

13:2-12.4 Ineligibility of minors

No permit shall be issued to any person under 21 years of age.

13:2-12.5 Other disqualification

No permit shall be issued to any person who has been convicted of an offense involving "unlawful alcoholic beverage activity", as defined in N.J.S.A. 33:1-1(x), subject to a waiver of this prohibition in the discretion of the Director after the lapse of 12 months from the date of such conviction.

13:2-12.6 Number of permits per year

Not more than one permit shall be issued to any individual during any calendar year.

13:2-12.7 Transfer of permits

No permit shall be transferable from person to person, and transfer from premises to premises may only be made with the written permission of the Director.

13:2-12.8 Revocation of permit

Violation of the provisions of the permit shall be grounds for revocation.

SUBCHAPTER 13. EXECUTION OF QUESTIONNAIRE BY STATE LICENSEES AND THEIR PRINCIPALS AND EMPLOYEES

13:2-13.1 Execution of questionnaires by State licensees and principals

Every person who, individually or as a member of a partnership, holds a manufacturer's, wholesaler's, public warehouse, warehouse receipts, broker's or transportation license (except railroad carriers, but not excepting their affiliated or subsidiary transportation companies engaged in transporting alcoholic beverages) shall execute a questionnaire, on a form promulgated by the Director. In addition, every person who is an officer, director or holder of more than one percent of the stock of a corporation holding any such license, shall execute a questionnaire, in a form prescribed by the Director.

13:2-13.2 Execution of questionnaires by employees of State licensees; exemptions

(a) Every person employed by or connected in any capacity whatsoever with the alcoholic beverage business conducted in this State by the holder of any license specified in N.J.A.C. 13:2-13.1 shall execute a questionnaire, on a form promulgated by the Director. This requirement shall not apply to:

1. Any person holding a solicitor's permit or an employment permit issued by the Director;
2. Any person whose employment does not exceed 10 working days in any one calendar year;
3. Stenographers, telephone operators, clerks, office boys and other employees who do not handle any alcoholic beverages and have no choice in the conduct of the licensee's alcoholic beverage business in this State;
4. A nonresident banker or other creditor who has loaned money to a licensed corporation and who becomes a director thereof but has no active interest in the conduct of the corporation's business in this State; or
5. Any person whose only connection with a licensed corporation is that of registered or authorized agent for the service of process.

13:2-13.3 Photograph of person executing questionnaire

Each questionnaire shall have attached thereto one color passport type photograph, two inches by two inches, of the person who has executed such questionnaire, which photograph shall have been taken not more than 30 days prior to the execution of the questionnaire.

13:2-13.4 Maintenance of questionnaire upon licensed premises

All questionnaires shall be kept upon the licensed premises, available for inspection by the Director, his or her deputies, inspectors, investigators and agents and other officers defined by N.J.S.A. 33:1-1(p).

SUBCHAPTER 14. EMPLOYMENT BY LICENSEES OF A PERSON FAILING TO QUALIFY AS A LICENSEE

13:2-14.1 Restriction upon a minor's employment activities on a licensed premises

(a) No licensee shall allow, permit or suffer any person under the age of 18 years to sell, serve or solicit the sale of any alcoholic beverage, or to participate in the manufacture, rectification, blending, treating, fortification, mixing, processing, preparing or bottling of any alcoholic beverage. It shall not constitute a defense to any prosecution for violation of this rule that the employment of a person under the age of 18 years is permitted under N.J.A.C. 13:2-14.2.

(b) No licensee shall allow, permit or suffer any person under 18 years of age to be employed as an entertainer on any premises where the consumption of alcoholic beverages is permitted unless such minor's employment shall be authorized pursuant to N.J.S.A. 34:2-21.1 et seq. of the New Jersey Child Labor Law and the rules and regulations established thereunder.

13:2-14.2 Minor's employment permit; fees

(a) No licensee (except a retail licensee conducting a bona fide hotel or public restaurant) shall employ any person under the age of 18 years, nor shall such licensee allow, permit or suffer the employ-

ment of any such person, in or upon the licensed premises, unless such person shall have obtained an employment permit from the Director of the Division of Alcoholic Beverage Control no later than 10 days from commencement of employment, or the licensee shall have had issued by the Director of the Division of Alcoholic Beverage Control a blanket employment permit issued pursuant to N.J.A.C. 13:2-14.4.

(b) The fee for an individual permit is $5.00 per annum, or any part thereof.

13:2-14.3 Permit; age restrictions

No permit shall be issued to any person under the age of 16 years except caddies, pinboys or similar temporary or transient type employees as the Director may deem appropriate upon a showing of good cause, and further except persons employed by a plenary or limited retail distribution licensee, which persons shall be no younger than 15 years of age.

13:2-14.4 Blanket minors' employment permit

(a) A blanket minors' employment permit may be issued by the Director to a licensee to authorize the employment of persons disqualified by reasons of age, who are employed by the licensee as caddies or pinboys, or similar temporary or transient employees as the Director may deem appropriate upon a showing of good cause, and such persons covered by the licensee's blanket minors' employment permit need not hold or apply for individual employment permits.

(b) The fee for the blanket employment permit shall be based upon the number of anticipated employees to be hired under the permit, but shall not exceed $500.00 per annum.

13:2-14.5 Restrictions upon employing criminally disqualified persons

No licensee shall knowingly employ or have connected with him in any business capacity any person who has been convicted of a crime involving moral turpitude unless the statutory disqualification resulting from such conviction has been removed by order of the Director, in accordance with N.J.A.C. 13:2-15, or such person has first obtained the appropriate rehabilitation employment permit or temporary work letter from the Director.

13:2-14.6 Application for a rehabilitation employment permit; temporary work letter

(a) Any person convicted of a crime involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a rehabilitation employment permit. Whenever that application is made and it appears to the satisfaction of the Director that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the Director may, in his or her discretion, issue such employment permit.

(b) Upon the proper filing of an application and proof of promised employment, the Director may, in his or her discretion, issue the applicant temporary work letters not to exceed 90 days at any one time, authorizing employment upon a specified licensed premises pending determination on the application for a permit.

13:2-14.7 Rehabilitation employment permit; duration; types; fees

(a) A rehabilitation employment permit shall be issued for a one year period, and shall be renewable annually for the term of disqualification, as set forth in N.J.S.A. 33:1-31.2.

(b) Rehabilitation employment permits shall consist of the following types:

1. Unlimited employment permit: This permit shall allow the holder thereof to be employed by any class license, without restriction as to type of employment. Such permits may not be issued to persons who have been convicted of crimes which, in the opinion of the Director, present a special risk to the alcoholic beverage industry.

2. Limited employment permit: This permit shall allow the holder thereof to be employed by any class license in any non-managerial capacity, except that the holder may not sell, serve or deliver any alcoholic beverages.

(c) The fee for either type of rehabilitation employment permit shall be $15.00 per annum, payable on the date of application.

13:2-14.8 Restrictions upon limited rehabilitation employment permittee

No licensee shall allow, permit or suffer the holder of limited rehabilitation employment permit to act in a managerial capacity with respect to the licensed business, or sell, serve or deliver any alcoholic beverage; nor shall any holder of a limited rehabilitation permit engage in any such activity.

13:2-14.9 Termination of employment of disqualified person

No licensee shall continue to employ in any manner whatsoever on the licensed premises any criminally disqualified person after the application of such person for an employment permit has been withdrawn or denied, or the employment permit or temporary work letter has been cancelled, suspended, revoked, or has expired.

13:2-14.10 Nontransferability of permits; term of permit; applicant's photograph and fingerprints

(a) Employment permits are not transferable from person to person.

(b) All individual permits, except rehabilitation permits, expire on March 31st following their issuance unless otherwise specified therein.

(c) Each applicant for his first permit shall submit with the application one color passport-type photograph, two inches by two inches, taken not more than 30 days prior to the date of application.

(d) Applications for a rehabilitation employment permit shall require fingerprinting of the applicant and payment of the necessary fingerprinting processing fees attendant thereto.

13:2-14.11 Amendment of application

Whenever any change shall occur in any of the facts set forth in the application for a permit, the permittee shall file with the Director a notice in writing of the change within 10 days after its occurrence.

13:2-14.12 Prohibited conduct of permittee

No permittee shall engage in any conduct which is prohibited to his employer by the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. or any regulation adopted thereunder, or by any valid municipal ordinance or regulation pertaining to employment upon licensed premises.

13:2-14.13 Cancellation, suspension and revocation of permit

(a) Any employment permit may be canceled or suspended or revoked by the Director for cause, including, but not limited to, any of the following:

1. Violation by the holder of any provision of the alcoholic beverage law or any regulation adopted thereunder;

2. For any fraud, misrepresentation, false statement, misleading statement, evasion or suppression of a material fact in the application for the permit;

3. Proof that the holder has a prohibited interest in any license issued by the Director or any other issuing authority;

4. The permit holder is disqualified from being employed by a licensee for reasons other than the disqualification referred to in the employment permit;

5. Any other act or happening, occurring after the time of making an application for an employment permit which, if it had occurred before said time, would have prevented issuance of the permit; and

6. With respect to rehabilitation employment permits or temporary work letters issued pursuant to N.J.A.C. 13:2-14.6, proof of arrest or conviction of the permit holder of any crime or disorderly persons offense.

SUBCHAPTER 15. REMOVAL OF STATUTORY DISQUALIFICATION

13:2-15.1 Time for petition filing; removal of statutory disqualification

Any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of conviction, or release from incarceration, whichever is later, petition the Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 33:1-31.2 for an order removing the resulting statutory disqualification from obtaining or holding any license or permit.

13:2-15.2 Petition; contents

The petition for removal of disqualification shall be in verified form accompanied by payment of a filing fee of $25.00. The petitioner shall be required to submit a set of fingerprints and a recent color passport photograph (two inches by two inches) with said application, as well as any fingerprinting processing fees attendant thereto.

13:2-15.3 Hearing

No petition shall be denied without first affording the petitioner a hearing, which the Director shall schedule to be held at this Division by the Director under N.J.S.A. 52:14F-8 or by an Administrative Law Judge as a contested case pursuant to N.J.A.C. 1:1-3.2. The petitioner and two character witnesses will be required to appear in person at said hearing and to testify under oath.

13:2-15.4 Removal of disqualifications; causes

(a) The Director may, in the exercise of his or her discretion, enter an order removing the disqualification, if he or she is satisfied from the petitioner's testimony, the witnesses produced or the investigative record, that:

1. At least five years have elapsed from the later of the date of conviction or release from incarceration;
2. The petitioner has conducted himself or herself in a law-abiding manner during such period; and
3. His or her association with the alcoholic beverage industry will not be contrary to the public interest.

SUBCHAPTER 16. SOLICITOR'S PERMIT

13:2-16.1 (No change.)

13:2-16.2 Privileges of permit

A solicitor's permit, issuable by the Director of the Division of Alcoholic Beverage Control, authorizes the permittee to make offers and solicit for such sales of alcoholic beverages on behalf of the licensee represented by the solicitor and designated in the permit.

13:2-16.3 Eligibility for permit

Solicitor's permits may be issued only to bona fide employees of Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licensees with the exception that no solicitor's permits shall be issued to employees of a bonded warehouse bottling licensee which holds no other type of Class A or Class B license.

13:2-16.4 Permits to enforcement officers or municipal officials

No solicitor's permit shall be issued to or held by any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever, except that nothing herein shall prohibit a member of a municipal governing body or municipal issuing authority from being issued or holding a solicitor's permit, provided, however, that no holder of a solicitor's permit shall, directly or indirectly, offer for sale or solicit any order for the purchase or sale of any alcoholic beverages in any municipality in which he is a member of the municipal governing body or municipal issuing authority.

13:2-16.5 Permit fees

The fee for a solicitor's permit is $15.00 per annum for solicitors employed exclusively by licensees whose license permits the sale of malt alcoholic beverages only, and $25.00 per annum for solicitors employed by all other eligible licensees. A separate fee shall be paid for each licensee designated in the permit.

13:2-16.6 Application for permit; photograph and fingerprints

(a) Each applicant for the issuance or renewal of a solicitor's permit shall make application on a form promulgated by the Director accompanied with the appropriate fee.

(b) Applications for the issuance of a solicitor's permit shall be accompanied by one passport type color photograph of the applicant, two inches by two inches, taken not more than 30 days prior to the date of the application.

(c) Applications for the issuance of a solicitor's permit shall require the fingerprinting of the applicant and the payment of the fingerprinting processing fees attendant thereto.

13:2-16.7 Term of permit

All solicitors' permits shall expire on May 31st following their issuance, unless otherwise specified therein, as provided in N.J.S.A. 33:1-67.

13:2-16.8 Non-transferability of permit

Each solicitor's permit covers only the employment designated therein and is not transferable as to employer or employee or employment.

13:2-16.9 Amendment of application

Whenever any change shall occur in any of the facts set forth in the application for a solicitor's permit, the permittee shall file with the Director a notice in writing of such change within 10 days after its occurrence.

13:2-16.10 Surrender of permit upon termination of employment

Upon the termination of any employment for which a solicitor's permit has been granted, the employer named therein shall file with the Director a notice in writing of such termination and the permittee shall surrender for cancellation to the Director the permit covering such employment within 10 days after its occurrence.

13:2-16.11 Restrictions on permittee

(a) No holder of a solicitor's permit shall, in the State of New Jersey, offer for sale or solicit any order for the purchase or sale of any alcoholic beverage other than to the extent duly allowed and permitted by law and by the New Jersey license of his ***or her*** employer.

(b) No holder of a solicitor's permit shall directly or indirectly engage in any conduct prohibited its employer by the provisions of Title 33 or any regulations promulgated thereunder, nor shall such person sell, solicit, or deliver alcoholic beverages at a price or upon terms or conditions or under promotions or contests not contained in its employers "Marketing Manual" and "Current Price List" kept pursuant to N.J.A.C. 13:2-24 for the operative period.

13:2-16.12 Interest of permittee in retail business

No holder of a solicitor's permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, nor shall the holder of a solicitor's permit be employed by or connected in any business capacity with any retail licensee.

13:2-16.13 Search of permittee's vehicle

By the acceptance of a solicitor's permit, the permittee consents to inspection and search of any vehicle owned or being driven by him, without search warrant, by the Director, his or her deputies, inspectors and investigators and by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-16.14 Responsibilities of employer

No holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license shall allow, permit or suffer, in his behalf, any individual to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without the State, unless such person has a solicitor's permit.

13:2-16.15 Solicitor's contracts

All contracts of employment between Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licenses and their solicitors shall be in writing and shall set forth the salary, commission or other compensation of any kind agreed to be paid to such solicitor. Contracts shall be maintained by the employer for a period of three years from the date of execution and shall be available for inspection by the Director, his or her deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

13:2-16.16 Filing of statement of compensation with Director

On or before May 31 of each year, each holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license employing any solicitor during the preceding calendar year shall file with the Director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses, prizes, awards, bonuses, or otherwise, paid to each such solicitor by such manufacturer or wholesaler during that calendar year.

SUBCHAPTER 17. APPEALS

13:2-17.1 Notice and petition of appeal; contents; fee

All appeals from the actions taken by a municipal issuing authority concerning the issuance, denial, renewal, transfer, suspension or revocation of a retail license shall be commenced by the filing, in duplicate, of a notice and petition of appeal to the Director of the Division of Alcoholic Beverage Control. The petition shall set forth the identity of the parties involved in the appeal, the subject matter of the appeal, the date and the action of the issuing authority from which the appeal is taken, the relief sought, the grounds therefor and a fee of $50.00 payable to the Director, Division of Alcoholic Beverage Control.

13:2-17.2 Service of notice and petition of appeal

The appellant shall first serve, personally or by ordinary mail, a copy of the notice and petition of appeal upon the respondent issuing authority and, where the action appealed from is the grant, transfer or extension of a license, or the refusal to revoke or suspend a license, a copy shall also be so served upon the licensee, who shall be joined as a respondent. The notice and petition of appeal, together with an acknowledgement or affidavit of service, must be filed with the Director within the time set forth in N.J.A.C. 13:2-17.3.

13:2-17.3 Time for appeal

Appeals by any taxpayer or other aggrieved person from the issuance of a license or from the grant of an application for the extension or transfer of a licensee must be taken within 30 days from the date of issuance, extension or transfer of the license. All other appeals by a licensee or applicant for a license must be taken within 30 days after the personal service or mailing by registered mail of a written notice by the municipal issuing authority of the action taken against the licensee or the applicant.

13:2-17.4 Answer

Within 10 days after service of the notice and petition of appeal, each respondent shall file, in duplicate, an answer with the Director and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action, together with a copy of the subject resolution.

13:2-17.5 Jurisdiction

Upon filing of the notice and petition of appeal and answer, the Director shall determine whether the case is contested. If the Director determines that the case is contested, he or she shall either file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retain it under the provisions of N.J.S.A. 52:14F-8.

13:2-17.6 De novo hearing; burden of proof

All appeals shall be heard de novo and the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed shall rest with appellant.

13:2-17.7 Subpoenas

Subpoenas and subpoenas duces tecum, signed by the Director or Administrative Law Judge, for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request.

13:2-17.8 Stays

The filing of an appeal from a suspension or revocation of a license by a municipal issuing authority shall act as an automatic stay of such suspension or revocation, unless the Director shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the Director or Administrative Law Judge.

13:2-17.9 Extension of license term

Upon the filing of an appeal from the denial of an application for renewal of a license, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b), the Director may, at the time of the filing of the appeal, in his or her discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the license pending the return of the order to show cause. If it shall appear that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would otherwise result, the extension of license, subject to such conditions as may be imposed, shall be continued pending a final determination of the appeal, or the expiration of the license term, whichever comes sooner.

13:2-17.10 Transfer, extension or renewal subject to appeal

When appeal is taken in any matter, any subsequent transfer, extension or *[removal]* ***renewal*** of the license involved in the appeal shall be subject to the ultimate outcome of such appeal, unless otherwise ordered in the final administrative determination of the case.

13:2-17.11 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.

SUBCHAPTER 18. PETITION PROCEEDINGS; DISCRIMINATION AGAINST WHOLESALERS

13:2-18.1 Grounds of relief

(a) There shall be no discrimination in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverage, by importers, blenders, distillers, rectifiers and wineries, to duly licensed wholesalers of alcoholic beverages who are authorized by such importers, blenders, distillers, rectifiers and wineries to sell such nationally advertised brand in New Jersey. All actions by duly licensed New Jersey wholesalers seeking relief from such discrimination shall be in the form of a petition to the Director setting forth the facts of alleged discrimination, the relief sought and the grounds therefor.

(b) For purposes of (a) above, refusal to sell based upon any of the following shall be deemed not to be discrimination:

1.-7. (No change.)

8. The disparagement, by the wholesaler, of any product of the refusing seller made by a representative specifically authorized by a wholesaler's key management personnel. "Disparagement" shall mean the specific suggestion that the product of the refusing seller not be purchased, or demonstration of a course of conduct that would lead a reasonable person to believe that the product of the refusing seller should not be purchased, and when called to the attention of key management personnel of the wholesaler, no reasonable corrective action is taken;

9.-10. (No change.)

(c) (No change.)

13:2-18.2 Filing and serving petitions

(a) The petitioner shall file with the Director, Division of Alcoholic Beverage Control, an original and copy of a Verified Petition setting forth the identity of the parties, the subject matter of the petition, the identity of the product(s) involved, brand registration filings for the products, the relief sought, the grounds therefor and such other matters required under N.J.S.A. 33:1-93.6 et seq.

(b) The petitioner shall serve, personally or by ordinary mail, a copy of the petition upon the respondent importer, blender, distiller, rectifier or winery no later than within five days from the filing of the petition. The original petition, together with acknowledgement or affidavit of service, shall be filed with the Director.

13:2-18.3 Answer to petition

Within 10 days after service of the copy of the petition, each respondent shall file an answer with the Director, together with proof of service of a copy thereof on the petitioner. The answer shall include a statement whether the respondent has refused to sell to the petitioner and, if so, the reasons for such refusal.

13:2-18.4 Interlocutory relief

The petitioner may apply to the Director for interlocutory relief by order to show cause, accompanied by the verified petition alleging that the petitioner will probably suffer substantial and irreparable injury before final determination of the proceeding unless interlocutory relief is granted. If it appears that the petitioner will prob-

ably suffer immediate, substantial and irreparable injury before a hearing can be held on the return date of the order to show cause, the Director may enter an ex parte order granting ad interim relief, provided the respondent is granted the right to move, on two days' notice, to dissolve or modify said order. Upon return of the order to show cause, the Director may grant interlocutory relief if it appears that a substantial question of law or fact has been raised and that the petitioner will probably suffer substantial and irreparable injury without such relief before final determination of the proceeding.

13:2-18.5 Enforcement of Director's orders

All persons, whether licensees or non-licensees, shall comply with the terms of any final, interlocutory or other order entered in these proceedings. In the event a respondent fails to comply with the terms of such order, the Director may, in addition to any penalty provided by law, enter an order prohibiting any licensed wholesaler from purchasing, directly or indirectly, any alcoholic beverage other than malt alcoholic beverages of such respondent until the Director finds that there has been compliance therewith.

13:2-18.6 Jurisdiction

Upon the filing of the verified petition and answer, the Director shall determine whether the case is contested. If the Director determines that the case is contested, he or she shall either file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retain it under the provisions of N.J.S.A. 52:14F-8.

13:2-18.7 Public hearing

All proceedings shall be heard at the office of the Division of Alcoholic Beverage Control or designated location by the Office of Administrative Law, whichever agency is hearing the case.

13:2-18.8 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.

SUBCHAPTER 19. DISCIPLINARY PROCEEDINGS

13:2-19.1 License or permit subject to disciplinary proceedings

Disciplinary proceedings against a license or permit shall not be barred or abated because of the expiration, transfer, surrender, renewal or extension of the license or permit.

13:2-19.2 Suspension, cancellation or revocation

Any license or permit may be suspended, cancelled or revoked for proper cause, notwithstanding that such cause arose prior to a subsequent transfer or extension of the license, or arose during a prior license term of a license held by the licensee or his predecessor in interest or arose during the term of a prior permit held by the permittee.

13:2-19.3 Pending proceedings; effect upon license or permit

When disciplinary proceedings are instituted and the license is transferred, extended or renewed, or a permit is extended or renewed during the pendency thereof, such proceedings shall be carried through to completion. Any order of suspension, cancellation or revocation therein shall apply without further proceedings to the transferred, extended or renewed license or permit.

13:2-19.4 Expiration or surrender of license; pending proceedings

Where a license expires or is surrendered and another license is issued or transferred to another person for the licensed premises subject to pending disciplinary proceedings, the premises shall continue to be subject to any order made in the disciplinary proceedings declaring the premises ineligible to become the subject of a license under N.J.S.A. 33:1-31.

13:2-19.5 Suspended license; transfers or extensions

When any license has been suspended, such suspension shall continue in full force and effect notwithstanding any transfer or extension of the license during the period of suspension.

13:2-19.6 Jurisdiction and hearing procedure

(a) A Division instituted disciplinary proceeding shall be considered a contested case upon the entry of a "not guilty" plea by the licensee or upon the failure of the licensee to enter a timely plea. Contested cases shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retained by the Director under the provisions of N.J.S.A. 52:14F-8. Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.

(b) In uncontested cases before the Division, written argument as to penalty may be submitted to the Director within 10 days after entry of the plea. No oral argument may be had before the Director, unless, on his or her own motion, the Director decides to hear oral argument and notifies the parties or their attorneys of the time and place fixed therefor.

SUBCHAPTER 20. (No change.)

SUBCHAPTER 21. (No change.)

SUBCHAPTER 22. (RESERVED)

SUBCHAPTER 23. CONDUCT OF LICENSEES AND PERMITTEES AND USE OF LICENSED PREMISES

13:2-23.1 Prohibition against serving persons under the legal age and intoxicated persons

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

13:2-23.2 Prohibiting sales or consumption of alcoholic beverages during elections; municipal option

(No change in rule text.)

13:2-23.3 (No change.)

13:2-23.4 House-to-house solicitation forbidden

No licensee shall solicit from house-to-house, personally or by telephone, the purchase of any alcoholic beverage, or allow, permit or suffer such solicitation.

13:2-23.5 Prohibited patrons; narcotics or other unlawful drugs; illegal activity or enterprise

(a) (No change.)

(b) No licensee shall allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to:

1. Narcotic drugs;

2. Controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.);

3. Controlled dangerous analogs as defined by the Comprehensive Drug Reform Act of 1987 (N.J.S.A. 2C:35-1 et seq.);

4. Any prescription legend drug, in any form, which is not a narcotic drug or a controlled dangerous substance or analog, as so defined; or

5. Drug paraphernalia as defined by N.J.S.A. 2C:36-1.

(c) (No change.)

13:2-23.6 Prohibition against immoral activities; disturbance; nuisance on premises

(a) (No change.)

13:2-23.7 Prohibition against lottery and gambling; exceptions

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

13:2-23.8 Eastern Standard Time change

(a) On the first Sunday of April of each year, at 2 A.M., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Savings Time. In any municipality having a closing hour later than 2 A.M., the official time will then become 3 A.M. and the hours of sale will be calculated accordingly.

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

13:2-23.9 Prohibition against adulterated alcoholic beverages

(a) No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverages adulterated with any foreign or harmful substance.

(b) Nothing in this section shall prohibit licensees from storing and temporarily retaining such beverages for purposes of returning same to a manufacturer or wholesaler provided the container is immedi-

ately resealed and labeled with the name and address of the customer and the date of return by the customer.

13:2-23.10 Restriction upon receiving prohibited deliveries of alcoholic beverages

No licensee shall receive, possess or sell any alcoholic beverage transported into this State in violation of N.J.A.C. 13:2-20*[,]* ***and*** 13:2-21 and 13:2-22.

13:2-23.11 Consumption of alcoholic beverages and possession of open containers prohibited upon retail distribution licensee's premises; exception

(a) No retail distribution licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon the licensed premises nor shall such licensee possess or allow, permit or suffer any open containers of alcoholic beverage in or upon the licensed premises.

(b) Nothing in this provision shall prohibit opened bottles of alcoholic beverages returned by a customer as allegedly defective from being possessed by such licensee pending return to the manufacturer or wholesaler; provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

13:2-23.12 Receiving alcoholic beverages from prohibited sources

(a) No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control.

(b) The purchase of alcoholic beverages by one retailer from another and the sale of alcoholic beverages by one retailer to another are prohibited; provided, however, that the passage of title in any alcoholic beverages from transferor to transferee of a license may be authorized by special permit obtained from the Director of the Division of Alcoholic Beverage Control.

13:2-23.13 Maintaining copies of current license certificate; application, list of employees; availability for inspection

(a) No licensee shall conduct the licensed business unless:

1.-2. (No change.)

3. A list, on a form promulgated by the Director of the Division of Alcoholic Beverage Control, containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises.

(b) Such application copy and such list shall be available for inspection by the Director, his or her deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1(p).

13:2-23.14 Prohibition against indecent matter upon licensed premises

(No change in rule text.)

13:2-23.15 Possession of container mislabeled as to fill prohibited; exception

No licensee shall knowingly display, sell or deliver any alcoholic beverages in an original container having a content of fill less than that stated on the container or label thereof, subject to such tolerance as permitted by Federal law and regulation; and no licensee shall possess such a container except for the sole purpose of return for credit or replacement consistent with N.J.A.C. 13:2-23.11 and *[39.2]* ***39.1***.

13:2-23.16 (No change.)

13:2-23.17 Restriction upon limited retail distribution licensee possessing chilled malt alcoholic beverages

No limited retail distribution licensee shall possess or allow, permit or suffer any chilled malt alcoholic beverages other than chilled draught malt alcoholic beverages in kegs, barrels or similar containers of at least 7.75 fluid gallons in capacity, in or upon the licensed premises.

13:2-23.18 (No change.)

13:2-23.19 Prohibition against offering substitute beverages; exception

No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit or suffer the service of any alcoholic beverage other than ordered or substitute a nonalcoholic beverage when an alcoholic beverage has been ordered, unless agreed to by the customer.

13:2-23.20 Intoxicated workers prohibited

(No change in rule text.)

13:2-23.21 Restrictions upon storage of alcoholic beverages

(No change in rule text.)

13:2-23.22 Requirement for labeled tap markers; provision for electronic systems

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

13:2-23.23 Requirements concerning labels; tax payment indicia

(a) (No change.)

13:2-23.24 Restrictions upon placing of orders

(No change in rule text.)

13:2-23.25 Restrictions upon retail/manufacturer or wholesaler relationships

(No change in rule text.)

13:2-23.26 Fingerprinting requirements

(No change in rule text.)

13:2-23.27 Prohibited activities during license suspension

(a) No licensee, during the suspension of license, shall:

1. Allow, permit, or suffer the sale, service, delivery or consumption of any alcoholic beverage, or any other alcoholic beverage activity in or upon the licensed premises, except the storage of alcoholic beverages on hand or (with the permission of the Director) the return of alcoholic beverages to wholesalers or manufacturers; or

2.-4. (No change.)

13:2-23.28 Responsibility of licensee for employee conduct

(No change in rule text.)

13:2-23.29 Detention of evidence; search of licensed premises

By the acceptance of the license, the licensee consents to the detention, as and for evidence, of any physical matter, including alcoholic beverages, found on the licensed premises or during the course of any investigation, inspection or search of the licensed premises being conducted by the Director of the Division of Alcoholic Beverage Control, his or her deputies, inspectors or investigators or by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-23.30 Prohibition against hindering an investigation

No licensee shall, directly or indirectly, fail, on demand, to produce, exhibit or surrender to the Director of the Division of Alcoholic Beverage Control, his or her deputies, inspectors or investigators and any officer as defined by N.J.S.A. 33:1-1(p), any and all matters and things which the Director or other issuing authority is authorized or empowered to investigate, inspect or examine; nor shall any licensee, directly or indirectly, fail to facilitate, or hinder, delay or cause the hindrance or delay, of any investigation or inspection of the licensed business or of the licensed premises or of any search thereof by the Director, his or her deputies, inspectors or investigators or by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-23.31 Law enforcement officers; ownership prohibition; employment restrictions

(a) (No change.)

(b) No licensee shall employ or have connected with him in any business capacity whatsoever any such officer or person, except that:

1. Nothing herein shall prohibit a licensee from employing in a non-managerial capacity a special police officer; and

2. A licensee, upon prior written application to and written approval by the Director of the Division of Alcoholic Beverage Control, may employ a regular police officer, peace officer or other person whose powers and duties include the enforcement of the Alcoholic Beverage Law (other than an officer employed by the Division of State Police) provided that such officer shall not be employed in a jurisdiction in which the officer is officially employed and further provided:

i. Written application pursuant to (b)2 above shall include prior written approval of such employment by the chief law enforcement officer of the jurisdiction which employs said officer or person and proof that written notice of the application has been provided to the chief law enforcement officer of the jurisdiction where the licensee is located.

ii. In the case of the chief law enforcement officer seeking such employment, the prior written approval must be from the chief executive officer of the governing body of the jurisdiction which employs said chief officer;

iii. A police officer so employed shall not, while engaged in the selling, serving, possessing or delivering of any alcoholic beverages;

(1) Have in his or her possession any firearm; or

(2) Wear or display any uniform, badge or insignia which would identify him or her as a police officer; and

iv. No police officer so employed shall be permitted to work in excess of 24 hours a week in any such establishment.

(c) (No change in text.)

(d) Nothing contained in this section shall prohibit any regular police officer, peace officer or any other person whose powers and duties include the enforcement of the alcoholic beverage control laws or regulations from assuming any leadership or titular position in any fraternal, veterans', religious or similar type of nonprofit organization that is a club licensee; provided, however that:

1. The actual licensee of the organization is not a police officer or a person whose duties include enforcement of the alcoholic beverage control laws and regulations; and

2. No police officer or person whose duties include enforcement of the alcoholic beverage control laws and regulations shall be involved in the alcoholic beverage operations of the club licensee.

13:2-23.32 Books of account

All licensees shall have and keep a true book or books of account in the English language wherein there shall be entered a record of all moneys invested in the licensed business and the source of all such investments, for an unlimited period of time; and, for a period of five years, a record of all moneys received in the ordinary course of business; a record of the source of all moneys received other than in the ordinary course of business; a record of all moneys expended from such receipts; and the name of the person receiving such moneys and the purpose for which such expenditures were made. All books and records pertaining to such investments, receipts or expenditures shall be made available for inspection, upon demand, by the Director of the Division of Alcoholic Beverage Control and the other issuing authority and by his or her or its deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING AND ADVERTISING

13:2-24.1 (No change).

13:2-24.2 Discrimination in services, facilities or equipment

(a) Except as may otherwise be authorized by this subchapter, no manufacturer, supplier, importer, brand registrant, wholesaler or distributor privileged to engage in the commerce of any alcoholic beverage into or within this State shall, directly or indirectly, in any connection whatsoever with the sale, purchase, distribution or marketing of alcoholic beverages in this State, sell, pay, grant, provide, receive or accept anything of value:

1. (No change.)

2. As, or for services, facilities or equipment, unless the same is available on proportionally equal terms to all other customers or accounts competing in the distribution of the connected alcoholic beverage product(s), except that no service, facility or equipment may be offered to a retail licensee which, directly or indirectly, requires the future purchase or an agreement to make a future purchase of any alcoholic beverages.

13:2-24.3 and 24.4 (No change.)

13:2-24.5 Supplier pricing and marketing information

(a) Every manufacturer, supplier, winery, brewer, importer, blender or rectifier intending to sell alcoholic beverages to wholesalers or distributors within this State shall:

1. (No change.)

2. By the first day of the month preceding the month for which they are to become effective, make available to all its wholesalers or distributors its prices, inclusive of all discounts, allowances or differentials.

13:2-24.6 through 24.11 (No change.)

13:2-24.12 Display services

(a) No licensee, permittee, or registrant privileged to engage in the commerce of alcoholic beverages in this State shall, directly or indirectly, furnish to, provide payment for, receive or accept anything of value from, or otherwise utilize in any manner whatsoever, any display service unless such service has registered with the Division in a form prescribed by the Director. Such registration shall include:

1. (No change.)

2. An affidavit or certification that no person listed in (a) above would be disqualified from having an interest in an alcoholic beverage license in this State;

3.-4. (No change.)

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

SUBCHAPTER 25. DIVERSION, TRANSSHIPMENT AND REGISTERED DISTRIBUTION

13:2-25.1 (No change.)

13:2-25.2 Registered distribution

No plenary wholesale, wine wholesale or limited wholesale licensee shall sell or deliver any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is acquired from the brand owner, or his authorized agent, or a wholesale licensee designated as a New Jersey registered distributor by the brand owner or his authorized agent pursuant to N.J.A.C. 13:2-33.

13:2-25.3 State beverage distributor

(a) No State beverage distributor shall sell or deliver to any retailer or consumer malt alcoholic beverages other than from inventory in a warehouse or salesroom located in New Jersey and operated under a State beverage distributor's license. Such "inventory" shall be deemed to include only malt alcoholic beverages which shall have been stored in such warehouse for at least a period of 24 continuous hours.

(b) No State beverage distributor shall sell or deliver any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is acquired from the brand owner or his authorized agent, or a New Jersey distributor designated by the brand owner or his authorized agent.

SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES

13:2-26.1 Restrictions on cooperative purchases

(a) A Class C retail licensee, as defined in N.J.S.A. 33:1-12, may join with another Class C licensee in a cooperative agreement for the purchase and transportation of alcoholic beverages, provided that such agreement and activity shall conform to the following standards:

1. No unlicensed person or entity may participate in any management capacity nor receive any compensation in connection with the purchase or transportation of alcoholic beverages;

2. The number of Class C licensees joined in any agreement shall not exceed the largest number of plenary retail distribution licenses, as defined in N.J.S.A. 33:1-12(3)(a), issued to any one person or entity in this State at the time of the prior most recent annual renewal of such licenses;

3. No cooperative agreement may prohibit any licensee from joining any other cooperative agreement;

4. No cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price;

5. Any licensee may withdraw from any cooperative agreement upon 30 days written notice and no penalties may be charged for such withdrawal;

6. All purchases on credit through or by cooperative agreement shall be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of N.J.A.C. 13:2-24 *[and 39]*. Such credit terms shall include adequate assurances of payment by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be maintained by the wholesaler in its marketing manual and by the registered buying cooperative;

7. All individual purchases through or by cooperative agreement shall be separately invoiced consistent with N.J.A.C. 13:2-20.4; and shall contain the cooperative's registration number;

8. All purchases through or by cooperative agreement shall be transported consistent with N.J.A.C. 13:2-20, N.J.S.A. 33:1-13 and N.J.S.A. 33:1-28;

9. No licensed party to a cooperative agreement shall co-mingle inventory, funds or other assets inconsistent with this subchapter and N.J.A.C. 13:2-23.21;

10. Any purchase or transfer in violation of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement; and

11. Nothing herein shall be deemed to require the servicing of any cooperative agreement with quantity or cash discounts if there exists no corresponding justification for the differential pursuant to N.J.A.C. 13:2-24.1(b)1.

(b) (No change.)

SUBCHAPTER 27. (No change.)

SUBCHAPTER 28. DECANTING OF WINE

13:2-28.1 Decanting wine for consumption; labeling container

The holder of any retail license authorizing the sale of alcoholic beverages for consumption on the licensed premises may transfer wine from any original barrel, cask, keg or other container on the licensed premises to another barrel, cask, keg, decanter, bottle or similar receptacle and serve such wine therefrom solely for consumption on the licensed premises, and not to be removed from the licensed premises under any circumstances whatsoever; provided, however, that the last barrel, cask, keg or other container from which the contents thereof were drawn to fill the open container served to the patron shall have affixed thereto at all time a gummed label clearly identifying the contents thereof.

13:2-28.2 (No change.)

SUBCHAPTER 29. RECORDS

13:2-29.1 Public records

(a) The following enumerated records required to be maintained by law or other regulation by the Director, Division of Alcoholic Beverage Control, shall constitute public records of the Division:

1. All license or permit applications filed with the Director, subject to nondisclosure of information protected by Federal or State law;

2. All filed administrative disciplinary charges, transcripts of Division disciplinary hearings, Office of Administrative Law initial decisions and reports and recommendations, and Conclusions and Orders of the Director;

3. All filed administrative appeal pleadings, transcripts of Division appeal hearings, Office of Administrative Law initial decisions and reports and recommendations, and Conclusions and Orders of the Director;

4. All Ordinances or Resolutions of local issuing authorities that may be filed with the Division;

5. All product information and other filings required to be made by licensees and permittees by law or regulation; and

6. All records, pleadings, documents and orders, exclusive of investigative reports, pertaining to duly instituted seizure proceedings, pocket license applications and tax revocation proceedings.

13:2-29.2 Confidential records

(a) For purposes of investigative confidentiality and integrity, the following records constitute "confidential records" of this Division and shall not be available for inspection or photocopy:

1.-3. (No change.)

4. All intergovernmental and intra-Division memoranda, documents or records of and to this Division, including, but not limited to, Criminal History Record Information supplied by a Criminal Justice Agency;

5. All such other documents, records, reports and memoranda the Division shall possess, where the primary purpose is the investigation and enforcement of the Alcoholic Beverage Law and its regulations;

6. All solicitors' statements of compensation; and

7. Tax reports and documents filed by licensees regarding the payment of monetary penalties.

13:2-29.3 Inspection, reproduction and availability of records; copy fees

(a) As hereinabove defined and limited, every citizen of this State, during regular business hours, shall have the right to inspect such public records at the Division's offices, and, under the supervision of a Division representative, to copy such public records by hand or purchase copies of same upon payment as hereinafter set forth.

(b) (No change.)

(c) If the Director finds that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business, he or she may permit any citizen who is seeking to copy any individual record or report which exceeds 100 pages to use his own photographic process, approved by the custodian, upon the payment of a fee of $25.00 per day.

(d) (No change.)

13:2-29.4 Licensee records; storage systems and availability of records

(a) Upon written application to the Director accompanied by all relevant specifications and descriptions, the Director, in his or her discretion, may approve alternate methods or locations for storage of any record required to be maintained by licensees, provided that such a record system permits access to all required records so that they are "readily retrievable" and "accurate".

(b) Records are "readily retrievable" if, when relating to a transaction from the date of request, they are:

1. Not more than three months old and are produced for inspection immediately upon demand;

2. Not more than one year old but in excess of three months old, and are produced for inspection within two business days; or

3. In excess of one year old and produced for inspection within seven business days.

(c) Records are "accurate" if they are a reduced copy of the original document or otherwise correctly reflect all information contained on the original required record.

SUBCHAPTER 30. REGISTRATION OF STILLS

13:2-30.1 (No change.)

13:2-30.2 Registration form; contents

Such registration shall be upon forms promulgated by the Director designated as registry certificates, which may be obtained from the Director upon request, and which shall set forth the description and location of the still, distilling apparatus and parts thereof, and the names and address of the owner and the person having possession, control or custody thereof.

13:2-30.3 Possession of registry certificate on premises

Certificates must be completed and returned to the Director in duplicate, and one of said certificates, bearing due endorsement by the Director of the receipt thereof, shall be returned to the registrant and must at all times be kept on the premises where the still, distilling apparatus and parts thereof are located.

13:2-30.4 to 30.6 (No change.)

SUBCHAPTER 31. SEIZURE HEARINGS

13:2-31.1 Hearings generally

Contested case hearings to determine whether seized property constitutes unlawful property and shall be forfeited, shall be conducted according to N.J.A.C. 1:1 and either retained by the Director, Division of Alcoholic Beverage Control under the provisions of N.J.S.A. 52:14F-8 or filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1.

13:2-31.2 Procedures; return of property seized

(a) Prior to final determination by the Director, claims for the return of property seized under N.J.S.A. 33:1-66 or N.J.S.A. 33:2-3 may be made to the Director by payment in cash, under protest, of the retail value of the seized property, or by the posting of a proper bond with sureties satisfactory to the Director in a sum double the retail value of the property. In lieu of such cash bond or surety bond, a claimant may institute an action for replevin against the Director in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of such court; such action to be commenced within 30 days from the seizure of such property and not thereafter. The Director may, in his or her discretion, refuse to entertain any such claim for the posting of a bond to obtain return of the property seized made more than 30 days from the date of the final order of forfeiture.

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

13:2-31.3 Forfeiture of seized property

(a) (No change.)

(b) Claims may be made by the person whose property has been seized or forfeited for the return of seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law, by presenting evidence to that effect at the hearing. The Director may require a claimant to file a verified petition setting forth in detail all of the facts relied upon. Where the Director is satisfied that the claimant has acted in good faith and has unknowingly violated the law, he or she may order the return of the property upon payment by claimant of reasonable costs of seizure and storage.

(c) Claims may be made by any person having a bona fide and valid lien upon or interest in the seized or forfeited property for the recognition of the validity and priority of such lien or interest, by presenting evidence at the hearing that such claimant has acted in good faith, and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use. The Director may require such claimant to file a verified petition setting forth in detail the facts relied upon. If the claim is established to the satisfaction of the Director, he or she may order the return of the property to the claimant where it appears that the amount or value of such lien or interest exceeds the value of the property, subject to payment of reasonable costs of seizure and storage; or order the retention of the property for the use of the State, subject to the payment of the lien or interest less costs of seizure and storage; or order the sale of the property, subject to the payment of the lien or interest out of the proceeds of sale, after first deducting the reasonable costs of seizure and storage.

(d) Claims may be made by a common carrier whose vehicle has been seized for return of the vehicle by filing a verified petition with the Director substantiating such interest, together with a statement that claimant has acted in good faith and had no knowledge at the time of the seizure that the vehicle contained illicit alcoholic beverages. The Director may, in his or her discretion, if satisfied that these facts are established, order the return of the seized vehicle to the common carrier.

13:2-31.4 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.

SUBCHAPTER 32. SALES OF FORFEITED PROPERTY

13:2-32.1 Publication of notice of sale

Notice of sale of forfeited property shall be given by publication twice in at least one newspaper designated by the Director of the Division of Alcoholic Beverage Control and published either in the county where the sale is to be held, or elsewhere in the State of New Jersey as may appear expedient once in each of the two consecutive calendar weeks preceding such sale. Such notice shall contain a brief description of the property to be sold and shall state that inspection of such property will be permitted upon application therefor to the Director.

13:2-32.2 Adjournment of sales

Sales may be adjourned from time to time with respect to all of the property to be sold or any part thereof. No advertisement of the adjourned date shall be necessary but such adjourned date shall be announced at the sale. Adjourned sales shall be subject to all rules in this subchapter.

13:2-32.3 (No change.)

13:2-32.4 Bids subject to rejection

The Director reserves the right to reject each and every bid in whole or in part and all sales shall be subject to such reserved right.

13:2-32.5 Bids and deposits

Written bids accompanied by a deposit of 25 percent thereof either in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control will be received by the Director at any time within two days prior to the date of sale and will be announced and considered as having been made at the sale. Each successful bidder who submits his bid at the sale must accompany his bid by 25 percent of the amount thereof in cash, money order or certified check. Any deposits made by unsuccessful bidders shall be returned.

13:2-32.6 Confirmation of bids and sales

All successful bids shall be submitted to the Director and all bids and sales shall be subject to confirmation by the Director. The Director may in his or her absolute discretion withhold confirmation and such decision shall be final.

13:2-32.7 (No change.)

13:2-32.8 Bill of sale; delivery of property

In cases of property other than motor vehicles, after payment of the balance of the amount due on his bid, within the time limited by N.J.A.C. 13:2-32.7, and after confirmation of the sale by the Director, the purchaser shall be entitled to a bill of sale which shall transfer all the right, title and interest to said property as the Director is empowered to transfer under and by virtue of the alcoholic beverage law, as amended and supplemented, and shall take possession of the property forthwith. In cases of sales of motor vehicles, upon payment of the balance of the amount due on his bid, within the time limited by N.J.A.C. 13:2-32.7, and after confirmation of the sale by the Director, the purchaser shall be entitled to a bill of sale, accompanied by an affidavit of a duly authorized agent of the Director, stating the time and place of seizure, the determination by the Director that said motor vehicle constitutes unlawful property, the sale thereof to the purchaser named in the bill of sale and the confirmation of said sale by the Director. The said bill of sale shall transfer all the right, title and interest to said motor vehicle as the Director is empowered to transfer under and by virtue of the alcoholic beverage law, as amended and supplemented. Actual delivery of the motor vehicle to the purchaser shall be deferred until such purchaser has presented satisfactory evidence of motor vehicle registration thereof. In the event the purchaser fails within five days after delivery of a bill of sale to present such motor vehicle registration, a notice may be mailed to the purchaser at the address set forth in the bill of sale stating that unless such motor vehicle registration is presented within five days from the date of the notice, the amount paid by the purchaser shall be forfeited to the State and such property shall be resold for the benefit of the State. The Director may, however, in his or her discretion, permit the purchaser to present evidence

of registration and to take possession of such motor vehicle after the expiration of the five-day period referred to in this notice.

13:2-32.9 Unconfirmed sales

In the event that any sale is not confirmed, the amount deposited shall be returned to the successful bidder and the property shall be resold, subject to this subchapter or otherwise disposed of according to law.

SUBCHAPTER 33. PRODUCT INFORMATION FILING: BRAND REGISTRATION

13:2-33.1 Brand registration schedule

(a) No licensee shall knowingly sell, offer for sale, deliver, receive or purchase, for resale in New Jersey, any alcoholic beverage (including private label brands owned by a retailer or exclusive brands owned by a manufacturer or wholesaler and sold by such manufacturer or wholesaler exclusively to one New Jersey retailer or group of affiliated retailers) unless there is first filed with the Director of the Division of Alcoholic Beverage Control a schedule, for each separate alcoholic beverage product, listing the following:

1.-8. (No change.)

(b) (No change.)

(c) Whenever any change occurs, including, but not limited to, the addition or deletion of an authorized wholesaler, the filer of the brand registration schedule shall file an amended brand registration schedule within 10 days after the occurrence of such change.

13:2-33.2 (No change.)

SUBCHAPTER 34. (RESERVED)

SUBCHAPTER 35. SALE AND DISPLAY OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS BY CONSUMPTION LICENSEES NOT HOLDING THE BROAD PACKAGE PRIVILEGES

13:2-35.1 Definitions

(a) For the purpose of this regulation:

1. A public barroom shall be a room containing a public bar, counter or similar piece of equipment, which must occupy not less than 15 percent of the total square footage of said room and which is designed for and used to sell and dispense alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises.

2. The public bar, counter or similar piece of equipment must be equipped with hot and cold running water, sink, drainboard, a sufficient number of bar stools (minimum of one for each three feet of bar perimeter), utensils and glassware for the making and serving of mixed drinks, and a sufficient number of opened bottles of alcoholic beverages for the service of drinks to be consumed upon the licensed premises. A substantial portion of the bar must be visible from all public entrances to the barroom.

3. The principal public barroom shall be the room in which the main public bar is located. In determining which public barroom shall constitute the principal public barroom, consideration shall be given to the nature of the operation and volume of alcoholic beverage business for consumption on the licensed premises, the accessibility to the barroom, the size of the barroom, and the hours of operation.

13:2-35.2 Prohibition on sales of package goods from other than the principal barroom except by holders of the broad package privilege

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, except as provided by N.J.S.A. 33:1-12.24 and 12.25, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide public barroom of the licensed premises (the privilege to engage in such sale and display in other than such barroom being known as the "Broad Package Privilege") unless:

1. (No change.)

2. The Director of the Division of Alcoholic Beverage Control has approved a verified petition, received on or before June 18, 1948, by such a license alleging that on May 27, 1948, such licensee was not actually engaged in the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom by reason of:

i. Building alteration or construction in progress;

ii. Prior destruction or loss of possession of the licensed premises; or

iii. Non-operation of the entire licensed business, but that, prior to May 28, 1948, such licensee had sold alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom or had actually undertaken alteration or construction of the premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom.

13:2-35.3 Notation of privilege on license certificate; daily certification

The Division of Alcoholic Beverage Control shall note the following on the face of the renewal license certificate of each holder of a license which includes the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1:

"This license bears the "Broad package privilege" pursuant to P.L. 1948, ch. 98 (N.J.S.A. 33:1-12.23 and N.J.A.C. 13:2-35.1)".

13:2-35.4 Off-premises consumption sales; requirements and prohibitions

(a) No licensee without the "Broad package privilege" shall, with respect to the public barroom in which he may sell or display for sale alcoholic beverages in original containers for off-premises consumption:

1.-4. (No change.)

13:2-35.5 Multiple barrooms; package goods sales restricted to the bona fide principal barroom

No holder of a plenary retail consumption license or seasonal retail consumption license, without the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1, 35.2 and 35.3, who maintains at the same time more than one barroom on the licensed premises, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in principal bona fide public barroom on the licensed premises.

SUBCHAPTER 36. REQUESTS FOR ADVISORY OPINIONS

13:2-36.1 Advisory opinions

(a) Other than in proceedings instituted pursuant to N.J.S.A. 52:14B-8 (Declaratory Rulings), a written request for an interpretation, application, or other inquiry concerning the Division of Alcoholic Beverage Control's regulations, policies or practices shall only be considered if it sets forth issues not previously articulated by the Division or involves a substantial question of general applicability.

(b) All requests shall be sent to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625, and any request and corresponding advisory opinion may be reproduced in Bulletins issued by the Division which are publicly available upon subscription. Requests which are hypothetical in nature will not receive Division response.

(c) The provisions of this section are to be considered of general applicability and may be relaxed in the discretion of the Director.

SUBCHAPTER 37. (RESERVED)

SUBCHAPTER 38. LIMITATION OF HOURS FOR SALE AND DELIVERY AT RETAIL OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION

13:2-38.1 Retail package sales hours

Subject to local options as expressed in the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. and N.J.A.C. 13:2-38.3, no licensee shall allow, permit or suffer the sale, service or delivery

of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or allow, permit or suffer the removal of any alcoholic beverage in its original container from retail licensed premises, before 9:00 A.M. or after 10:00 P.M. on any day of the week; except that, whenever the sale of alcoholic beverages for consumption on the premises is authorized in any municipality for the holder of a retail consumption license, the sale, service or delivery by any licensee with retail off-premises package goods privileges of wine and malt alcoholic beverages in original containers for consumption off the premises shall be authorized on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises is permitted as reflected in N.J.S.A. 33:1-40.3.

13:2-38.2 Hours; municipal ordinances

If a municipality has no ordinance or local law that authorizes the sale of alcoholic beverages for consumption on the premises, then such municipality may by ordinance authorize the sale of wine and malt alcoholic beverages in original containers by retail distribution and State beverage distributor's licensees any time between the hours of 12:30 P.M. and 6:30 P.M. on Sunday, in addition to such weekday hours as may be authorized by ordinance.

13:2-38.3 Municipal ordinances and regulations

N.J.A.C. 13:2-38.1 shall not be construed to permit the sale or delivery of any alcoholic beverage, whether for on-premise or off-premise consumption, during hours when such sale or delivery is prohibited by an applicable municipal regulation or referendum.

SUBCHAPTER 39. RETURN OF ALCOHOLIC BEVERAGES; SOLICITOR'S DELIVERY

13:2-39.1 Reasons authorizing return of alcoholic beverages; inclusion in marketing manual; other required records

(a) No manufacturer, brewer, winery, distiller, rectifier and blender, wholesaler or distributor privileged to sell to retailers shall accept a return of any alcoholic beverages from a retail licensee for cash, credit or exchange, nor shall any retail licensee accept any cash, credit or exchange, except for one of the following reasons:

1. Defective product and breakage which occurred prior to or simultaneously with delivery of such products to the retailer;
2. Bona fide error in product delivered;
3. Product which may no longer be lawfully sold;
4. Product on hand when retail licensee terminates business (subject to applicable rights of other persons protected by State or Federal laws);
5. Change in product or labeling of product;
6. Discontinued product;
7. Product likely to spoil from retailers who are only open for a portion of the year;
8. Rotation of malt alcoholic beverage product consistent with the policy established by the brewer; or
9. Such other good cause as may be approved by the Director.

(b) A manufacturer, brewer, winery, distiller, blender and rectifier, wholesaler or distributor privileged to sell to retailers is not required to accept returns from a retail licensee for any of the reasons enumerated in (a) above; but should such licensee do so, the return policy shall be clearly identified in its "Marketing Manual" and shall be nondiscriminatorily applied to all similarly situated retail licenses.

(c) Every return of an alcoholic beverage by a retail licensee shall be accompanied by a return document truly dated and signed by a duly authorized representative of both the wholesale and retail licensee, and contain a detailed description of all product returned, the specific reason for the return, the original date of delivery and invoice number of the original purchase, the date of pick-up or return, the name of the person requesting the return, and the terms of return, that is, cash, credit or exchange. A copy of the return document shall be left with the retail licensee.

(d) The return document shall be retained for a period of one year on the licensed premises, unless the Director, Division of Alcoholic Beverage Control, shall have granted to the licensee written permission to keep such documents at another designated place. Licensees shall make the return documents available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

13:2-39.2 (No change in text.)

SUBCHAPTER 40. (No change.)

(a)

STATE BOARD OF PROFESSIONAL PLANNERS

State Board of Professional Planners' Rules

Readoption with Amendment: N.J.A.C. 13:41

Proposed: May 21, 1990 at 22 N.J.R. 1438(b).
Adopted: July 12, 1990 by the State Board of Professional Planners, Shirley M. Bishop, President.
Filed: July 17, 1990 as R.1990 d.402, **without change.**

Authority: N.J.S.A. 45:14A-4.

Effective Date: July 17, 1990, Readoption; August 20, 1990, Amendment.
Expiration Date: July 17, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:41.

SUBCHAPTER 2. (RESERVED)

(b)

DIVISION OF STATE POLICE
STATE BUREAU OF IDENTIFICATION (SBI)

Criminal History Record Background Checks for Non-Criminal Matters

Readoption with Amendments: N.J.A.C. 13:59

Proposed: June 18, 1990 at 22 N.J.R. 1869(a).
Adopted: July 25, 1990 by Colonel Justin J. Dintino, Superintendent, Division of State Police.
Filed: July 30, 1990 at R.1990 d.425, **without change.**

Authority: N.J.S.A. 53:1-20.5, 53:1-20.6 and 53:1-20.7 (P.L. 1985, c.69).

Effective Date: July 30, 1990 Readoption
August 20, 1990 Amendments.
Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:59.

Full text of the adopted amendments follows.

13:59-1.1 Definitions

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

"Authorized agency" means any agency which is authorized by a federal or state statute, rule or regulation, executive order, administrative code or local ordinance to have access to the Criminal History Record Information File for non-criminal licensing and/or employment purposes.

. . .

"Licensing and/or employment purpose" means any matter in which applicant fingerprints or name search requests are submitted as required by a federal or state statute, rule or regulation, executive order, administrative code or local ordinance to the State Bureau of Identification for processing from all authorized agencies.

. . .

13:59-1.4 Prescribed forms

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

(c) For fingerprint identification purposes, an "Applicant" fingerprint card (SBI-19) must be used. The exception to this rule will be for a firearms application which requires a "Firearms Application" card (SBI-19A).

1. Fingerprint card (SBI-19 or SBI-19A): The fee as prescribed in this subchapter, in the form of a cashiers check, certified check or money order payable to the "Division of State Police—SBI," must be stapled to the lower left corner of the "Applicant" fingerprint card (SBI-19) or "Firearms Application" fingerprint card (SBI-19A) and submitted to the State Bureau of Identification.

(d) For name search identification purposes, a "Request for Criminal History Record Information" form (SBI-212 or SBI-212A) must be used.

1. "Request for Criminal History Record Information" form (SBI-212 or SBI-212A): This form will be filled out in its entirety and must contain all the required information necessary to complete the check. The fee as prescribed in this subchapter, in the form of a cashiers check, certified check or money order payable to the "Division of State Police—SBI," must be stapled to the front of each SBI-212 or SBI-212A form and submitted to the State Bureau of Identification.

13:59-1.5 Acceptable form of payment

(a) A cashiers check, certified check or money order made payable to the "Division of State Police—SBI" will be accepted.

(b) New Jersey State agencies shall submit a "Memo Processed Certificate of Debit and Credit" for the applicable amount with each group of submissions. Any other form of payment is unacceptable unless approved by the Superintendent of State Police.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Spill Compensation and Control Tax

Readoption with Amendments: N.J.A.C. 18:37

Proposed: June 18, 1990 at 22 N.J.R. 1908(a).

Adopted: July 20, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: July 23, 1990 as R.1990 d.407, **without change.**

Authority: N.J.S.A. 58:10-23.11 et seq.

Effective Date: July 23, 1990, Readoption; August 20, 1990, Amendments.

Expiration Date: July 23, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:37.

Full text of the adopted amendments follows.

18:37-1.1 Tax imposed on transfer of hazardous substances

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

(c) The transferee is an owner or operator of a major facility, except as provided in (e) below, which receives a transfer of a hazardous substance. For the purpose of this chapter a major facility, as defined in the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., as amended by P.L. 1986, c.143, is a facility that has a combined above ground or buried storage capacity of:

1. 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products; or

2. 200,000 gallons or more for hazardous substances of all kinds.

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

(f) Effective on and after April 1, 1980, for purposes of (a) above, in the case of the transfer of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined or rerefined, such precious metals shall mean gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium and copper.

18:37-2.1 Tax rates on the transfer of petroleum or petroleum products

(a) (No change.)

(b) In the event of a major discharge or series of discharges of petroleum or petroleum products resulting in claims against the Spill Compensation Fund which exceeded the existing balance of the fund, a tax rate of $0.04 per barrel on transfers of petroleum or petroleum products shall be levied until the revenue produced by such increased rate equals 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of petroleum or petroleum products. The tax rate as herein set forth may be less than $0.04 per barrel transferred if, as provided by the Spill Compensation Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within one year of such levy. Under no circumstances shall this rate be levied prior to February 1, 1988.

OTHER AGENCIES

(b)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Ordering a Transcript

Adopted Amendments: N.J.A.C. 19:11-6.1, 7.2, 7.3; 19:14-6.5, 7.2 and 7.3.

Proposed: June 18, 1990 at 22 N.J.R. 1910(a).

Adopted: July 19, 1990 by the New Jersey Public Employment Relations Commission, James W. Mastriani, Chairman.

Filed: July 19, 1990 as R.1990 d.406, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:13A-5.2; N.J.S.A. 34:13A-6(f) and 6(g).

Effective Date: August 20, 1990.

Expiration Date: August 20, 1995.

Summary of Public Comments and Agency Responses:
No public comments were received.

Summary of Agency-Initiated Changes:

1. In the amendment to N.J.A.C. 19:11-6.1(d), "Hearing Officer" has been changed to "hearing officer" in both places.

2. In the amendment to N.J.A.C. 19:14-6.5, "Hearing Examiner" has been changed to "hearing examiner" in both places.

These changes make the references to "hearing officer" and "hearing examiner" in these amendments consistent with lower-case references in other rules.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:11-6.1 Who shall conduct; to be public unless otherwise ordered

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

(d) Copies of the transcript may be purchased by arrangement with the official reporter, or examined in the commission's offices during normal working hours. If a transcript of the proceedings is ordered before a recommended decision has been issued, the ordering party shall, at the time of ordering, notify the *[Hearing Officer]* ***hearing officer*** that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the *[Hearing Officer]* ***hearing officer*** for inclusion in the record.

19:11-7.2 Record in the case

The record shall include the petition, notice of hearing, motions, rulings, orders, any official transcript of the hearing, stipulations, documentary evidence, together with the hearing officer's report and recommendations and any exceptions, cross-exceptions, briefs and answering briefs in support thereof.

19:11-7.3 Exceptions; cross-exceptions; briefs; answering briefs
(a)-(b) (No change.)
(c) Exceptions to a hearing officer's report shall:
1.-2. (No change.)
3. Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities, unless set forth in a supporting brief. If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the director of representation.
(d)-(g) (No change.)

19:14-6.5 Rights of parties
Any party shall have the right to appear at such hearing in person or by authorized representative to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing examiner. Five copies of documentary evidence shall be submitted, unless the hearing examiner permits a reduced number of copies upon good cause shown. If a transcript of the proceedings is ordered before a recommended decision has been issued, the party ordering the transcript shall, at the time of ordering, notify the *[Hearing Examiner]* ***hearing examiner*** that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the *[Hearing Examiner]* ***hearing examiner*** for inclusion in the record.

19:14-7.2 Record in the case
The record in the case shall consist of the charge and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, order, any official transcript of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's recommended report and decision and any exceptions, cross-exceptions, and briefs and answering briefs in support thereof.

19:14-7.3 Exceptions; cross-exceptions; briefs; answering briefs
(a) (No change.)
(b) Each exception shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; shall identify that part of the recommended report and decision to which objection is made; shall designate by precise citation of page the portions of the record relied on; and shall state the grounds for the exception and shall include the citation of authorities unless set forth in a supporting brief. Any exception which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded. If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the Commission for inclusion in the record.
(c)-(h) (No change.)

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Rules

Readoption with Amendments: N.J.A.C. 19:30
Adopted Repeals: N.J.A.C. 19:30-4 and 7
Adopted New Rules: N.J.A.C. 19:30-5

Proposed: May 21, 1990 at 22 N.J.R. 1537(a).
Adopted: July 19, 1990 by the New Jersey Economic Development Authority, James J. Hughes, Jr., Executive Director.
Filed: July 23, 1990 as R.1990 d.411, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(k) and (l).
Effective Date: July 23, 1990, Readoption; August 20, 1990, Amendments, Repeals and New Rules.
Expiration Date: July 23, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
The Authority is making two changes in N.J.A.C. 19:30-1.5(a), which deals with records of the Authority which the Authority is exempting from public records requirements and declaring as nonpublic.
As proposed, N.J.A.C. 19:30-1.5(a)2 would have exempted all personnel records. This passage has been revised to exempt all personnel records except any records which are deemed public as required by an Executive Order.
As proposed, N.J.A.C. 19:30-1.5(a)7 would have exempted any records of any type which the Authority determined to be nonpublic in accordance with the authority provided in N.J.S.A. 47:1A-1 et seq., the Public Right to Know Law. The intent of the revision to this passage is to limit the Authority's discretion in making such determination to circumstances where nondisclosure of records is essential for the protection of the public interest or the interest of those to whom the records pertain.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:30.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

19:30-1.1 Purpose and objectives
(a) These rules are established to effectuate, and shall be applied so as to accomplish, the general purposes of "The New Jersey Economic Development Authority Act" (N.J.A.C. 34:1B-1 et seq.; P.L. 1974 c.80), and the following specific objectives:
1.-2. (No change.)
3. To assist in the economic development or redevelopment of political subdivisions within the State;
4. To contribute to the prosperity, health and general welfare of the State and its inhabitants by making available financial and other assistance to induce manufacturing, industrial, commercial and other employment-promoting enterprises to locate, remain, or expand within the State; and
5. To protect and enhance the quality of the natural environment.

19:30-1.2 Definitions
The following words and terms, when used in this chapter and in N.J.A.C. 19:31, shall have the following meanings unless the context clearly indicates otherwise:
. . .
"Authority" means the staff of the New Jersey Economic Development Authority.
"Executive Director" means the Executive Director of the New Jersey Economic Development Authority.
Words or terms which are defined in the Act are used in this chapter and in N.J.A.C. 19:31 as defined in the Act.

19:30-1.3 Organization
(a) The governing body of the New Jersey Economic Development Authority, in but not of the Department of Commerce and Economic Development, consists of the Commissioner of Commerce and Economic Development, the Commissioner of Environmental Protection, the Commissioner of Labor, the Commissioner of Community Affairs, the State Treasurer, and four members and three alternate members appointed by the Governor with the advice and consent of the State Senate (collectively referred to as Members). The Authority is chaired by the Commissioner of Commerce and Economic Development.
(b) The Authority maintains the following functional divisions to administer its programs:
1. The Division of Project Development issues tax-exempt bonds:
i. To manufacturing firms to meet capital financing needs;

ii. For certain exempt activities as defined in the United States Internal Revenue Code;
iii. To benefit certain nonprofit organizations; and
iv. To refund eligible projects.
2. The Division of Project Development also issues taxable bonds for projects not eligible for tax-exempt bonds;
3. The Division of Finance guarantees loans and makes direct loans for fixed-asset financing and for working capital;
4. The Division of Real Estate Development develops modern business parks and commercial facilities to provide improved, affordable building space for businesses and other users in urban centers and other areas in need of economic expansion or diversity; and
5. The Trade Adjustment Assistance Center operates a Federally funded program of consulting services for manufacturers whose employment and either sales or production have declined due to foreign competition.

19:30-1.4 Public information

The public may obtain general information concerning Authority programs by contacting the Public Affairs Office, New Jersey Economic Development Authority, 200 S. Warren St., CN 990, Trenton, N.J. 08625.

19:30-1.5 Nonpublic information

(a) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:
1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the members, or to any other state agency or instrumentality;
2. All personnel records ***except those deemed public as required by an Executive Order***;
3. All records concerning applications for employment with the Authority;
4. All records concerning personal, financial or proprietary information submitted by applicants for Authority assistance;
5. All records concerning personal, financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;
6. All reports, correspondence and other documents or data provided or discussed at the Executive Session of the meetings held by the Members, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and
7. Any other reports, correspondence or other documents or data *[which the Authority in its discretion deems to be nonpublic pursuant to N.J.S.A. 47:1A-1 et seq]* ***where the Authority finds that nondisclosure is necessary for the protection of the public interest***.

19:30-1.6 Petitions for rules

Purusant to N.J.S.A. 52:14B-4(f), interested persons may petition the Authority for the promulgation, amendment or repeal of any rule by the Authority.

19:30-1.7 Procedure for petitioner

(a) Any person who wishes to petition the Authority to promulgate, amend or repeal a rule must submit to the Executive Director, in writing and signed by the petitioner, the following information:
1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the matter, including any relevant organization, affiliation, or economic interest; and
4. The statutory authority under which the Authority may take the requested action.
(b) The petitioner shall send the petition to the following address:

Executive Director
New Jersey Economic Development Authority
200 S. Warren St., CN 990
Trenton, N.J. 08625

(c) Any materials submitted to the Authority not in substantial compliance with (a) and (b) above shall not be deemed to be a valid petition for rulemaking requiring further action pursuant to N.J.S.A. 52:14B-4(f).

19:30-1.8 Procedure of the Authority

(a) Upon receipt of a petition in compliance with N.J.A.C 19:30-1.6, the Authority shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register, to include:
1. The date the petition was received by the Authority;
2. The name and address of the petitioner;
3. The substance or nature of the rulemaking which is requested; and
4. The problem or purpose behind the request.
(b) Within 30 days of receiving the petition, the Authority shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which will include:
1. The name of the petitioner;
2. Certification by the Executive Director that the petition was considered pursuant to law;
3. The substance or nature of the Authority action; and
4. A brief statement of reasons for the Authority action.
(c) Authority action on a petition may include:
1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

AGENCY NOTE: Subchapter 2 is recodified with amendments as subchapter 6. Subchapter 5, recodified with amendments as subchapter 2, follows:

SUBCHAPTER 2. DISQUALIFICATION DEBARMENT CONFLICT OF INTEREST

19:30-2.1 Definitions

For purposes of this subchapter, the following words and terms shall have the following meanings:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Authority project contracting" means any arrangement giving rise to an obligation to perform any service in connection with the construction of a project financed with, and paid for in whole or in part with Authority assistance, including the service of architects, engineers and professional planners.

"Debarment" means an exclusion from contracting with the Authority and exclusion from Authority project contracting on the basis of a lack of responsibility evidenced by an offense or inadequacy of performance for a reasonable period of time commensurate with the seriousness of the offense or in adequacy of performance.

"Disqualification" means an exclusion from receiving Authority financial assistance or from being a tenant in an Authority-financed project.

19:30-2.2 Causes for disqualification/debarment of persons

(a) The Authority may decline to give financial assistance, or approval as a tenant in an Authority-financed project, to any person, or may debar a person from Authority project contracting for any one of the following causes:
1.-2. (No change.)
3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276 b, c);
4. Violation of any law governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;
5. (No change.)

6. Violation of any law governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any law governing the conduct of occupations or professions of regulated industries;

8. Violation of any law which may bear upon a lack of responsibility or moral integrity;

9. (No change.)

10. Debarment by any department, agency, or instrumentality of the State or Federal government;

11. Violation of any of the following prohibitions on vendor activities representing a conflict of interest, or failure to report a solicitation as set forth in (a)11ii below:

i.-v. (No change.)

19:30-2.3 Conditions affecting the disqualification/debarment of a person(s)

(a) The following conditions shall apply concerning disqualification/debarment:

1. The existence of any of the causes set forth in N.J.A.C. 19:30-2.2(a) shall not necessarily require that a person be disqualified/debarred. In each instance, the decision to disqualify/debar shall be made within the discretion of the Authority unless otherwise required by law, and shall be rendered in the best interests of the Authority.

2. All mitigating factors shall be considered in determining the seriousness of the offense or inadequacy of performance, and in deciding whether disqualification/debarment is warranted.

3. The existence of a cause set forth in N.J.A.C. 19:30-2.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the disqualification/debarment shall be removed upon the request of the disqualified/debarred person unless other cause for disqualification/debarment exists.

4. The existence of a cause set forth in N.J.A.C. 19:30-2.2(a)9 and 11 shall be established by evidence which the Authority determines to be clear and convincing in nature.

5. Debarment for the cause set forth in N.J.A.C. 19:30-2.2(a)10 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:30-2.2(a)1 through 8 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

19:30-2.4 Procedures; period of disqualification/debarment

(a) When the Authority seeks to disqualify/debar a person or his affiliates, the person or persons shall be furnished with a written notice stating that:

1. Disqualification/debarment is being considered;

2. The reasons for the proposed disqualification/debarment; and

3. An opportunity for a hearing will be afforded to such person or persons if the hearing is requested in writing and the request is received by the Authority within seven days from the date of personal delivery or the date of receipt of the mailing of such disqualification/debarment notice.

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 54:14B-1 et seq.). Where any Federal or State department, agency, or instrumentality has already imposed debarment upon a party, the Authority may also impose a similar debarment without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) Disqualification/debarment shall be a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Disqualification/debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of disqualification/debarment should not be imposed.

(d) Except as otherwise provided by law, a disqualification/debarment may be removed or the period thereof may be reduced in the discretion of the Authority, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause or causes for which the disqualification/debarment was imposed.

(e) A disqualification/debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(f) The offense or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

19:30-2.5 (No change in text.)

19:30-2.6 Authority discretion

Nothing contained in this subchapter is intended to limit the discretion of the Authority or the members in determining eligibility for financial assistance or eligibility of tenants, or in refraining from contracting with any person. The purpose of this subchapter is to provide notice of certain offenses or failures which may result in disqualification for assistance or debarment. Project applicants, tenants, and contractors must meet any other applicable standards and policies.

19:30-2.7 (No change in text.)

AGENCY NOTE: Subchapter 3 is recodified with amendments as subchapter 4. Subchapter 6, recodified with amendments as subchapter 3, follows:

SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS

19:30-3.1 Definitions

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

"Construction contract" means any contract, subcontract, or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with a project receiving Authority assistance and paid for in whole or in part with funds received through Authority assistance.

"Contractor" means any party who enters into a construction contract with the project owner/applicant, or any party to whom funds will be disbursed for payment of construction work, including any subcontractor of the contractor.

"Minority worker" means any worker as defined by the New Jersey Department of the Treasury rule set forth in N.J.A.C. 17:27-2.1.

"Project owner/applicant" means the entity which or individual who has applied for, or is the recipient of, Authority financial assistance.

19:30-3.2 Application of affirmative action regulations

(a) Every contractor involved in a construction contract is required to undertake a program designed to employ minority workers and female workers in accordance with the hiring goals to be established by the Affirmative Action Office, New Jersey Department of the Treasury (see N.J.A.C. 17:27-7.3).

(b) The project owner/applicant shall be responsible for the performance of its contractors under this subchapter.

19:30-3.3 Compliance

(a) A contractor will be considered in compliance with this subchapter only if the contractor has made every effort to meet the minority hiring goals and female hiring goals for each trade or craft

employed on the project. The goals are expressed as percentages of the total hours worked on the project in each trade. The Authority will publish these goals as part of its Affirmative Action program. At a minimum, the contractor must take the following steps in this effort:

1. Notify the Authority and at least two minority referral organizations of the contractor's labor needs, and request referrals of minority workers and female workers. The contractor shall leave standing requests for referrals of minority workers and female workers with the local unions, the State Employment Service, New Jersey Bureau of Apprenticeship and Training, and at least two referral sources designated from time to time by the Authority until such time as the contractor has met its hiring goals;

2. Give notice of employment opportunities to all minority workers and female workers who have been listed with the contractor as awaiting available vacancies;

3. Employ qualified minority workers and female workers who have been listed with the contractor as candidates for available vacancies; and

4. Keep complete and accurate records of all requests for worker referrals and hours worked.

19:30-3.4 Monitoring by the Authority

(a) The Authority will maintain an Office of Affirmative Action, the staff of which will review contractor performance for compliance with this subchapter. Each contractor will be required to submit to the Office of Affirmative Action, on a weekly basis, certified payroll records identifying the name, address, Social Security number, race, hourly wage rate, gross earnings of, and number of hours worked in each craft or trade by, minority, female, and other workers. The office of Affirmative Action will make field inspections of project sites, and may perform audits of records relating to construction activities on the project.

(b) The project owner/applicant and the contractor shall identify an officer or employee who will coordinate the Affirmative Action program and act as liaison with the Authority's Office of Affirmative Action.

(c) Each project owner/applicant and contractor shall resolve any questions regarding this subchapter with the Authority's Office of Affirmative Action prior to the execution of any construction contracts in connection with a project receiving Authority assistance.

(d) The Authority may prioritize its monitoring of construction contracts based on available staff, cost, nature, timing and extent of the work to be performed under the contract, the number of workers needed to perform the contract, and any other relevant factors.

19:30-3.5 Contract provisions

(a) Every construction contract must require that:

1.-2. (No change.)

3. The contractor must make every effort to employ minority workers and female workers at a level consistent with the applicable hiring goals.

4. The contractor must submit employment reports to the Authority on a weekly basis.

5. The contractor must submit such certificates to the Authority as are required by the Application for Financial Assistance.

6. (No change.)

7. The contractor shall comply with any rules promulgated by the New Jersey Department of Treasury pursuant to P.L. 1975, c.127 as amended and supplemented from time to time.

19:30-3.6 Failure to comply

(a) In the event the Authority determines that a contractor is not in compliance with this subchapter, the Authority will notify the contractor, the project owner/applicant, the construction lender, and the agent or trustee, in writing, of the steps the contractor should take to be considered in compliance.

(b) If the contractor fails to comply or otherwise respond after receipt of the notice in (a) above, the Authority may take action against the contractor or project owner/applicant including:

1. Direct the project owner/applicant, agent or trustee to withhold 10 percent of any disbursements to that contractor of bond proceeds or construction funds obtained with Authority assistance;

2. Institute debarment proceedings to preclude a contractor from contracting on Authority projects (see N.J.A.C. 19:30-2); and

3. Refer reported violations to the Attorney General for enforcement action under the "Law Against Discrimination."

19:30-3.7 Executive Director to enforce regulation

The Executive Director may require applicants for Authority assistance and recipients of Authority assistance to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority as are necessary to carry out the purposes of this subchapter. The Executive Director shall take such steps as are necessary to ensure compliance with this subchapter.

SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

19:30-4.1 Definitions

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

"Construction contract" means any contract, subcontract, or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with a project receiving Authority assistance and paid for in whole or in part with funds received through Authority assistance.

"Prevailing wage rate" means the prevailing wage rate established by the Commissioner of the New Jersey Department of Labor from time to time in accordance with the provisions of N.J.S.A. 34:11-56.30 for the locality in which the Project is located.

19:30-4.2 Payments of prevailing wages in Projects receiving assistance

Recipients of assistance from the Authority for projects, as defined in N.J.S.A. 34:1B-3, as a condition for receipt of such assistance, shall in all construction contracts in the amount of $2,000 or more, require that wages paid to workers employed in the performance of the construction contracts be not less than the prevailing wage rate for such work.

19:30-4.3 Assurances required

(a) Recipients of assistance for construction contracts shall deliver a certificate to the Authority (or designated agent for the Authority), upon completion of the project, signed by an authorized representative of the recipient, representing and confirming that:

1. It has complied and has caused its contractors and subcontractors to comply with the requirements of N.J.A.C. 19:30-4.2 and attaching true copies of all such construction contracts with contractors and subcontractors; or

2. It has not entered into any construction contracts subject to the provisions of N.J.A.C. 19:30-4.2.

19:30-4.4 Contract provisions required

(a) Each recipient of assistance from the Authority shall in all construction contracts in the amount of $2,000 or more require that:

1. (No change.)

2. Contractors and subcontractors keep accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and preserve such records for two years from the completion date of the project.

19:30-4.5 Violation

A violation of the provisions of this subchapter shall be deemed a violation of N.J.S.A. 34:11-56.25 et seq.

SUBCHAPTER 5. TARGETING OF AUTHORITY ASSISTANCE

19:30-5.1 Priority consideration for projects in economically distressed localities

(a) Subject to Federal tax law compliance and certain other legal restraints, all projects located anywhere in the State of New Jersey may qualify for assistance from the Authority if they meet certain economic needs. Nevertheless, the Authority recognizes the special

needs of certain municipalities and accordingly affords them priority consideration in offering its assistance. Such municipalities are eligible locations for a period of one year or longer.

(b) Qualification under this subchapter is not tantamount to project approval. Projects must also meet eligibility standards set forth in N.J.A.C. 19:31.

19:30-5.2 Municipalities eligible for priority consideration

(a) Municipalities meeting either of the following criteria are considered eligible locations:

1. Eligibility under P.L. 1987, c.439, which designates certain municipalities as "New Jersey Urban Aid Municipalities" based on a formula including, but not limited to:

i. Population exceeds 15,000;

ii. At least one publicly financed dwelling unit for low income families;

iii. The number of children receiving "Aid to Families of Dependent Children" exceeds 250;

iv. The municipality's equalized tax rate exceeds the State equalized tax rate; and

v. The municipality's equalized valuation of real property per capita is less than the State equalized valuation per capita.

2. Eligibility under the Authority's formula, which requires that three of the four following standards are met:

i. Unemployment rate above the State average;

ii. Per capita income lower than the State average;

iii. Ratables per capita less than the State average;

iv. A total number of unemployed persons of 1,000 or more.

(b) A municipality shall remain on the list of eligible locations for a period of one year after the municipality ceases to meet the criteria in (a)1 and 2 above.

19:30-5.3 Special eligibility list

The Executive Director shall, from time to time, establish a list of municipalities and activities by Standard Industrial Classification Number, eligible for Authority assistance, notwithstanding the requirements of N.J.A.C. 19:30-5.2 and 19:31, based on the Authority's objectives as indicated in N.J.A.C. 19:30-1.1.

AGENCY NOTE: Subchapter 5 is recodified with amendments as subchapter 2. Subchapter 2 recodified with amendments as subchapter 6 follows:

SUBCHAPTER 6. FEES

19:30-6.1 Application fee

A non-refundable fee of $500.00 shall accompany every application for Authority assistance, except for an application under the Urban Centers Small Loan Program for which the fee is $250.00, and except for an application under the Trade Adjustment Assistance Center program for which there is no application fee. The non-refundable application fee of $500.00 for a guarantee of a bond issued by the Authority is in addition to the bond application fee.

19:30-6.2 (No change in text.)

19:30-6.3 (No change in text.)

19:30-6.4 Post-closing fees

(a) The fees in this section are due and payable upon closing of the bond amendment, approval of change of ownership, or signing of amendment, consent, waiver, etc.

1. For refunding bonds issued to refinance or change the terms of outstanding Authority bonds, an amount equal to one-half of the closing fee (see N.J.A.C. 19:30-6.3(a)) shall be charged.

2. For combination refunding and new money bonds, an amount equal to one-half of the closing fee (see N.J.A.C. 19:30-6.3(a)) shall be charged on the refunding portion and the closing fee (see N.J.A.C. 19:30-6.3(a)) shall be charged on the new money portion.

3. For change of ownership of 50 percent or more of the project property or ownership interest in the borrower to an unrelated entity, or to a related entity not previously approved by the Authority for the project, a $1,500 fee shall be charged.

4. For change of ownership of the project property or ownership interest in the borrower to a previously Authority-approved related entity, or for the transfer of less than 50 percent of the project property or ownership interest in the borrower to an unrelated entity (excluding a limited partner, or a shareholder holding or about to hold an ownership interest in the borrower of 10 percent or less), a $750.00 fee shall be charged.

5. For changing project location or description, or changing loan document provisions on bond-financed projects, a $750.00 fee shall be charged.

6. For executing a document or granting a consent or waiver related to an Authority-assisted project, a fee of $100.00 shall be charged.

7. For executing (up to ten bonds) or authorizing issuance of substitute bonds, a fee of $25.00 per project, per occurrence shall be charged.

(b) When a transaction does not by its terms fall into one of the above categories, the Authority in its discretion shall determine the appropriate category based on the substance of the transaction. The categorization of the transaction on U.S. Department of the Treasury, Internal Revenue Service Form 8038 will be a significant factor in the determination of the fee.

19:30-6.5 Sign fee

Applicants requesting financial assistance from the Authority, where part of the project consists of construction or renovation, will be sent a sign, upon granting of approval by the members, which is to be erected at the project site indicating that the financing was made available through the Authority. The applicant will be charged $75.00 for the sign which is payable upon receipt of the sign.

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Bond Financing Program
Loan Guarantee Program
Direct Loan Program
Urban Centers Small Loan Program
Export Revolving Line of Credit
New Jersey Trade Adjustment Assistance Center

Adopted New Rules: N.J.A.C. 19:31

Proposed: May 21, 1990 at 22 N.J.R. 1545(a).

Adopted: July 19, 1990 by the New Jersey Economic Development Authority, James J. Hughes, Jr., Executive Director.

Filed: July 23, 1990 as R.1990 d.410, **without change.**

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(k) and (l).

Effective Date: August 20, 1990.

Expiration Date: August 20, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 31
AUTHORITY ASSISTANCE PROGRAMS

SUBCHAPTER 1. BOND FINANCING PROGRAM

19:31-1.1 Program description

(a) The Authority is empowered to issue tax-exempt and taxable bonds, the proceeds of which can be used to provide low-interest loans to businesses and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables.

(b) Most bond financings are not guaranteed by the Authority or the State, and are payable solely from revenues generated by the project being financed.

(c) The general credit of neither the Authority nor the State is pledged to secure the bonds.

19:31-1.2 Bond purchaser

(a) The applicant shall secure a written commitment from a bond purchaser.

(b) A bond purchaser shall be:

1. A commercial bank or other institutional lender;
2. An underwriter or placement agent;
3. A privately owned entity; or
4. An individual.

(c) A bond purchaser cannot be a substantial user or owner of the project (as defined by the Internal Revenue Code) or be related to the project owner.

(d) A bond purchaser other than a commercial bank or institutional lender must submit an Application to Purchase Bonds, which will be reviewed by the Authority to determine acceptability to purchase a bond. This application includes requests for identification of, or information about:

1. The officers, directors, partners, owners and stockholders of the applicant;
2. Litigation involving the applicant;
3. Applicant's counsel, principal banks of account, and accountant; and
4. Financial statements of applicant.

(e) The bond purchaser establishes the amount, term, interest rate, collateral, etc., for the bond in negotiation with the applicant.

19:31-1.3 Bond financing

(a) Typically, the bonds are secured by a loan agreement and a mortgage on project assets.

(b) The funds raised by the bond issue are loaned by the Authority to pay for eligible project costs. The borrower signs an agreement with the Authority pledging to make payments sufficient to cover principal and interest on the bond. This agreement is then assigned to the bond purchaser.

(c) The borrower makes payments directly to the bond purchaser or trustee.

19:31-1.4 Eligibility standards

(a) Generally, to be eligible for bond financing:

1. A project must serve a public purpose; that is, maintain or expand employment in New Jersey, assist in the economic development or redevelopment of a municipality, maintain or increase the tax base of the municipality, and maintain or diversify business and industry in the State; and
2. Applicants must represent to the Authority that they would not proceed with their project in the present time, place, or scope without the Authority's assistance.

(b) The Authority generally will not approve financial assistance to a project involving relocation within New Jersey if the relocation will result in a job loss and/or hardship for the existing employees or if the relocation endangers the maintenance of tax ratables in a particular community.

(c) There is no minimum size for borrowings under the program, but loan requests of less than $500,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Code (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project. The interest income earned is exempt from most Federal and New Jersey State taxes.

(e) Taxable bonds issued through the Authority are not subject to the IRC. Loans may be made to borrowers for various projects and purposes including, but not limited to:

1. Office buildings;
2. Healthcare financings;
3. Warehouses and distribution facilities;
4. Manufacturing projects;
5. Commercial and retail projects;
6. Debt refinancing; and
7. Working capital needs.

19:31-1.5 Application procedures

(a) A prospective applicant should consult with the Authority to determine if the project is eligible.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) The Application includes requests for information about:

1. The applicant's business, including financial statements and projections;
2. The project to be undertaken;
3. The officers, directors, partners, owners and stockholders of the applicant;
4. Litigation involving the applicant;
5. Other users of the project, if applicable;
6. Municipal approvals, if applicable;
7. Contractors, subcontractors, architects, engineers, and planners who will work on the project, if known;
8. Equipment to be purchased as part of the project; and
9. The relocation of any part of the applicant's or user's business, if applicable.

(d) Applications are logged in and assigned a number and project officer for review and processing.

(e) Applications are assigned to a bond counsel firm from the Authority's list of designated bond counsel to review the project for eligibility under Federal and State law (see N.J.A.C. 19:31-1.6). At the time of application, applicants may request assignment of one of the designated bond counsel firms, which request may be approved by the Authority at its discretion.

(f) Applications are processed through several levels of staff review, and may then be recommended for consideration and official action of the Members of the Authority (Members) at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-1.6 Bond counsel review and fees

(a) The Authority is represented in bond transactions by bond counsel, a private law firm with particular experience and expertise in this specialized area of law. The bond counsel firm:

1. Reviews Applications to determine eligibility under Federal and State law;
2. Assists the Authority in drafting the necessary resolutions to be adopted concerning projects;
3. Publishes notice of public hearing;
4. Drafts financing documents to be used in the transaction;
5. Prepares certain Federal forms for filing with the IRS relating to bond financing;
6. Delivers an opinion at the settlement of the transaction indicating, among other things:

i. The project qualifies for Authority assistance;

ii. The Authority has taken all necessary steps to accomplish the transaction; and

iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

(b) Bond counsel fees are paid by the applicant usually at the closing of the transaction, and may, subject to certain limitations, be included as a project cost to be financed out of the Authority bond issue.

(c) The borrower also is responsible for paying other professional fees associated with financing the project, including, but not limited to:

1. Printing fees;
2. Real estate commissions;
3. Consulting fees; and
4. Bond purchaser counsel fees.

(d) Applicants may be charged a fee by bond counsel even though the project does not close with Authority bonds.

19:31-1.7 Approval process

(a) Only the Members acting at a duly constituted public meeting can authorize or approve assistance to a project. These public meetings will satisfy the requirements for public hearings in accordance

with the IRC. The Authority staff is not empowered to authorize or approve such assistance.

(b) The following approvals are required:

1. A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.

i. Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.

ii. If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.

iii. A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;

2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:

i. Receipt of a written commitment acceptable to the Authority from a bond purchaser;

ii. Substantial agreement among the interested parties as to the form and substance of the financing documents; and

iii. Availability under the State volume cap for bond financing in accordance with the IRC; and

3. Approval of the Governor.

(c) Bond counsel may prepare a combination resolution granting both preliminary and final bond approval at a single meeting, if the requirements set forth in (b)1 and 2 above have been met.

(d) The bond closing must occur within a specified period of time, usually not exceeding 90 days from the date of final bond approval.

19:31-1.8 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

19:31-1.9 Post-closing review

The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond.

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

19:31-2.1 Program description

(a) The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

(b) There are two types of guarantees available: Fixed Asset Guarantees and Working Capital Guarantees.

1. Under the Fixed Asset Guarantee program:

i. The Authority may guarantee the lesser of $1.5 million or 90 percent of the principal amount of the financing;

ii. The financing can either be a conventional loan, or a taxable or tax-exempt bond financing (see N.J.A.C. 19:31-1);

iii. Proceeds of guaranteed conventional loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

iv. Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

2. Under the Working Capital Guarantee program:

i. The Authority may guarantee the lesser of $1 million or 90 percent of the principal amount of the financing;

ii. The financing can be either a conventional loan or a taxable bond, as tax-exempt bonds cannot be used to provide working capital; and

iii. The loan proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(c) Both the Fixed Asset Guarantee and the Working Capital Guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term.

19:31-2.2 Eligibility standards

(a) Generally, preference for guarantees is given to projects which:

1. Are job intensive;

2. Will create or maintain tax ratables;

3. Are located in an economically distressed area; and/or

4. Represent an important economic sector of the State.

(b) For fixed asset financing guarantees, the applicant will be required to invest at least 10 percent equity into the project.

19:31-2.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. A formal commitment letter from the lender providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-2.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-2.5 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-2.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) The Authority is empowered to make direct loans to applicants which are unable to obtain funding from conventional sources even with the help of an Authority guarantee.

(b) Direct loans are available in a maximum amount of $500,000 for fixed asset financing and $250,000 for working capital.

(c) Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings.

(d) Proceeds of working capital loans can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(e) Interest on fixed asset and working capital loans is equal to the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing.

(f) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay.

19:31-3.2 Eligibility standards

(a) Generally, preference for direct loans is given to projects which:

1. Are job intensive;
2. Will create or maintain tax ratables;
3. Are located in an economically-distressed area; and/or
4. Represent an important economic sector of the State.

(b) For fixed asset loans, the applicant will be required to invest at least 10 percent equity into the project.

(c) The applicant must demonstrate to the Authority that it is unable to obtain conventional, affordable financing on its own or with the availability of an Authority guarantee.

19:31-3.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and
8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-3.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-3.5 Approval process

(a) Only the Members can approve a direct loan.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-3.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 4. URBAN CENTERS SMALL LOAN PROGRAM

19:31-4.1 Program description

(a) The Authority is empowered to make direct loans to owners and operators of retail and commercial businesses located in downtown urban areas who are unable to obtain funding from conventional sources to upgrade their properties and to remain in such areas.

(b) Applicants may be eligible for loans in amounts ranging from $5,000 to $50,000.

(c) Proceeds of loans are to be used primarily to renovate, remodel or expand the interior and/or exterior of the facility, but a limited amount of the funds can be used for working capital.

(d) Interest on these loans is equal to the lower of one percent below the Federal Discount Rate at the time of approval or at time of loan closing, with a minimum of four percent and a maximum of 10 percent.

(e) The term of the loan is a maximum of 10 years, although the repayment schedule is usually for a shorter term based on the applicant's ability to repay.

19:31-4.2 Eligibility standards

To be eligible, an applicant must be located in the downtown area of a targeted municipality (see N.J.A.C. 19:30-5).

19:31-4.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

7. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts payable; and/or

3. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-4.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

5. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

6. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

7. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing the above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-4.5 Approval process

(a) Only the Members can approve an Urban Centers loan.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant, and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-4.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 5. EXPORT REVOLVING LINE OF CREDIT

19:31-5.1 Program description

(a) The Authority is empowered to extend revolving lines of credit for production of goods and services for export to applicants which are unable to obtain funding from conventional sources.

(b) Lines of credit are available up to an amount of $250,000.

(c) Funds provided under this program must be used to finance the purchase of materials and other production costs for specific, firm contracts and can be used for pre- and post-expert working capital.

(d) Interest on advances under the line of credit is set at the Federal Discount Rate at the time of each borrowing.

(e) The amount of each borrowing, including principal and interest, is payable in full upon collection of the accounts receivable created as a result of the specific contract.

(f) Generally, any borrowing under the line of credit is to be repaid within 180 days of the advance.

19:31-5.2 Eligibility standards

(a) Eligibility criteria for the export revolving line of credit are as follows:

1. The applicant is in or entering the export market for goods or services, at least 50 percent of the cost of which must be added in New Jersey; and

2. The applicant must have a firm contract to sell;

i. The contract payment must be secured by an irrevocable, assignable, and United States bank-confirmed letter of credit; or

ii. The accounts receivable must be accepted and insured by the Foreign Credit Insurance Association.

19:31-5.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-5.4 Evaluation process

(a) Once all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of the applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing the above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval or disapproval.

19:31-5.5 Approval process

(a) Only the Members can approve an Export Revolving Line of Credit.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant, and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-5.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 6. NEW JERSEY TRADE ADJUSTMENT ASSISTANCE CENTER

19:31-6.1 Definitions

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

"Certification" means the process of determination by the USDOC that a company is eligible to apply for assistance under this program.

"Certified Firm" means a company which has been determined to be eligible to apply for assistance under this program.

"Petitioner" means a manufacturing or producing company seeking assistance under this program.

"TAAC" means the New Jersey Trade Adjustment Assistance Center.

"USDOC" means the United States Department of Commerce.

19:31-6.2 Program description

(a) The Authority operates a TAAC for the State of New Jersey under a cooperative agreement with the International Trade Administration of the USDOC.

(b) The TAAC works with manufacturing/producing firms (generally, Standard Industrial Classification Numbers 2000 to 3999) whose sales or production and employment have declined due to the impact in the marketplace of like or directly competitive imported products.

(c) After a petitioner achieves certification, the TAAC may assist in the development of a business plan in order to identify the specific types of assistance needed.

(d) If the plan is approved by USDOC, the TAAC is empowered to provide project management and partial funding from USDOC to implement the assistance.

19:31-6.3 Eligibility standards

(a) To be eligible, a manufacturing/producing company must have a decline in sales or production in the aggregate or for a product representing 25 percent of sales, and a decline in employment of at least five percent.

(b) The decline must be due to the competition of imported products, which products must represent an increasing share of the U.S. market.

(c) Determinations on eligibility are made by the USDOC in response to a petition package submitted, with the assistance of the TAAC.

19:31-6.4 Application and approval process

(a) The petitioner should consult with the TAAC to determine its potential eligibility.

(b) In response to a request for assistance from a potentially-eligible petitioner, TAAC will work with the petitioner in preparing the petition for certification.

(c) If certification is granted, the certified firm may be assisted by the TAAC in developing the business plan and accompanying information to be submitted to the USDOC.

(d) If the plan is accepted by the USDOC, the TAAC may assist in obtaining implementation assistance, using business consultants, and in obtaining funding for the assistance.

(e) All approvals are made by the USDOC.

19:31-6.5 Cost of implementation assistance

(a) The certified firm is required to share in the costs.

(b) The determinations of the actual cost sharing will be made by USDOC, which may not provide more than 75 percent of the costs up to a dollar limit (set by USDOC, and revised from time to time).

(a)

CASINO CONTROL COMMISSION

Temporary Amendment of Accounting and Internal Controls Pursuant to the Automated Coupon Redemption Machine Experiment

N.J.A.C. 19:45-1.1, 1.34, 1.35, 1.46 and New Rule N.J.A.C. 19:45-1.46A

Petitioner: Trump's Castle Associates and Trump Plaza Associates

Authority: N.J.S.A. 5:12-69(c), 5:12-69(e) and 5:12-99(a)

Take notice that beginning August 27, 1990, the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct a test for the period of 90 days (until November 25, 1990) for the purpose of determining if new rules should be adopted which would permit casino licensees to utilize an automated coupon redemption machine for the purpose of redeeming coin coupons.

Specifically, the test would allow Trump's Castle Associates and Trump Plaza Associates to utilize automated coupon redemption machines to redeem coin coupons on the casino floor. The test will be conducted at Trump's Castle Associates and Trump Plaza Associates for the purpose of evaluating the viability and operational suitability of automated coupon redemption machines. Signage will be posted at major casino entrances in Trump Castle, Trump Plaza and on the machines themselves.

A petition for rulemaking on this subject was filed with the Commission on February 1, 1990. Should the test prove successful, the Commission will propose new rules for adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF COASTAL RESOURCES

Coastal Zone Management

Readoption with Amendments: N.J.A.C. 7:7E

Proposed: April 16, 1990 at 22 N.J.R. 1188(a).

Adopted: July 24, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: July 24, 1990 as R.1990 d.413, **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. 13:1D-1 et seq.; 13:19-1 et seq.; 13:9B-1 et seq.; 13:9A-1 et seq., and 12:5-1 et seq.

DEP Docket Number: 009-90-03.

Effective Date: July 24, 1990, Readoption; August 20, 1990, Amendments.

Expiration Date: July 24, 1995.

Summary of Public Comments and Agency Responses:

The readoption with amendments was proposed on April 16, 1990. The Department held public hearings in Asbury Park on May 10, 1990, Atlantic City on May 11, 1990 and Trenton on May 15, 1990. The comment period for this proposal ended on June 1, 1990. Oral comments were received from the majority of the approximately 80 people who attended the public hearings. The Department received written comments from 47 individuals.

Also pursuant to Federal regulations (15 CFR 923.84), the Department is taking rulemaking action as described in the Notice of Adoption. The Department considers this action to constitute "Routine Program Implementation" of the New Jersey Coastal Management Program. This term is defined in 15 CFR 923.84 as a program change which does not involve:

"Substantial changes in . . . or to enforceable policies related to: (1) boundaries; (2) uses subject to the management program; (3) criteria or procedures for designating or managing areas of particular concern of areas for preservation or restoration; and consideration of the national

interest involved in the planning for and in the sitting of, facilities which are necessary to meet requirements other than local in nature."

The Division has requested the concurrence of the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration, with its determination that this rulemaking action constitute routine program implementation. Comments concerning whether or not this rulemaking action should be considered routine program implementation should be sent, on or before October 31, 1990 to:

Kathryn Cousins
North Atlantic Regional Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Road
Washington, D.C. 20235

GENERAL COMMENTS:

COMMENT: The social and economic impact statements are incorrect; the amendments will have a negative social and economic impact. The Division of Coastal Resources (Division) needs substantive and procedural changes so that it can be responsive and efficient in its day-to-day operations. Unless the Division cuts back or maintains its "status quo" responsibilities, these rules will have a negative social impact and economic impact.

RESPONSE: The Department of Environmental Protection (Department) acknowledges that its level of responsiveness to the applicant has decreased in the past two years, during which time the Division has grown in terms of size and areas of responsibility and was relocated and reorganized to adjust to these changes. The Department disagrees however that this problem is caused by these rules or their amendments. The Coastal program, the Freshwater Wetlands Protection Program and Stream Encroachment Program were consolidated to improve the overall responsiveness and efficiency of the programs since their jurisdictions overlap. As suggested, the Division has, in this rule proposal, lessened its workload by deleting four resource policies so that time could be more efficiently spent on the more critical policies. The remaining rules do inevitably adversely affect the development potential of certain sites, but the Department maintains its original assessment that these rules will have a positive overall social and economic impact on the New Jersey coast.

COMMENT: The State regulatory programs need to be consolidated and simplified at the local, county and State governmental levels.

RESPONSE: The Department agrees with this comment. The Department has taken steps to consolidate and simplify its programs. For example, the Division of Coastal Resources in 1979 combined three separate regulatory programs (Waterfront Development, Coastal Wetlands, and the Coastal Area Facility Review Act, (CAFRA), N.J.S.A. 13:19-1 et seq.) into one regulatory program. These proposed amendments begin to simplify the coastal regulatory program by eliminating four rules (Energy Conservation, Solid Waste Groundwater Use, and Wet and High Permeability Soils). In addition the Department is working closely with the State Planning Commission to ensure that the State Development and Redevelopment Plan and the Department policies are well coordinated.

COMMENT: The Division is overworked and ineffective in processing permit applications. For instance, requests to modify previously issued permits take four to six months to be processed.

RESPONSE: The Division within the last two years has acquired three new regulatory programs (Stream Encroachment, Freshwater Wetlands and Waterfront Development upland jurisdiction within the coastal area). This addition of new programs requires training of existing and new personnel, the establishment of effective procedures to enable efficient and quality decisions to be made and an increase in the number of new personnel to process the substantial rise in permit applications. These improvements, unfortunately, take time, but the Division has made progress in these management areas and is striving to shorten review times.

COMMENT: The Department does not have authority to impose land use related restrictions such as development setbacks, restrictions on surface pavement and restrictions on the sitting of marinas, under CAFRA.

RESPONSE: CAFRA requires the Department to make broad findings with respect to air, water, radiation standards, and the natural functioning of plant, animal, and human processes and to insure that the public health, safety and welfare is not impaired. Requirements for development setbacks, restrictions on surface pavement, and sitting restrictions on marinas are designed to minimize the effect of new development on water quality and biological processes while accommodating development. Since the Department has been given authority under CAFRA to regulate development and ensure that environmental impacts are minimized, the requirement of specific design criteria is a valid exercise of this authority.

COMMENT: The cost to applicants of preparing and processing CAFRA permit applications is $100,000. An environmental impact statement is not necessary. The Coastal Location Acceptability Method (CLAM), a part of the Rules on Coastal Resources and Development, is sufficient.

RESPONSE: The Department does not collect data with respect to application preparation costs from applicants and believes that this cost varies widely depending on the nature and scope of the site and the project. CAFRA requires that environmental impact statements be prepared for all CAFRA permit applications. The Department works with individual applicants to minimize information requirements.

COMMENT: The proposed regulations will not unnecessarily infringe on the rights of individual property owners. An example mentioned is the dedication of a portion of a filled water's edge site for public access/open space reasons.

RESPONSE: The Department agrees with this comment and has created flexibility within the Filled Water's Edge Policy to ensure that the feasibility and applicability of such requirement would be evaluated based on the need, the specific condition of the site, and the nature of the proposed project.

COMMENT: The implementation of the proposed amendments should only be prospective in nature and should not be applied to applications already filed. This limitation ought to be stated as part of the rules.

RESPONSE: Presently the Department seeks to provide guidance for prospective applicants and not change the rules once an application has been received and declared complete for review by the Department. Any application not received or received but not declared complete for review will be reviewed by the Department under the adopted amended rules. Any application declared complete for review prior to adoption of the amended coastal rules will be reviewed under the rules previously in effect. The Department will consider adding this ongoing procedure to the next proposed amendments of the Coastal Program Regulations at N.J.A.C. 7:7.

COMMENT: The Department has the authority to waive coastal policies and should allow waivers in cases where a project ought to be approved in a different form than what is required by the land use policies.

RESPONSE: The Coastal Zone Management Rules represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses in diverse coastal locations. Numerous balances have been struck among these interests in defining these policies. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns in contrast to other resource management programs which have a more limited scope of concern. Decision making on individual proposed actions using the coastal rules must therefore consider all these steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the policies. Many rules have such terms as "prudent," "feasible," "practicable," and "maximum extent." The interpretation of these terms may vary depending upon the relationship of the proposed use, location and design. However, this flexibility does not allow arbitrary decision making or unrestrained administrative discretion. Rules cannot be waived or ignored. If a rule is found to be unreasonable, the Department will seek to amend the rule through the public rulemaking process and not through individual permit decision making.

COMMENT: It should be mentioned in the proposed amendments that the Coastal Program Rules on Waterfront Development, amended in October 1988, giving the Department authority to regulate almost any development adjacent to tidal waters under the Waterfront Development Act, N.J.S.A. 12:5-3 et seq. was struck down by an Appellate Court decision.

RESPONSE: Since this comment was made, the Supreme Court of New Jersey upheld the Appellate Division, Superior Court decision in *Last Chance Development Partnership, et al., v. Thomas H. Kean, et al.* on June 20, 1990. The Department adopted an emergency rule with concurrent proposal, effective July 17, 1990, using guidance found in the Supreme Court decision to reestablish authority over certain types of development near tidal waters. The rule struck down by the Supreme Court, portions of N.J.A.C. 7:7-2.3, is part of the Coastal Permit Program Rules embodied in N.J.A.C. 7:7 and not these rules, N.J.A.C. 7:7E, which the Department seeks to amend and readopt.

COMMENT: Has the Department set aside the permit fees in an escrow account for the applications that were required to be submitted by the rules recently struck down by the Supreme Court; will the fees be refunded; and will applicants that were subject to permit review be compensated for the temporary taking of their land?

RESPONSE: The Department is looking into the potential of refunding fees for all applications which had not been processed by June 20, 1990 after the Supreme Court decision was issued. The Department does not believe a temporary taking has occurred.

COMMENT: The coastal permit program jurisdiction should be expanded to include development with projects less than 25 units.

RESPONSE: The Department is working toward doing this by the emergency rule amendment referenced above to the extent allowed by law, but believes that in order to more fully protect all the resources mentioned in CAFRA, new legislation, which it is seeking, would be necessary.

COMMENT: Many respondents asked that the comment period be extended to allow more for review and preparation of comments.

RESPONSE: The Department is aware that the time frame of the comment period is limited, but is obligated to readopt the coastal rules before they expire on July 24, 1990. To meet this deadline and accommodate public review and comment, the June 1 deadline, giving a comment period of 16 days more than that required by The Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., was chosen as a matter of necessity. Division staff hope to continue discussing issues raised by the proposal with members of the public in the following months.

COMMENT: The Rules on Coastal Zone Management undermine local initiatives. The City of Atlantic City is a good example.

RESPONSE: CAFRA at N.J.S.A. 13:19-19 states that "[t]he provisions of this Act shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, *including municipal zoning authority* (emphasis added). The Department has attempted to administer CAFRA respecting the separate police powers of municipalities while attempting to implement the mandate of CAFRA. Because development must comply with both municipal and State regulations, there is bound to be some conflict and inconsistency. The Department will continue to address this concern and to address any real and perceived conflict.

COMMENT: The proposed amendments go far beyond legislative intent.

RESPONSE: This comment was made without reference to a specific amendment for specific policies. Instead of seeking to respond generically, the Department addresses this in responses to specific topic areas.

COMMENT: Several respondents object to the new rulemaking procedure by the Department where interested parties cannot participate in the discussion and drafting of amendments. This new procedure places interested parties in a reactionary rather then in a participative position.

RESPONSE: The Department is reviewing this procedure with the goal of providing a more participatory framework for discussing and drafting new rules and rule amendments while still fully complying with the dictates and spirit of the APA.

COMMENT: The Department should set guidelines for development on piers outside of the Hudson River Region.

RESPONSE: The Department will consider addressing this issue in a subsequent rule amendment.

N.J.A.C. 7:7E-1.2 Jurisdiction

COMMENT: One commenter requested that the Department clarify which requirements of the Coastal Zone Management rules apply to Water Quality Certificates and the criteria used for issuing these certificates by the Department.

RESPONSE: The Department is currently preparing a set of rules governing the issuance of Water Quality Certificates and will cross-reference these new rules in the Coastal Zone Management Rules once they are adopted.

COMMENT: One commenter expressed concern with the impact that the Coastal Zone Management Rules would have on other Department management actions, specifically regarding the application of these rules in the allocation of Department planning grants and wastewater treatment construction grants, and objected to the application of the rules to grant allocations.

RESPONSE: The Department believes that there should be a coordinated approach in its planning and management activities and that these provisions should be maintained for that purpose. That is why the provisions have been part of these rules since they were first adopted in 1978.

N.J.A.C. 7:7E-1.5 Coastal decision-making process

COMMENT: The State Development and Redevelopment Plan cannot and should not be used in the coastal decision making process because the coastal area was explicitly excluded from the State Planning Act and the Plan has not been adopted.

RESPONSE: The Department agrees and has accordingly deleted the reference to the State Development and Redevelopment Plan at N.J.A.C. 7:7E-1.5(b)iii in this adoption. Although the CAFRA area was excluded from the State Planning Act, there has been a concerted effort by the coastal counties, the Department and the State Planning Commission to coordinate the development of the State Plan in the coastal counties on a county-wide basis, rather than limiting the State Plan's development process to only portions of the county outside of the coastal area. It was the intent of the Department to acknowledge this ongoing coordination effort when this reference was added.

N.J.A.C. 7:7E-1.6 Mitigation

COMMENT: The rule should encourage counties to plan for mitigation on a regional basis by identifying restoration sites.

RESPONSE: The identification of potential mitigation sites on a regional basis is encouraged and supported by the Department. The Department has provided and will continue to provide technical assistance and available funding to work with the local governments in such efforts.

COMMENT: One commenter stated that all open space should require mitigation for its loss.

RESPONSE: The Department agrees that the protection of open space is desirable, but does not see that mitigation requirements can be easily applied to the wide range of projects reviewed by the Department at this time. The feasibility, advantages and disadvantages of such a requirement would need to be addressed before such a requirement could be incorporated.

N.J.A.C. 7:7E-3.6 Submerged vegetation

COMMENT: What is the rationale for including attached green algae in the rule?

RESPONSE: Attached green algae have value comparable to eel grass in serving as good nursery grounds for juvenile fish populations.

N.J.A.C. 7:7E-3.14 Wet Borrow Pits

COMMENT: The Department needs to clarify the overlapping of jurisdictions. The possible application of open water and wetlands regulations on wet borrow pits is not the intent of the Legislature.

RESPONSE: Where a wet borrow pit is a State open water as defined at N.J.A.C. 7:7A-1.4, any filling or dredging activities would be regulated and require an open water fill permit under the Freshwater Wetlands Protection Act (FWPA), N.J.S.A. 13:9B-1 et seq. Since FWPA Rules supersede the Coastal Rules in regulating Freshwater Wetlands, the wet borrow pit policy would apply only in cases where specific regulated activities have been exempted from the FWPA pursuant to N.J.A.C. 7:7A-2.

COMMENT: The proposed amendment does nothing to define open water versus wet borrow pit versus a wetland wet borrow pit, leaving an applicant at the whim of an individual review officer. Open water, wet borrow pit and wetland wet borrow pit should be defined individually.

RESPONSE: All wet borrow pits could be either open water or wetlands. If a wet borrow pit can meet the definition of a freshwater wetland as determined by the three parameter approach, (hydrology, soils and vegetation—see N.J.A.C. 7:7A-2.4), it is then a freshwater wetland by definition. The definition of State open waters is provided at N.J.A.C. 7:7A-1.4. A water body which serves or could serve as a resting area for migratory birds is a State open water by definition. To include an additional definition to redefine freshwater wetlands or State open water that is already defined and regulated under the FWPA Rules would cause confusion and possibly create inconsistency between those rules and the Coastal Zone Management Rules.

N.J.A.C. 7:7E-3.16 Dunes

COMMENT: One commenter stated that sand landward of a shore protection measure should not be considered as a dune; shore protection measures should be built into the definition of dunes.

RESPONSE: The Department disagrees with the commenter's assertion that dunes located landward of a shore protection measure should not be considered as dune. Dunes are valued and protected for their function as a natural buffer against storms and flooding and as wildlife habitats. Dunes located landward of a shore protection measure still perform these valued functions. In addition, the potential for structural

failure does exist, whether it is a bulkhead or revetment. The beach and dune system is still considered the best shore protection measure by far.

N.J.A.C. 7:7E-3.17 Overwash Areas

COMMENT: How is the boundary drawn for the inland limits of sediment transport or the landward limit of the overwash area?

RESPONSE: The boundary of the overwash area is typically established from the shape of the land form shown on the post storm aerial photography taken over the site where the formation of an overwash fan had occurred.

N.J.A.C. 7:7E-3.18 Coastal High Hazard Areas

COMMENT: The policy should require maintenance easements along sea walls that are of sufficient width to accommodate equipment such as large cranes. The 25 foot setback is not sufficient to allow proper maintenance of the seawall.

RESPONSE: Based on the Department's previous experiences in maintaining sea walls, the 25 foot setback appears to be sufficient. Tracks for a typical crane are 14 feet wide. As a standard practice, an easement agreement is typically obtained from the property owners to ensure the unimpeded access for the maintenance of the structure whenever a public shore protection measure is placed on private properties.

COMMENT: Development should be allowed in the Coastal High Hazard Areas provided that it complies with the construction code for flood proofing. Federal Emergency Management Agency (FEMA) Maps were never intended to be used for prohibition of construction. A prohibition of construction on these properties is a taking without compensation.

RESPONSE: Coastal High Hazard Areas are areas subject to high velocity waters and minimum three-foot high wave breaking actions. Structures in these areas are vulnerable to severe storm damage and are so identified by the FEMA Maps. Buildings constructed in accordance to the applicable federal flood hazard reduction standards as found in the Uniform Construction Code, N.J.A.C. 5:23, can withstand the storm damage better, but can still be damaged by storms. The prohibition of new construction in these high risk areas is necessary to minimize any losses of life and property from inevitable flooding and storm surges and to reduce public costs caused by private risk taking.

The Department believes that it has the legal authority to promulgate this rule and that the rule does not constitute a taking of property.

COMMENT: The policy fails to address the acceptability status for rebuilding and reconstruction of existing buildings. Some exception for rebuilding or limited expansion for residential development should be allowed.

RESPONSE: The Department addresses the rebuilding issue in the Coastal Permit Program Rules at N.J.A.C. 7:7-2.3(d)3 and amended that section of the rule in the emergency rule amendment referenced above to exempt the reconstruction of any building which existed prior to January 1, 1981 not resulting in an increase of more than 750 square feet over that of the building as it existed prior to January 1, 1981, provided that such reconstruction does not bring the footprint of the building any closer to the mean high water line, most inland oceanfront beach or most inland oceanfront dune.

N.J.A.C. 7:7E-3.19 Erosion Hazard Areas

COMMENT: One commenter requested to see the extent of the erosion hazard areas.

RESPONSE: The Department has adopted a new methodology to more accurately determine erosion rates. This determination is based on site specific data. Therefore, it is now virtually impossible to map the erosion hazard areas for the entire coast. The Department does, however, provide all relevant information necessary for the determination of the extent of erosion areas for specific sites upon request.

COMMENT: The Department should provide the public a rationale for the change in the formulation of these areas and publish in the New Jersey Register detailed diagrams of how the size of these areas is calculated for dunes, non-dunes and coastal bluffs.

RESPONSE: The rationale is provided in the Summary attached to the notice of proposal for these rules which was published in the New Jersey Register at 22 N.J.R. 1188(a) on April 16, 1990. For the convenience of the public, the Department has been reprinting the rules with the rationales as well as illustrations in its own public information publications and will continue to do so in the future. The Department will consider adding graphic information to illustrate how to determine the extent of an Erosion Hazard Area for dunes, non-dunes and coastal bluffs in the reprints.

COMMENT: Who has the burden of proof in determining the long term erosion rate?

RESPONSE: The Department has its own data for determining long term erosion rate of a site. However, should anyone demonstrate to the Department that another determination is more accurate, the Department will accept that determination.

COMMENT: How are the criteria for erosion hazard areas defined? Is it by dune gap?

RESPONSE: The erosion hazard area is a distance which is determined based on the annual erosion rate of a site multiplied by either 30 or 60 years depending upon the number of units in the dwelling structure. The definition of the Erosion Hazard Area provides a list of physical features which may serve as an indicator for identifying areas that are likely to be subject to erosion, but the presence of these features at a site does not necessarily mean that a site is, in part or whole, an erosion hazard area.

COMMENT: When does the eight foot contour apply? In Brant Beach it varies, depending on which year, before or after a storm.

RESPONSE: The Department will use the eight foot contour based on mean datum (National Geodetic Vertical Datum). It is a long term average, which discounts any abrupt storm induced changes.

COMMENT: Exceptions should extend to Special Urban Areas, which include Keansburg, Asbury Park and Long Branch. In particular the Asbury Park boardwalk area should be exempted because the redevelopment plan was previously approved by the Division.

RESPONSE: The Department has reevaluated the strict application of this policy in Special Urban Areas and believes that the short term economic gain from development in these communities in the near future outweighs the risk of development loss and long term economic costs in a 60-year span. Therefore, the Division has decided to add greater flexibility to allow for case-by-case review of projects located in the designated redevelopment section(s) of an urban community (see N.J.A.C. 7:7E-3.19(b)4).

COMMENT: What is the rationale for the change in definition from the areas most likely to be eroded in 50 years to 30 years for small structures and 60 years for larger structures.

RESPONSE: This change makes a distinction on the extent of the risk involved with buildings constructed in the Erosion Hazard Areas, where as the existing rule treats all buildings the same, requiring them to be set back from the area that is most likely to be eroded in 50 years. Because smaller structures can theoretically be relocated and represent a lesser financial risk, the amendment reduces their setback requirement from 50 to 30 years. Conversely, because larger buildings are more difficult to relocate and represent a more substantial investment, they would be safer if set back further.

N.J.A.C. 7:7E-3.20 Barrier Island Corridor

COMMENT: What is meant by headlands of Northern Ocean and Monmouth County? Headland should be defined by the rule.

RESPONSE: Headlands by definition means any land projection into the sea, and generally applies to a promontory of some elevation. Along the New Jersey Coast, the headlands are located between Monmouth Beach, Monmouth County and Pt. Pleasant Beach, Ocean County. This is added to the existing definition at N.J.A.C. 7:7E-3.20.

N.J.A.C. 7:7E-3.21 Bay Islands

COMMENT: The Bay Islands policy contradicts the State Development and Redevelopment Plan and the local zoning, specifically all sites on Route 30 and in the City of Absecon are zoned tier 2, a growth region.

RESPONSE: The Department also notes this discrepancy between the tier maps developed by counties and municipalities and the policy. However, this discrepancy does not necessarily mean that this policy will contradict the final version of the State Plan. It simply points out that this would be an area that will require more detailed discussion among all levels of government participating in the State Plan and Redevelopment Plan cross-acceptance process.

COMMENT: High-rise properties are easier to evacuate than smaller properties. High-rises are viable developments in terms of evacuation. Therefore, high-rises should be allowed in the Bay Island Corridor.

RESPONSE: The rationale for designating the bay islands as a Limited Growth Region is based upon the overall suitability of development on these islands. The ability to evacuate barrier islands during storms is one of the main criteria evaluated in determining such suitability. The concern over evacuation of these islands takes into account both the potential cumulative impact of all new developments on these islands, rather than specific types of developments at a given site, and the large number of people and vehicles which would inevitably be attracted by high rises and high density developments.

COMMENT: The restriction on development fails to recognize the necessity to utilize bay islands for non-water dependent developments which will contribute to the economic development of Atlantic City; in particular, along Route 30 where the sites have access to adequate roadway and sewerage capacity and the majority of the sites do not have water access for water dependent use.

RESPONSE: Because of the limited developable upland on these islands, their close proximity to surface and ground water, their value as wildlife habitat and their function as evacuation routes during storm events, the bay islands are not suited for extensive developments and are classified as a limited growth region. Sites with available sewer and roadway capacity may be developed at a low or moderate intensity of development.

COMMENT: The proposed changes weaken the policy. This policy should be strengthened rather than weakened.

RESPONSE: This policy may be perceived as being weakened, but it is, in the Department's judgment, fine-tuned so that the existing physical conditions of the islands would be recognized and reflected in the policy as stated. At already developed bay islands sites where adequate road and sewerage exists, limited development and reconstruction will now be permitted by the change.

COMMENT: What is the rationale for restricting use to existing square footage or density? To allow only "in kind" replacement would deny any real hope of rehabilitating many derelict structures now standing on bay islands. Many of these structures remain in their present state because their existing development density cannot support a viable redevelopment project.

RESPONSE: "In-kind" redevelopment is permitted when a facility already exists on a site and no appreciable degradation of the environment or aggravation of emergency evacuation is expected to occur from in-kind replacement. This could not be applied to facility expansion. The Department does, however, recognize that it may not be economically feasible for a facility to be reconstructed identical in use and size as the existing facility and allows for the conversion of a facility's use, provided that the new intensity of development does not exceed the existing intensity of development, and that the existing density and/or interior floor area, whichever is applicable, would not be exceeded. The deletion of the interior habitable area at N.J.A.C. 7:7E-3.21(d) will clarify the confusion on conversion of use.

COMMENT: Bay Island classification is arbitrary and amounts to confiscating such properties.

RESPONSE: The Department disagrees. The rationale for the Bay Island classification was previously explained when this classification was first proposed in 1986. The Department has, in this proposal, made changes to permit limited development to occur on these islands.

N.J.A.C. 7:7E-3.23 Filled Water's Edge

COMMENT: At N.J.A.C. 7:7E-3.23(f), the 30 feet right-of-way requirement for walkways along urban waterfronts appears to be a public acquisition without compensation.

RESPONSE: This provision applies to only densely populated urban waterfront sites where non-water dependent development, if it included a public walkway, can be substituted for the required water dependent use. In these cases the walkway should have a minimum width to be functional. The Department believes that it has the legal authority to promulgate this rule and that this rule does not constitute a taking.

N.J.A.C. 7:7E-3.24 Existing Lagoon Edges

COMMENT: The language is confusing. In N.J.A.C. 7:7E-3.24(b), the word "or" should be placed between paragraphs 2 and 3.

RESPONSE: Criteria 2 and 3 at N.J.A.C. 7:7E-3.24(b) are not necessarily mutually exclusive. Where a particular project may only need to reconstruct a portion of its shore protection structure, satisfaction of both criteria would be required. The Department therefore does not agree that the word "or" should be added at the end of N.J.A.C. 7:7E-3.24(b)2.

N.J.A.C. 7:7E-3.25 Flood Hazard Area

COMMENT: The definition of Flood Hazard Area should be consistent with the Flood Hazard Area Control (Stream Encroachment) Rules, N.J.A.C. 7:13, where the Flood Hazard Area is defined by floodway and flood fringe areas, rather than floodway and floodplain.

RESPONSE: The Department agrees. The definition is changed at N.J.A.C. 7:7E-3.25 to be the same as in the Stream Encroachment Rules.

COMMENT: One commenter objected to the proposed deletion of exemption of 10 acre or less sites from the 100 foot setback requirement. The 100 feet requirement does not take into account factors such as existing neighborhood and/or adjoining urban uses, which often effectively preclude the establishment of a wide setback and imposes a prohibitive limitation on the ability to redevelop urban properties which are often less than 10 acres in size. The Department's discretion to determine such application on a case-by-case basis, regardless of the size of the applicant's project, should be retained in the rules.

RESPONSE: There is no proposed deletion for the exemption of 10 acre or less sites from the 100 foot setback requirement, nor deletion for the determination of the applicability of the 100 feet set back requirement on a case-by-case basis.

COMMENT: The regulation for the Flood Hazard Areas in the coastal area should be the same as the rest of the State. The restriction is too severe, more so than the Stream Encroachment Rules, that is, 100 feet water dependent use restriction, and intensity of development restriction with the undeveloped portion of the flood plain.

RESPONSE: The Stream Encroachment Rules and the coastal Flood Hazard Areas rule are enacted under separate legislation, each with specific mandates.

Because there is a jurisdiction overlap of these two programs in coastal areas and because the Coastal Zone Management Rules are more comprehensive than those of the Stream Encroachment Permit Program for the areas subject to tidal flooding, the Department has already exempted most of these overlapping areas from the Stream Encroachment Permit Rules and intends to further amend the Stream Encroachment Rules so that all areas subject to tidal flooding would be regulated only by the Coastal Zone Management Rules.

COMMENT: What is the rationale for distinguishing detention and retention basins designed for storm water management purposes versus those not used for this purpose.

RESPONSE: Although retention and detention basins are typically developed for stormwater management purposes, they could also be interpreted as retention and detention basins developed for aesthetic or irrigation purposes without that distinction.

COMMENT: Clarification is requested as to what is meant in N.J.A.C. 7:7E-3.25(d)1 regarding the "acceptability of development . . . for sites that receive a Low Intensity Rating and do not exceed Moderate Intensity level for all other sites."

RESPONSE: At N.J.A.C. 7:7E-3.25(d), the provision sets forth the limit of Acceptable Intensity of Development for a site by using the criteria established at N.J.A.C. 7:7E-5.2, General Land Areas, as a guide. For those sites that receive a Low Intensity rating, the acceptable intensity of development would be low, and for those that receive a High or Moderate Intensity rating, the acceptable intensity of development would be Moderate. In other words, the acceptable intensity of development would be determined in the same manner as any general land area, with the exception that all sites receiving a high intensity of development rating would be downgraded to a moderate intensity of development.

COMMENT: I would like to see greater regulatory flexibility being applied in tidal floodplains in developed areas.

RESPONSE: There are no special requirements for the development of a project located in an already developed tidal floodplain other than that they be constructed in accordance to the flood proofing standards.

N.J.A.C. 7:7E-3.26 Alluvial Flood Margin

COMMENT: Why does the rule for alluvial flood margin appear to be more stringent than the rule for Flood Hazard Area?

RESPONSE: Alluvial Flood Margin by definition includes sites which have a seasonal groundwater table equal to, or less than, one foot below the surface. Development on these sites is likely to affect the quality of groundwater feeding into streams.

N.J.A.C. 7:7E-3.27 Wetlands

COMMENT: This policy should be clarified so that the policy only applies to tidal wetlands and projects that are exempt from FWPA rules. The word coastal should be deleted from N.J.A.C. 7:7E-3.27(a)3 and (a)5.

RESPONSE: Although the world "coastal" was used in the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., "tidal" is a more accurate adjective describing the wetlands protected by the Wetlands Act of 1970. Therefore, all references made on those wetlands have been changed from "coastal" to "tidal" in the adoption.

COMMENT: Objection to the New Jersey Mosquito Commission being exempted from CAFRA and the Wetlands Act of 1970.

RESPONSE: These are statutory exemptions.

COMMENT: FWPA should only protect those tidal wetlands with salt content less than or equal to three parts per thousand, not all coastal wetlands.

RESPONSE: Neither the Wetlands Act of 1970 not the FWPA defines wetlands by percentage of salt content. Tidal wetlands north of Raritan

Bay, for instance, are protected by the FWPA. Certain tidal freshwater wetlands along the Delaware River, on the other hand, are protected under the Wetlands Act of 1970.

Agency-Initiated Changes to N.J.A.C. 7:7E-3.27:

At N.J.A.C. 7:7E-3.27(a)4iii, additional clarification is made to further explain the applicability of the National Wetlands Inventory Maps on a site.

In N.J.A.C. 7:7E-3.27(h)6iii, the enhancement ratio requirement is changed from a ratio of one to seven to a case-by-case evaluation in response to the Appellate Division's decision in *National Association of Industrial and Office Parks v. New Jersey Department of Environmental Protection* on May 10, 1990 (Docket No. A-3285-88T5).

N.J.A.C. 7:7E-3.28 Wetlands Buffers

COMMENT: This policy should be clarified to state that it only applies to those projects that are exempt from the FWPA and to buffer tidal wetlands. The word buffer should be changed to transition area to make it consistent with the FWPA.

RESPONSE: This is a policy for all wetlands located in the coastal zone, although the activities subject to the FWPA would be regulated in accordance with the FWPA Rules as clarified in N.J.A.C. 7:7E-3.28(c). Wetlands Buffer and transition areas are interchangeable; the Department does not see that this change will add to the clarify of the policy. Calling this policy Transitional Area may cause confusion over the difference in standards between the two classes of regulated wetlands.

COMMENT: I recommended that N.J.A.C. 7:7E-3.28(d) be deleted, since the Division does not have jurisdiction over projects located in these two areas under the statutes.

RESPONSE: The Department does have jurisdiction in portions of the Pinelands Area located in Atlantic County and Burlington County. The Hackensack Meadowlands District's Master Plan Rules are adopted as part of the New Jersey Coastal Zone Management Rules. N.J.A.C. 7:7E-3.28(d) is added to clarify which wetlands buffer requirements apply in these overlap areas.

COMMENT: Reference to the Pinelands Wetlands Buffer Delineation Model is not what N.J.A.C. 7:50 calls for and does not allow for future alterations.

RESPONSE: N.J.A.C. 7:7E-3.28(d) is corrected in the adoption to read "the appropriate wetlands buffer width shall be determined in accordance to the requirement set forth in the Pinelands Comprehensive Management Plan for Wetlands Transition Areas, N.J.A.C. 7:50-6.14."

COMMENT: The Rules seek to substantially modify the existing regulatory scheme and require a buffer of up to 300 feet in width for coastal wetlands. The Coastal Wetlands Act of 1970 requires no buffer. Such action would require a legislative change. It also attempts to regulate wetlands that are exempt from the FWPA and attempts to subject all coastal wetlands to FWPA Rules, unless the wetlands are located within the boundary delineated by coastal wetlands maps. This is an attempt to expand the jurisdiction and regulation of the FWPA.

RESPONSE: The existing wetlands buffer requirement was not changed, except for those wetlands that are now subject to the FWPA where the buffer or transition area requirement would be limited to a maximum of 150 feet.

N.J.A.C. 7:7E-3.30 Wet Borrow Pit Margins

COMMENT: Buffers for Wet Borrow Pits should be determined on a case-by-case basis depending upon the existing or surrounding land use, the availability of sewer hookups and the existing and proposed land-water edge treatments.

RESPONSE: Because the availability of sewer is already taken into account in the General Land Area policy at N.J.A.C. 7:7E-5.3, it is not considered as a factor here. This Policy defines an immediate area adjacent to the Wet Borrow Pits where special consideration must be given to prevent a degradation of the water quality in the pit. Because there is no empirical formula that could be used to account for the variables that exist among the various surrounding land use type or water edge treatments, fixed guidelines must be used to avoid arbitrary case-by-case determinations. The existing standard is general enough to be applied as a guide for the majority of the cases and still satisfy the intent of the policy.

N.J.A.C. 7:7E-3.32 Intermittent Stream Corridors

COMMENT: There is a potential for confusion between this definition and the "State Open Water" as defined under the FWPA Rules. These two terms should be distinguished in the definition.

RESPONSE: An Intermittent Stream Corridor is a corridor area which encompasses both the intermittent stream bed and a minimum 25 feet of buffer area on either side of the bed, while the "State Open Waters" encompass only the intermittent stream bed itself. However, to eliminate any possibility of confusion, the distinction between these two terms is added in the adoption, and the FWPA Rules are cross-referenced with respect to the acceptability of use of the Intermittent Stream Bed.

COMMENT: What was the rationale for changing the method for measuring the 25 feet from middle of the channel to the top of the channel.

RESPONSE: The change in the language is to make the measuring method more explicit. The current wording states "a distance of 25 feet on either side of the channel" fails to specify exactly where the 25 feet ought to be measured from. The Department has always used the edge of the bank as the point of beginning, while some applicants mistakenly contend that it could be interpreted as a distance from the middle of the channel.

N.J.A.C. 7:7E-3.33 Farmland Conservation Areas

COMMENT: Several commenters supported the proposed amendment, citing that it would enhance the existing farmland preservation program and reduce the rate of farmland lost to residential and commercial developments in the fast growing coastal area.

RESPONSE: The Department acknowledges their support.

COMMENT: A large number of commenters objected to the amendment. The main reasons given by the majority of the commenters were: (1) The Department has no legal authority to require mitigation since The Agricultural Retention and Detention Act supersedes CAFRA; (2) This policy contradicts the Department of Agricultural farmlands preservation and protection programs in two key areas: the protection measure is mandatory rather than voluntary, and the designation of the Agriculture District Area is solely for the eligibility to the farmland preservation program, and not to be used in any manner that would infringe on the property right of the land owner; (3) The mitigation requirement will adversely affect the land value in terms of both development potential and equity used to obtain loan for farming; and (4) This loss of development potential should be compensated.

RESPONSE: The Department recognizes these concerns and will address these issues and the potential adverse impact of mitigation requirement to an existing farming operation, before making a final determination on how farmlands as a special resource may be managed in the coastal area. Therefore, while recognizing the comments in favor of the proposed amendment, all amendments proposed for this section have been deleted in the adoption. However, the Department will continue to review the issue.

COMMENT: Farming activities are one of the major causes of non-point source pollution. The proposed amendment will aggravate the existing non-point source pollution problem by promoting agricultural crops.

RESPONSE: The Department acknowledges that farming activities cause non-point pollution, but believes the water quality issue is and can be addressed through other regulatory programs and can be corrected. The conversion of farmlands to development is generally irreversible and the resource would be lost, not degraded.

COMMENT: It does not make sense to mandate farming in areas, for example, woodlands, where it may not be economically feasible.

RESPONSE: Whether farming is economically feasible or not can be influenced by many factors, such as the surrounding land use, the prevailing market for a specific crop and the marketing strategy of the farmer. Many farms are not profitable as farms but are maintained as farms by investors. The Department does not require every farmland site be maintained for farming purposes, but rather require that an opportunity for the preservation of an equivalent acreage of farmlands that are most suitable for the continuation of farming be created when a conversion of farmland does take place, and that allows the preservation site selection process to be carried out through the State or local farmland preservation programs.

COMMENT: The proposed amendment will prohibit children of farmers, who grew up and worked on a family farm, from building a home on the property unless the child is engaged in farming activity.

RESPONSE: The proposed amendment will not prohibit anyone building a number of homes on the property, because the Department, under CAFRA, does not regulate subdivisions or residential contruction less than 25 units.

COMMENT: This policy would cause loss of farmland preservation program, elimination of tier 6 in the State Development and Redevelopment Plan and elimination of Agriculture Development Areas by County Agricultural Development Boards.

RESPONSE: The Department understands that the combination of the changes to the Farmland Conservation Area definition and the mitigation requirement has caused considerable concern over the potential conflict of sharing the same resource data between a planning or voluntary program and a regulatory program. The Department will direct its attention to this issue when it reviews this policy (see response above).

COMMENT: In order to effectively preserve farmland, a mitigation measure such as that proposed needs to be required on a Statewide basis and not just the farmlands in the coastal areas. I recommend that the Department hold off on the amendment and wait for State guidelines so that both the farmlands as well as the farmers' interests will be protected.

RESPONSE: The Department has decided to reconsider the proposal and will not adopt the changes at this time.

N.J.A.C. 7:7E-3.34 Steep Slope

COMMENT: The codification is wrong. It should be N.J.A.C. 7:7E-3.30. This policy should be less restrictive, such that a project that satisfies the stability and soil erosion control standards of the soil conservation district would satisfy the policy.

RESPONSE: This policy is being recodified from N.J.A.C. 7:7E-3.30 to N.J.A.C. 7:7E-3.32 under the proposed reorganization of the Special Areas Policies. Soil conservation and erosion control standards of the County Soil Conservation Districts pertain only to the acceptable standards and practices during the construction phase of a project, while this policy encourages that the development of steep slopes be avoided or minimized to the extent feasible during the planning and design stage of a project.

N.J.A.C. 7:7E-3.38 Endangered or Threatened Wildlife or Vegetation Species

COMMENT: What happens if the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, does not get adopted?

RESPONSE: The Endangered Plant Species List was adopted effective June 4, 1990.

COMMENT: The use of the Endangered Plant Species List may be confusing for applicants with sites located within the Pinelands National Reserve. I recommend that CAFRA develop its own comprehensive list that includes at least the "species of concern" in the Pinelands portion of CAFRA jurisdiction.

RESPONSE: The Department agrees, and has amended the wording of the rule on adoption for clarity. The list of threatened or endangered plants of the Pinelands in the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-6.24, is used in addition to the Endangered Plant Species List for areas located in the Pinelands National Reserve or Pinelands Protection Area.

COMMENT: Several commenters objected to the substitution of the Endangered Plant Species List because a large number of plants are eliminated and the change will drop protection for sensitive areas.

RESPONSE: The change from an unofficial list to the Endangered Plant Species List is mandated by the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq., in which the reason given for the enactment was "to eliminate the confusion resulting from various existing unofficial lists which are inconsistent and is a necessary precondition to more effectively and efficiently incorporate the preservation of our State's natural diversity into government planning process."

The Department agrees with the Legislature that only the Official List(s) should be used and that the application of two or more unofficial lists to this policy will indeed be confusing. For example, the list provided in "Rare and Endangered Vascular Plants Species in New Jersey," by D.B. Snyder and E.V. Vivian, the Conservation and Environmental Center, Inc., 1981, does not clearly distinguish the endangered and threatened species. Close to one hundred species that are now on the Endangered Plant Species List were not included in the Snyder and Vivian's list.

The Department believes that the Endangered Plant Species List, being the most up-to-date, should be used for the Coastal Rules along with the Pinelands Comprehensive Management Plan's list for the Pinelands Protection Area and Pinelands National Reserve at this time, but may consider proposing a Threatened Plant Species List in the future to supplement the Endangered Plant Species List.

N.J.A.C. 7:7E-3.41 Special Hazard Areas

COMMENT: This section should also contain a provision indicating that no approval is required for any clean up activity that meets the approval of the Division of Hazardous Waste Management. The rationale for the Division of Coastal Resources to regulate hazardous waste clean up activity should be explained.

RESPONSE: A regulated activity which requires a construction permit from the Division of Coastal Resources is an activity which is subject to the Coastal Area Facility Review Act (CAFRA), the Waterfront Development Law, the Wetlands Act of 1970, the Flood Hazard Protection Act and the Freshwater Wetlands Protection Act, as previously determined by the Legislature. A hazardous waste clean up facility regulated under any one of the five statutory authories would be regulated by the Division to ensure that a clean up activity will also adhere to the applicable requirements or standards set forth by each of the regulatory programs.

N.J.A.C. 7:7E-3.44 Pinelands National Reserve

COMMENT: The Division is creating the Pinelands National Reserve as if it has not been planned for except in the original comprehensive plan. Consideration ought to be given to municipalities who are in compliance with the Pinelands Comprehensive Management Plan, so that they would not be subject to double regulations.

RESPONSE: The Department does not treat the Pinelands National Reserve as if it has not been planned for except in the original comprehensive plan. The certification of local land use plan is a procedure established by the original Comprehensive Management Plan (N.J.A.C. 7:50-3.35). All applications reviewed by the Pinelands Commission are based on the Comprehensive Management Plan as revised, not the original.

COMMENT: One commenter questioned whether the Department is suggesting that the Pinelands National Reserve would be subject to the Pinelands buffer requirement as opposed to the FWPA rules?

RESPONSE: No. The FWPA regulates all wetlands in the State, except for those in Hackensack Meadowlands District, the Pinelands Protection Areas and the tidal wetlands subject to the Wetlands Act of 1970. Without the exemption status, the wetlands in the Pinelands National Reserve would be regulated by the Rules of the FWPA which supersedes CAFRA regulation. This policy is addressed and clarified in the Wetlands Buffer policy, N.J.A.C. 7:7E-3.28(c) and (d).

COMMENT: Several commenters objected to the change, at N.J.A.C. 7:7E-3.44(b)1, because it will formally give the Pinelands Commission a veto power over coastal decisions, and further stated that the Pinelands Commission should remain as another commenting agency without special status.

RESPONSE: The Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., requires that "the environmental design standards for coastal area be revised to include consideration of the goals of pinelands protection insofar as the coastal area overlaps the Pinelands National Reserve." The Department and the Pinelands Commission have, over the years, carried out this legislative mandate through the permit review process and a memorandum of agreement, but without giving any formal recognition to this process in the Coastal Zones Management Rules. The proposed change does not alter the Pinelands Commission's status with respect to project review; instead, it formally recognizes an existing mechanism for meeting the statutory requirement, and effectively coordinates the work of two governmental agencies.

COMMENT: N.J.A.C. 7:7E-3.44 does not define what the Memorandum actually set forth, which still leaves the policy ambiguous. The document does not require Pinelands to be consistent with the coastal growth designations of areas administered by the Division.

RESPONSE: The Memorandum of Agreement between the Department and the Pinelands Commission reaffirms the working relationship between the two agencies to jointly meet the intent of the Pinelands Protection Act concerning areas where it overlaps with CAFRA, and evaluate every case on an as needed basis. Each program has its own comprehensive set of rules that are updated periodically. To set forth specific policy in the Memorandum of Agreement would seem to duplicate the efforts that have been placed in establishing the existing policies or standards under both programs.

COMMENT: N.J.A.C. 7:7E-3.44(b)1 appears to be an effort to conform to the requirement of the Pinelands Protection Act, which mandates that the Department modify its land use plan to conform to the Pinelands Plan. The simple deferral to the Pinelands Commission does not fulfill the statutory requirement.

RESPONSE: The Pinelands Protection Act, N.J.A.C. 13:18A-1 et seq., requires that the environmental design for the coastal area be revised to meet the Pinelands protection goals. It does not mandate that the Department modify its land use plan to conform to the Pinelands Comprehensive Management Plan.

N.J.A.C. 7:7E-3.45 Hackensack Meadowlands District

COMMENT: One commenter objected to the provisions of the FWPA, exempting Hackensack Meadowlands District from its regulations.

RESPONSE: The content of enacted legislation is beyond the scope of discussion in this rulemaking process.

N.J.A.C. 7:7E-3.36 Historic and Archaeological Resources

COMMENT: Several commenters supported the changes.

RESPONSE: The Department acknowledges this support.

COMMENT: The requirement to identify and evaluate historic and archaeological resources which are "potentially eligible" for the State and National Register is too broad and vague. The rules ought to give specific guidance on what characteristics would cause a resource to be considered "potentially eligible" for inclusion in the State and National Register.

RESPONSE: The Department is in the process of proposing rules which would establish criteria for eligibility.

COMMENT: The Division should not rely on the Office of New Jersey Heritage for determinations.

RESPONSE: The Department disagrees. The Office of New Jersey Heritage is the Office within the Department which has the greatest knowledge and expertise in cultural resources. Their resources should be used to assist the Division in its application review.

COMMENT: Qualifications of professionals and performance standards should be adopted pursuant to the APA and not merely by reference.

RESPONSE: The Department disagrees with the premise that incorporation of adopted rules and regulations by reference is not in conformity with the provisions of the APA.

COMMENT: The Department should consider the cost of performing these cultural resources surveys and include it in the economic impact portion of the proposal.

RESPONSE: Although it is not expressly discussed in the Economic Impact Statement of this adoption, the Department has considered the cost of performing these surveys. The Department has just completed an in-house study to determine how to best process coastal applications so that a comprehensive screening procedure may take place to minimize the actual need for cultural resources surveys.

Agency Initiated Change to N.J.A.C. 7:7E-3.36: Reference at N.J.A.C. 7:7E-3.36(a) to criteria for eligibility for inclusion on the State or National Register of Historic Places is deleted. The Department has not yet adopted criteria for such eligibility.

N.J.A.C. 7:7E-3.46 Wild and Scenic River Corridor

COMMENT: One commenter objected to the vagueness of the policy, that is, how is "adverse effect on the scenic, recreational and fish and wildlife attributes of the river corridor" determined, and questioned why a quarter of a mile was used in the National Wild and Scenic River Act.

RESPONSE: Two criteria are necessary for inclusion in the National Wild and Scenic River System: (1) the river must be free flowing and (2) it must contain outstandingly remarkable scenic, recreational, fish, wildlife and historic, or other similar values. No river is yet designated as a National Wild and Scenic River in New Jersey, but several are on the Nationwide River Inventory List, that is, rivers that have been identified as meeting the minimum criteria for further study and potential inclusion into a Wild and Scenic River System. The outstanding values for which these rivers are being considered vary from river to river but will be identified for a particular river in its eligibility determination. Similarly, the effect of a development on the outstanding value also will vary from river to river, depending how a particular value would be affected by a specific project at the site. Once a river is included into the National System, the local river management plan of that river will guide the developments within the corridor.

A quarter of a mile is used in the Federal guidelines to define a "study corridor" as a "study segment and related adjacent lands, normally (but not necessarily) defined as an area extending the length of the study area and extending in width one quarter mile from each bank of the river or to the limit of visibility from all points along the river (visual corridor), whichever is greater." Development is not prohibited within the study area. Rather, the corridor defines an area within which new development will be evaluated for any adverse impact on the attributes of the river. Once a river becomes a part of the National Wild and Scenic River System, its corridor would be that which is defined in the local river management plan, which is usually prepared by the end of the study.

Accordingly, additional language has been added to the end of N.J.A.C. 7:7E-3.46(a)1 to clarify these two possible corridor boundaries and at N.J.A.C. 7:7E-3.46(b)5 to recognize that a project's acceptability will be guided by the locally adopted comprehensive river management plan.

COMMENT: Several commenters supported the change and further stated that this is an important enhancement and an excellent contribution to the State's partnership with the Federal government.

RESPONSE: The Department acknowledges this support.

COMMENT: One commenter objected to the change because this rule will most likely adversely affect electric utility related facility construction within the corridors.

RESPONSE: The intent of this amendment is to be consistent with the national effort to preserve the integrity of a wild or scenic river. Utility facilities will be evaluated using the same criteria as are applied to any other developments, evaluating their impacts and acceptability within a corridor in accordance with the comprehensive river management adopted for the particular river of concern.

N.J.A.C. 7:7E-3.48 Hudson River Waterfront Area

COMMENT: One commenter objected to the requirement for a conservation easement for walkways as it appears to be a taking of property without compensation.

RESPONSE: The conservation easement is required as a management tool to ensure that once a public waterfront walkway or a linear waterfront park facility is provided, it would be maintained for that purpose. The Department believes that it has the legal authority to promulgate this rule and that this rule is not a taking of property without compensation.

COMMENT: One commenter objected to the requirement for the developer to create a conservation easement, when the regulation does not provide the terms of the easement that will satisfy the Department.

RESPONSE: The Department is in the process of preparing a standard conservation easement language to eliminate the need for each applicant to use their own resources to create such an easement agreement. Prior to the finalization of this language, the Department will review and approve proposed language meeting the intent of this policy. Thereafter, the Department will approve alternate easement language that deviates from this standard language if the language meets the intent of this policy.

N.J.A.C. 7:7E-4.11(e) Recreational docks and piers

Agency initiated change: The height requirement was changed from three to four feet due to a change in Federal regulations which must be reflected in these State administered rules.

N.J.A.C. 7:7E-4.11(f) Dredging standards

COMMENT: Dredging required for maintenance of intake and discharge canals should be included in the definition of maintenance dredging.

RESPONSE: The Department agrees and has added "canals" to the definition.

N.J.A.C. 7:7E-5.3 Coastal Growth Rating

COMMENT: The proposed redesignation of Stafford Township at N.J.A.C. 7:7E-5.3(h) and (i) encompasses an area that has two growth designation under the Pinelands Comprehensive Management Plan: (1) regional growth area (3.5-5.25 units/acre density with sewer) and (2) rural development area (1 unit/3.2 acre of upland) with the boundary line being Oak Road. Oak Road should be the southern boundary, and the area south of Oak Road, due to its close proximity to Cedar Creek and extensive wetlands, should remain as a limited growth region.

RESPONSE: The Department recognizes that the redesignation of the area south of Oak Avenue may appear to be inappropriate because of the reasons cited by the commenter. But, due to the following considerations, the Department believes that the Cedar Creek is a sound boundary for this regional redesignation. The wetlands and transition areas adjacent will essentially be preserved by the FWPA. The Township of Stafford has down-zoned the area immediately adjacent to and south of Cedar Creek. This local land use regulation should compliment the Coastal Zone Management Rules in that smaller developments not regulated under CAFRA would be regulated in a manner consistent with this policy. In addition, because the designation of a sewered or unsewered area in the Department's Area Wide Water Quality Management Plan is affected by the coastal growth designation, the Department believes that the overall

environmental protection of the area between Oak Avenue and Cedar Creek may be best accomplished if the limited development that could occur could be serviced by a public sewerage treatment facility.

N.J.A.C. 7:7E-5.4 Environmental Sensitivity Rating

COMMENT: One commenter opposed the removal of vegetation as a criterion, stating this change which ignores the value of vegetation is inappropriate.

RESPONSE: The environmental sensitivity rating is used jointly with the development potential to determine the acceptable intensity of development of a project. The existing policy, using vegetation as one of the two criteria that has to be used in conjunction with the soil type, also ignores the value of vegetation since forested vegetation alone would not qualify an area as being highly sensitive unless it is a forest that also happens to be located in an area with a high seasonal water table. The deletion of vegetation will still lead to the same determination for such sites.

COMMENT: In N.J.A.C. 7:7E-5.4(d), there appears to be an incomplete deletion notation. The bracket placed after the word characteristics in the third line should be deleted.

RESPONSE: A bracket should open after the word "structures" in N.J.A.C. 7:7E-5.4(d) and close at the end of N.J.A.C. 7:7E-5.4(e)2.

COMMENT: The elimination of vegetation raised a broader issue regarding the level of protection offered in the limited growth region. Permitting moderate intensity development does not seem to be warranted in any "limited growth" region, yet that is already possible, and the proposed rule change could worsen the situation. Acceptable development intensity should always be low for "limited growth region" and any "limited growth" regions which are suitable and appropriate for more intense development should be redesignated as extension region.

RESPONSE: The level of intensity of development appropriate for a site is based on the particular conditions that exist on a site as well as the general location of the site. The resulting acceptable intensity of development represents a striking of a balance between the variations among the different sites and regions. The Coast Growth Rating determines only the general location of a site; it is not the sole factor for determining the level of intensity of development appropriate for a site.

N.J.A.C. 7:7E-5.5 Development Potential

COMMENT: In N.J.A.C. 7:7E-5.5(b)4, the word "limit" should be "limited." The proposed deletion shown in N.J.A.C. 7:7E-5.5(b)4i and language at (b)4ii do not seem necessary. They do not appear in the existing rules. Clarification needed.

RESPONSE: The word "limit" is now corrected as "limited." The apparent confusion over the proposed deletion and addition is due to an error in the reprinted version of rules which showed that these changes have already taken place. The official code version of the Coastal Zone Management Rules has not yet incorporated these changes.

N.J.A.C. 7:7E-5.6 Definition of acceptable intensity of development

COMMENT: There is no interim number within the location rules to allow for the intensity of site coverage between five percent and 30 percent. There ought to be a process to allow a development relief to be developed between these two limits.

RESPONSE: The location site coverage criteria allow development to cover sites in increments of five percent, 30 percent and 80 percent. But a site can be designed to cover zero percent to five percent, zero percent to 30 percent and zero percent to 80 percent respectively dependent upon the maximum allowable impervious coverage criteria.

N.J.A.C. 7:7E-5.7 Land Acceptability Tables

COMMENT: The change in the Limited Growth Region table at N.J.A.C. 7:7E-5.7(a) is unacceptable; it would allow more development in limited growth regions.

RESPONSE: The change of Acceptable Development Intensity was made as a result of the change in the definition for Environmental Sensitivity Rating. Because more sites would be assigned with a higher environmental sensitivity rating, this change is not expected to allow more development in Limited Growth Regions.

N.J.A.C. 7:7E-6.1 Policy on location of linear development

COMMENT: One commenter urged the Department to include a general exemption from regulation under the rules for linear development which meets the Policy on Location of Linear Development.

RESPONSE: The acceptability of any project is determined based on the Coastal Location Acceptability Method (CLAM) Analysis, which include the identification of the applicable location, use and resource policies. A project may meet the Policy on Location of Linear Development, and still be found to be unacceptable because it failed to meet the Use or Resource Policy. Therefore, an outright exemption cannot be given based on conformance with Linear Development Policy.

N.J.A.C. 7:7E-6.2 Basic location policy

COMMENT: This rule should be deleted because it is too vague and unclear and allows the Department to reject any development unless the development is reasonably necessary to promote public health, safety and welfare.

RESPONSE: This policy reinforces the general framework of coastal polices, under which all coastal decisions are determined. Although the language is not in specific terms, it nevertheless provides a sound basic premise from which many of the specific policies were developed. It closely follows the actual language used in the CAFRA. The Department has not had the need to use this provision often, but believes it is necessary to leave this policy in its present form for use in cases where the evaluation of specific policies fails to address the broader concerns of public health, safety and welfare as well as other broad concerns enumerated in this rule.

N.J.A.C. 7:7E-7.2(f) Single Family and Duplex Developments

COMMENT: Several commenters questioned the definition of an infill and wanted to know how the infill exemption would be applied under various circumstances. They include: (1) Can a buildable lot count as an existing development, or do houses have to exist on or prior to October 31, 1988?; (2) What if the adjacent house existed but was later destroyed? What will that mean?; (3) Lots have more than two sides. What exactly does the two sides mean, and what about odd shape lots, corner lots?; (4) Will a vacant corner lot next to a street be considered as an infill if it were to be adjacent to a house on one side of the street and a house on the other?

RESPONSE: A buildable lot without a house on it can not be considered as a developed lot. The October 3, 1988 date is the cut off date for the buildable lot(s), not the adjacent houses. The adjacent houses must exist at the time of the application review. The definition of an infill development is further clarified at N.J.A.C. 7:7E-7.9(f)1iii to specify which of the two sides of the vacant lot(s) the existing houses should be located. This specification also answers the question with regard to odd shaped lots that typically are so shaped due to the natural configuration of the shoreline. Additional clarification is also added to show that when a lot or house is separated from the other houses on a shoreline by a street perpendicular to the shoreline, the infill requirement for the side of the property adjacent to the street is determined by the status of the property adjacent to the other side of the street. In the example cited by the commenter, that corner lot would be an infill since it is flanked by houses on both sides even through one of the houses is located on the other side of the street.

COMMENT: It is impossible to determine the alignment of a new development with the existing developments where the shoreline curves.

RESPONSE: The Department disagrees. The layout and alignment of the streets, blocks and lots usually follow the natural configuration of the land. The alignment of a new development could easily be determined by the setback of the existing developments from the property line immediately adjacent to the water or the mean high water line.

COMMENT: One commenter questioned the Department's justification and the need for such broad jurisdictional authority on single family construction and stated that the Coastal Zone Management Rules are too broad and inflexible for the development of single family housing, especially in a developed area.

RESPONSE: The Department's justification was based on the continual degradation of the coastal environment and its fragile ecological resources. The waterfront has long been valued for its functions in facilitating water-borne commerce and navigation, and increasingly so in the recent decades, for its recreational resources and its appeal for tourism developments. The application of the Coastal Zone Management Rules to smaller developments has been reduced to a minimum by this proposal at N.J.A.C. 7:7E-7.2(f).

COMMENT: The 25 feet setback from shore protection structures is an arbitrary standard which does not recognize criteria used to determine breaker travel distance of waves which should be the basis for determining the proper building setback. A more flexible standard should be provided to allow for site specific information.

RESPONSE: The 25 feet setback requirement was not and should not be determined based on breaker travel distance of waves. This setback requirement was calculated based on the wave run-up above a shore

protection structure. The calculation for wave run-up overtopping a shore protection structure is highly technical and requires analysis by qualified professionals specializing in coastal engineering. The Department has calculated the wave run-ups for various locations in six municipalities on the barrier islands by following the methodology recommended in the U.S. Army Corp of Engineers' Coastal Engineering Technical Aid Report No. 80-7, entitled "Estimation of Wave Transmission Coefficient for Overtopping of Impermeable Breakwaters," 1980. The distances derived from the calculations fell mostly between 20 and 30 feet, clustering around 25 feet. The Department believes that the 25 feet setback is a reasonable requirement for all the properties because the variation from site to site is slight and because this standard would eliminate the need for individual applicants to go through the expense and trouble of trying to determine the distance on their own.

COMMENT: The existing Rules do not consider any exception to the rule where exemption may be warranted by special circumstances unique to a particular property.

RESPONSE: The Coastal Zones Management Rules are designed to increase the predictability of the Department's Coastal decision making by limiting administrative discretion.

N.J.A.C. 7:7E-7.2(i) Large Scale Developments

COMMENT: The policy, in concept, has merit and should be refined to accomplish its intent rather than be deleted. The policy has been proven to be beneficial in that it has provided much needed housing in the Atlantic County area and should be retained to continue to serve that need. Two commenters have drafted detailed revisions for consideration by the Department.

RESPONSE: In view of the merits cited by the commenters in support of this policy's retention, the Department has reconsidered this amendment which deleted the policy, and has readopted the policy. The Department may consider proposing modifications to it in the future.

COMMENT: This rule should be kept; or at the very least, development which was previously approved under this rule should be allowed to expand and continue to their full anticipated build out.

RESPONSE: The Department has decided to readopt this policy.

N.J.A.C. 7:7E-7.3 Resort/Recreational Use

COMMENT: The threshold for marina definition is too low, and should be raised to 50 or more vesssels.

RESPONSE: The Department agrees that the five vessel threshold is too low for the installation of pumpout facilities at marinas and has increased this threshold to 25 vessels. The Department has, however, decided to maintain the five vessel threshold for defining a marina because this definition is consistent with the Department's Marine Shellfish Growing Water Classification Regulations, N.J.A.C. 7:12.

COMMENT: A mechanism must be provided to require towns to accept flows from the pumpout facilities in cases where a municipality is under a sewer ban or in cases where certain municipalities do not allow the use of holding tanks. The Department should condition this requirement for pumpout facilities on the availability of State funding.

RESPONSE: The Department disagrees. In cases where a municipality is under a sewer ban, a marina should explore other acceptable alternative means of treatment, such as holding tanks and septic systems. The purpose of this requirement is to prevent water pollution. If there is no viable mechanism for the waste collected at a pumpout facility to be treated, then the marina should not be developed or expanded. The commenter does not make clear what specifically the State would be funding.

COMMENT: The requirement for marinas to post a sign that prohibits the discharge of toilets (wastes) into the State waters is not a realistic approach. No solution is provided as to what pleasure boat or commercial captains are going to do with the waste. A substantial amount of money will have to be spent on enforcement and clean up activities to see real results.

RESPONSE: Sign posting is just one of many steps the Department can take to better inform and enforce the law. Such signs may not deter all illegal dumping of wastes into the water, but they will serve as a deterrent and reminder to a segment of the user population.

N.J.A.C. 7:7E-7.5 Transportation Use Policies

COMMENT: A wide range of comments representing various public and private sectors supported the intercept lot requirement, citing various past and current traffic and air quality impacts associated with the development of the casino industry as reasons for the support.

RESPONSE: The Department acknowledges the support.

COMMENT: One commenter stated that off-island parking requirements contribute to the demise of the central business district in Atlantic City.

RESPONSE: Estimates prepared by Atlantic County Transportation Authority (ACTA) indicate that up to 80 percent of casino employees currently park on Absecon Island, yet downtown shows no apparent benefit. In fact, several commenters have pointed out that the opposite might be true. Their reasoning: the construction of on-island parking garages have converted much of the City's valuable space for parking purposes rather than for revitalization projects that could add to the attractiveness and vitality of the City's environment.

COMMENT: One commenter opposed the off-islands intercept lot requirement for the following reasons: (1) the basis of the 20 percent off-island casino employee parking regulation is arbitrary, lacking technical studies with specific data; (2) there is no factual study to determine the cost to Atlantic City; (3) the requirement may thwart coordinated proposals for improved casino employee parking facilities within the City; (4) some employees may resent a restriction on their mobility rights; (5) there are several pieces of legislation being advanced that will make trip reduction mandatory; (6) the proposal is inconsistent with the State Development and Redevelopment Plan which encourages concentrated growth into urban centers; (7) more effort and study should be accomplished before instituting this change.

RESPONSE: The proposed intercept parking lot requirement has been supported by the Atlantic County Transportation Authority (ACTA), the Atlantic County Expressway Authority, the Department of Transportation (DOT) and the Atlantic County Planning Board. The 20 percent employee participation rate or one intercept space per five employees is recommended by both the DOT and ACTA based on traffic and the current casino employee participation rate. Both of these agencies concur that this requirement is an effective way to reduce the traffic in and out of Absecon Island, and that, while higher percentages would have an even greater positive impact, one space per five employees seems to be an achievable number based on performance to date. The Department sees a need to take measures such as the intercept parking lot requirement to resolve this regional problem and to ensure that the existing roadway systems will continue to have the capacity to service new development and redevelopment on the Island as envisioned by the State Development and Redevelopment Plan. This requirement has been instituted in CAFRA decisions for quite some time but the need for a specific number and an adopted rule has become clear. Due to the magnitude of the problem and the unsafe condition created by traffic congestion, the Department believes that it is important that this requirement be included in the Coastal Zone Management Rules.

Agency Initiated Change to N.J.A.C. 7:7E-7.5: The wording of the off-island intercept parking requirement has been changed at N.J.A.C. 7:7E-7.5(d)3 to avoid possible misinterpretation of the number of parking spaces required.

N.J.A.C. 7:7E-4.14 High-Rise Structures

COMMENT: Clarification is needed to exclude utility structures, such as communication towers, and electric distribution structures from being subject to this policy.

RESPONSE: The Department agrees that some flexibility may be necessary to allow the construction of a utility structure which has a demonstrated need and cannot be located elsewhere nor located elsewhere on a project site. This conditional acceptability has been added for utility structures at N.J.A.C. 7:7E-7.14(a).

COMMENT: This policy is concerned primarily with land use and aesthetics, rather than environment, which are concerns that have gone far afield from environmental regulations.

RESPONSE: The Department disagrees. The protection of scenic beauty and the promotion of appropriate land use pattern were explicitly cited as one of the objectives of CAFRA, from which the authority for this rule came.

COMMENT: Many opposed the amendment because: (1) The amendment would make it more difficult to develop high-rises in certain urban areas along the coast that desperately need revitalization; (2) at certain locations, high-rise may be the only economically feasible way to provide housing and work places along the shoreline; (3) the amendment would have a negative economic impact, especially in places like Atlantic City or Asbury Park, where considerable planning and investments have been made along the waterfront portion of the city for its redevelopment. For instance, in Atlantic City, the Casino Control Act does not permit the construction of casinos on the west side of Pacific Avenue, and mid-rise would not provide sufficient units to accommodate affordable housing

in the northeast inlets. The amendment will stifle much of these planned developments.

RESPONSE: The Department agrees that more consideration needs to be given to minimize this policy's immediate adverse economic impact to the existing planned growth of urban areas and yet still protect the long term economic interests of a coastal community from the potential adverse impact of unplanned high-rise developments on scenic resources. The Department, therefore, will not adopt the proposed amendments at this time and will take the time to reconsider and weigh the potential long and short term economic impacts of each of the amendments prior to making any decisions to propose subsequent changes to the policy.

COMMENT: Atlantic City should be exempted from the setback requirements and should be considered in the same manner as the Delaware River Front and the North Waterfront Region and the rule should be relaxed for urban areas.

RESPONSE: The Department will take these recommendations under consideration. Also, see response above.

COMMENT: What is meant by "in character with surrounding transitional heights and densities, et cetera?" as used at N.J.A.C. 7:7E-7.14(b)6. This requirement poses a dilemma for projects that may be consistent with the local development scheme but are not consistent with the high-rise policy.

RESPONSE: The standards set forth at N.J.A.C. 7:7E-7.14(b) are location standards. A high-rise structure is acceptable at locations where other high rises exist or at locations where a local development plan specifically calls for high-rise developments. In the latter case, the Department still may override such plan's zoning if it contradicts the basic goals of the coastal policies.

COMMENT: The location and sitting criteria for high-rise structures can be and usually are addressed by the local zoning and master plans. The local planning agencies are better equipped to decide in that they have the professional staff to address this issue. Even though the local planning approvals do grant variances from the local standards, the deviations are usually minor.

RESPONSE: The Department disagrees. The sitting criteria of this policy is designed specifically to protect the visual resource and its associated amenities along the waterfront of a community. While local zoning and land use plan may also set forth standards for sitting and design criteria of high-rise structure, these standards vary, and may or may not be established with the same intent as this policy of protecting the scenic resources of the waterfront area for the long term interest of the entire community. And, as pointed out by one commenter, variances to the local standards are obtainable from time to time.

COMMENT: The side yard setback is excessive.

RESPONSE: The Department is not adopting this requirement and will make the appropriate changes in conjunction with the other issues raised, should it repropose changes to this policy in the future.

COMMENT: The Department should meet with the County Improvement Authority, the Casino Development Authority and City planners prior to amending this rule.

RESPONSE: The Department agrees and will meet with interested local officials to discuss the issues raised.

COMMENT: The changes should be supported. High-rise structures have adverse impacts in a residential community. For example, on an existing beach block in Atlantic City where two high rises are separated only by street width and the sidewalks, these high-rises block sunlight, the view and ocean breeze, and induce wind tunnel effects. High rises are detrimental to the character of a residential community and local administration can not be depended on for protecting the character of a community from high-rise developments.

RESPONSE: The Department acknowledges this support and will take these comments into consideration along with the others when considering future possible proposed changes to the policy.

COMMENT: There is no environmental difference between residential and commercial high-rise structures. Residential housing should be allowed in development regions that are zoned for high-rise or officially designated redevelopment area.

RESPONSE: The Department agrees that there is no environmental differences between a residential and commercial high-rise structure in a physical sense. The reason for the distinction is that the scenic resource along the water's edge are limited and its use therefore needs to carefully be planned to provide the greatest economic and social benefits to the entire community. A residential high-rise at the water's edge location will benefit its occupants the most, while a commercial and business establishment will enable and attract more of the general public to use and enjoy the waterfront. The distinction therefore is a resource management determination based on social and economic reasons rather than purely environmental.

COMMENT: At N.J.A.C. 7:7E-7.14(b)5, "overshadow" should pertain to one side in cases where the site may be bounded by water on more than one side.

RESPONSE: The Department agrees and has never required that the overshadow be applied to both sides in the application of this standard.

COMMENT: Many commenters offered recommendations to further refine policy or improve the overall protection of the visual resource in the coastal zone. They include: (1) At N.J.A.C. 7:7E-7.14(b)6, add Redevelopment areas designated under 55:14A et seq. and 40:55C et seq. in addition to municipal comprehensive development scheme(s); (2) N.J.A.C. 7:7E-7.14(b) should be clarified to define the block of view in some reasonable term, such as not more than a reasonable established percentage or a defined view corridor; (3) The proposed setback is insufficient to protect the visual amenities of the shoreline. These setbacks should be for all structures and the setback should be measured from the inland boundary of the erosion hazard area; (4) The policy should encourage and ultimately require municipalities to submit master plans, with particular concern given to the first 1,000 feet of water; (5) N.J.A.C. 7:7E-7.14 should be changed to provide greater flexibility. The amendment would render all high-rises a discouraged status; (6) At N.J.A.C. 7:7E-7.14(b)8, the side yard setback should be proportioned to typical urban land development pattern in the existing area; (7) The new wording is too restrictive for developments along the Hudson Riverfront Special areas defined by N.J.A.C. 7:7-4.6; (8) Add a qualifier to the view blocking condition that the high-rise structures are discouraged unless unavoidable so that the appropriate development or redevelopment of the parcel may occur in accordance with all other Coastal Resource and Development Policies.

RESPONSE: The Department is not adopting these changes and acknowledges these recommendations and will take them into consideration in any future proposed amendments to the policy.

COMMENT: Does mixed use qualify as a business or commercial district? What about hotels and motels, which the Coastal Zone Management Rules classify as residential development.

RESPONSE: If a mixed use facility is truly a mixed use facility rather than a mixed use facility where very limited commercial use is made available, mainly to service the needs of its residential occupants, it would then qualify as a commercial district. The Department will, in this case, also consult the local zoning for the uses allowed under the designated commercial district. Hotels and motels are classified as residential developments in N.J.A.C. 7:7 for the purpose of determining the application fee of a CAFRA project. They are commercial developments in accordance with the generally accepted land use classification scheme and N.J.A.C. 7:7E.

COMMENT: The 20 percent open space requirement at N.J.A.C. 7:7E-7.14(b)9 and the discouragement of high rises that would block the view of dunes, beaches, etc. appear to raise the issue of taking without just compensation. Under *Mungler v. Kansas,* just compensation would be required since the regulation will impart a public benefit rather than protect the public from harm. The 20 percent set aside and the 2/3 requirements would be more reasonable if it were applied to high-rise construction on property fronting directly on coastal waters with no existing public access.

RESPONSE: The Department is not adopting this change and will determine the legal implications of the *Mungler v. Kansas* decision before reconsidering proposing such a requirement in the future.

COMMENT: The proposed Statewide standards are too narrow to meet the special needs of the individual community.

RESPONSE: The Department will consider modifying the rule to take this into consideration.

N.J.A.C. 7:7E-8.7 Stormwater runoff

COMMENT: The Department incorrectly assumes that the existing detention basin design criteria is most useful for protecting the water quality from pollutants associated with stormwater runoff prior to discharging areas subject to fluvial flooding. This assumption is incorrect because large tidal storms do not flood the area and the detention basins do not filter the first flush.

RESPONSE: The Department does not assume that the existing detention basin design criteria is most useful in filtering pollutants from the runoff leaving a site, regardless of whether it is subject to fluvial or tidal flooding. The Department does, however, recognize that the effectiveness of a detention basin as a flood control measure is dependent on its storage capacity, and that this control is most meaningful in a fluvial system.

In terms of water quality control, the Department has required and still requires that a project uses the best available technology to minimize off-site runoff, increase on-site infiltration, simulate natural drainage systems, and minimize off-site discharge of pollutants to ground or surface water and encourage natural filtration functions. Detention or retention basins are just one of many techniques for minimizing discharge of pollutants.

COMMENT: One commenter asked if the addition of the phrase "for sites subject to fluvial flooding . . ." means that flood and erosion control standards for detention now only apply to rivers?"

RESPONSE: Yes. Detention and Retention basins need not be designed to the standards specified in N.J.A.C. 7:7E-8.7(b)1, which was set forth primarily for flood control.

COMMENT: The storage capacity of the detention or retention basin required for flood control should be required for pollution control as well.

RESPONSE: The Department does not dispute that detention and retention basins can be used to abate pollution and reduce the amount of pollutants discharged from a site. It is however, not the only or the best method of control. N.J.A.C. 7:7E-8.7 specifically addresses the sediment or pollution control standards. Retention and detention basins' design requirement for water quality control at this section has not been changed.

COMMENT: The Department should modify the policy to provide for a more predictable method of meeting water quality standards and resolve differences between the Department and the Soil Conservation District.

RESPONSE: The Department recognizes that there are differences in the acceptable standard of practice between the Department and the Soil Conservation Districts and is presently working on a joint manual to bring them into conformance with each other.

COMMENT: The Department needs to develop a system to better evaluate the acceptability of a project with respect to meeting the water quality standards to provide a more uniform and predicable determination.

RESPONSE: The Department is willing to consider any viable solution developed to provide a more predicable method of meeting water quality standards and will meet with any interested party to discuss the viable options.

N.J.A.C. 7:7E-8.10 Air Quality

COMMENT: What criteria does the Department use to define major development, and what criteria are used for determining what monitoring requirements would be for a proposed project?

RESPONSE: Typically a highway project designed at a capacity for an average annual daily trip (AADT) of 20,000 trips or more, and residential facilities with 1,000 residential units or more, would qualify as a major development under N.J.A.C. 7:7E-8.10. However, residential developments over 100 units are typically screened for their potential air quality impacts in a congested area.

COMMENT: Clarify what types of measures are needed to obtain and maintain the State Implementation Plan (SIP).

RESPONSE: Any feasible measure that will reduce the emission of carbon monoxide, particulate matter, sulfur dioxide, ozone, lead, nitrogen dioxide and/or visibility could be used to obtain and maintain SIP. The appropriate degree of measure required will be based on the type of the facility and level of the anticipated increase in emission. Generally, measures such as redesigning the proposed traffic circulation pattern or signalization, or incorporation of any mass transit services or facilities in the design or operation of a facility could be used in meeting the SIP.

COMMENT: The Department's efforts to control air pollution should focus first in urban areas where air quality can be affected by traffic pattern.

RESPONSE: The Department agrees. Based on the Department's experience, all of the major developments referred to paragraph (b)1 have been located in urban areas. This is why these new conditions affecting these areas are incorporated.

COMMENT: The new requirement that major developments to conduct and/or contribute to air quality monitoring exceeds the authority granted to the Department by the Legislature and, further, is an improper attempt on the part of the Department to force a small segment of the urban community to address and remedy a problem that is areawide. Other entities such as the New Jersey Transit and Port Authority of New York and New Jersey contribute far more to the air pollution problem in Hudson and yet they are not required to perform air quality monitoring or take measures to attain the SIP standard. Any project which satisfies traffic requirements through a fair share monetary contribution toward the improvement of a regional transportation facility should be considered to be consistent with the SIP.

RESPONSE: The Department agrees that the new provision does not address the equity issue, even though it is consistent with SIP. The Department would like to take more time to reexamine the equity issue and defer making a final decision on the amendment until later and readopt the policy without making this change at this time.

COMMENT: A project should be required to use best management practices rather than having monitoring requirements for the major developments.

RESPONSE: The Department will take this recommendation into consideration when reassessing the equity issue as well as the effectiveness and efficiency of such a requirement.

N.J.A.C. 7:7E-8.11 Public Access to the Waterfront

COMMENT: N.J.A.C. 7:7E-8.11(b)9 should be deleted. To reference any local municipal, county or regional public plans that have never been adopted in accordance with any regulations would be a violation of the APA.

RESPONSE: The Department agrees. The word adopted is added at N.J.A.C. 7:7E-8.11(b)9 to ensure that only those public access plans adopted by the local governing body would need to comply with this policy.

COMMENT: The requirement for public access should be applied on a case by case basis by first analyzing if access is needed. In urban settings where there is sufficient access being provided by the street alignment, additional public access provision would not be needed. In cases where there is a legitimate concern, the property owner should be compensated since such access provides a benefit to the public-at-large.

RESPONSE: The public access requirement is evaluated on a case-by-case basis, with the specific requirements being tailored for the type of facility proposed, for example, public, semi-public or private. The feasibility or practicality of such an access at a given site and the need for or the usefulness of such access are also considered in evaluating the specific case requirement.

The Department believes that it has been given the legal authority to impose this requirement, and that it does not constitute a taking of property.

COMMENT: Several commenters supported this policy.

RESPONSE: The Department acknowledges the support.

N.J.A.C. 7:7E-8.12 Scenic Resources and Design

COMMENT: The setback requirement of N.J.A.C. 7:7E-8.11 will make it impossible to develop single family homes on small lots.

RESPONSE: Single family and duplex developments are specifically exempted from this policy and most of the coastal policies, except for certain minimum standards which must be met, by the amendment to N.J.A.C. 7:7E-7.2(f).

COMMENT: Several commenters opposed this requirement in general and asserted that property owners should be compensated for meeting this new requirement.

RESPONSE: Appropriate setback requirements are a planning tool used to regulate land use development pattern. Compensation is not required for such land use planning standards. Because both the Scenic Resources and Design Policy at NJ.A.C. 7:7E-8.12(d) and the High-rise Structures Policy at N.J.A.C. 7:7-7.14 amendments are intended to protect the scenic quality of the water's edge of coastal communities and because of the extensive opposition expressed over such protective measures, the Department wants to reconsider these amendments further. This policy, therefore, will be readopted without the proposed changes at this time.

COMMENT: Several commenters supported this standard in general. One of them, however, believes that the construction of electric facilities within an existing developed industrial site should be exempted from this requirement.

RESPONSE: The Department acknowledges the support. It is possible that this requirement would not be applicable to some electrical facilities due to certain unusual configurations of a site or the unique nature of a proposed used. The intent of this change is to promote greater visual and/or physical access to the water's edge wherever feasible.

N.J.A.C. 7:7E-8.14 Traffic

COMMENT: The requirement to consider and incorporate public and private mass transportation facilities and services will add significantly to the cost of development. The Department must clarify whether this means creation of bus bays or it means bus stations, shuttles transit facilities, and monorails.

RESPONSE: The public and private transportation facilities and services would typically consist of bus stations/stops, van pooling, staggered

working hours, etc., which requires more ingenuity and careful planning rather than money. To avoid misinterpretation, examples of these facilities and services are added at N.J.A.C. 7:7E-8.14(b)1.

COMMENT: The amendment at N.J.A.C. 7:7E-8.14(c), which permits an applicant to provide a funding contribution toward area wide traffic improvements in lieu of the design modification requirement, should be eliminated. Transportation agencies should take care of transportation problems and not the individual developers.

RESPONSE: This amendment gives an applicant greater flexibility in mitigating the traffic impacts attributed to a project. This requirement is similar to impact fees often assessed by a municipality which has to expand an existing infrastructure in order to accommodate a project. Because the pace of growth and development at certain coastal locations is extremely high and because not every transportation agency has unlimited funding to keep up with the necessary improvement that comes with the additional demand, the fair share contribution alternative is sometimes the only viable alternative that would allow a project to proceed without creating an unsafe roadway condition due to traffic congestion.

COMMENT: Clarify "when traffic systems are disturbed by approved development" in N.J.A.C. 7:7E-8.14(c).

RESPONSE: The Department agrees that the existing language is vague and has changed the language of 7:7E-8.14(c) to clarify what is meant by disturbance to traffic systems.

COMMENT: In N.J.A.C. 7:7E-8.14(d) clarify "generate traffic" and further clarify that those intersections which are already below "Level of Service" D need not be improved to level D since that is not related to new development.

RESPONSE: The Department agrees and has modified the language at N.J.A.C. 7:7E-8.14 to clarify these two points.

COMMENT: The Department should not be involved in traffic issues, especially if a project fronts on a local road.

RESPONSE: The Department disagrees. If a project is going to create traffic problems or aggravate an already congested roadway, a developer should be responsible to mitigate for the adverse traffic impact created by the project.

COMMENT: Some sort of credit should be given for developers that support and improve mass transportation so that the credit may be transferred to future projects.

RESPONSE: The Department does not believe such a credit transfer system can work within the existing decision making framework. The Coastal Zones Management Policies encourage certain activities and discourage or prohibit others. A prohibited activity, for instance, can not be approved, regardless of the credits a developer has gained from a previous project.

Full text of the readoption is found in the New Jersey Administrative Code at N.J.A.C. 7:7E.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisk *[thus]*):

CHAPTER 7:7E
COASTAL ZONE MANAGEMENT

SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose

(a) (No change.)

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Draft Environmental Impact Statement (EIS). In August 1978 the Governor submitted the revised New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final EIS for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement, for public review. In August 1980, the Governor submitted the final New Jersey Coastal Management Program and Final Environmental Impact Statement for Federal approval, which was received in September 1980. The Rules on Coastal Zone Management (Rules) constitute the substantive core of the program. The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, February 7, 1983, February 3, 1986, August 15, 1988 and May 15, 1989.

(c) (No change.)

7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to five categories, as defined in N.J.A.C. 7:7E-1.3(c) through (g), of actions or decisions by the Department on uses of coastal resources within or significantly affecting the coastal zone:

1. (No change.)
2. Division management actions:
3. (No change in text.)
4. (No change in text.)
5. DEP management actions affecting the coastal zone; and
6. (No change in text.)

(b) and (c) (No change.)

(d) Division management actions: This chapter shall apply to all actions of the Division of Coastal Resources within the Coastal Zone to the extent statutorily permissible:

1. Permits for use of a floodway (N.J.S.A. 58:16A-50 et seq.);
2. Promulgation of rules concerning land use in flood hazard areas (N.J.S.A. 58:16A-50 et seq.);
3. Certification pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq. (water quality certification);
4. Permits for activities regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.); and
5. Dam Permits (N.J.S.A. 58:4-1).

(e) Consistency determinations: This chapter shall apply to decisions on the consistency or compatibility of proposed actions by Federal, State, and local agencies with the Coastal Zone Management, including, but not limited to, determinations of federal consistency under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §1451 et seq., determinations of consistency or compatibility under the Coastal Zone Management Act, comments on Draft and Final Environmental Impact Statements prepared under the National Environmental Policy Act, 42 U.S.C. §4321 et seq., and comments on other public and private plans, programs, projects and policies.

(f) (No change in text.)

(g) This chapter shall apply, to the extent statutorily permissible, to the following DEP management actions in or affecting the coastal zone in addition to those noted at N.J.A.C. 7:7E-1.1:

1. Tidelands Resource Council: Conveyances of State-owned tidelands (N.J.S.A. 12:3-1 et seq.).
2. Division of Water Resources:
i. (No change in text.)
ii. (No change in text.)
iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.)
iv.-xii. (No change in text.)
3. (No change.)
4. Division of Solid Waste Management: Certification of solid waste facilities (N.J.S.A. 13:1E-1 et seq.).
5. Green Acres and Division of Parks and Forestry:
i.-iv. (No change.)
6.-7. (No change.)

***[(g)]**h** DEP planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by DEP in the coastal zone as the lead State agency for coastal management under Section 306 of the Federal Coastal Zone Management Act.

1. Division of Coastal Resources:
i. (No change.)
ii. Navigational dredging; and
iii. (No change in text.)
2. Division of Water Resources:
i. Areawide water quality management ("208");
ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.); and

iii. Allocation of Wastewater Treatment Construction Grants (P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.).

3. Division of Environmental Quality: Air quality planning.

4. Division of Solid Waste Management: Solid waste management.

5. Green Acres and Division of Parks and Forestry: Planning for public acquisition of coastal lands.

7:7E-1.5 Coastal decision-making process

(a) General: Decisions on uses of coastal resources shall be made using the three-step process comprising the Location Policies (subchapters 2 through 6), the Use Policies (subchapter 7), and the Resource Policies (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific policies in each of the three steps may be applicable in the coastal decision-making process. The Rules on Coastal Zone Management address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. DEP does not, however, expect each proposed use of coastal resources to address all Location Policies, Use Policies, and Resource Policies. Rather, the applicable policies are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.

(b) Principles: The Coastal Zone Management Policies represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these policies, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management Policies must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the policies. In this process, interpretations of terms, such as "prudent", "feasible", "minimal", "practicable", and "maximum extent", as used in a specific policy or combinations of the policies, may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Coastal Zone Management Policies provides a mechanism for incorporating professional judgment by DEP officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

1. In the application of administrative discretion, DEP officials will be guided by eight basic coastal policies, which summarize the direction of the specific policies.

i. (No change.)

ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.

iii. Employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development *[and in terms of its consistency with the goals and objectives of the State Development and Redevelopment Plan]*.

iv.-vi. (No change.)

vii. Maintain and upgrade existing energy facilities, and site additional energy facilities determined to be needed by the State Energy Master Plan in a manner consistent with the policies of this Coastal Management Program.

viii. (No change.)

(c) (No change.)

7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed or destroyed, that is, replacement in kind within the same watershed. The Division will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the Basic Coastal Policies. Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Areas Policy (N.J.A.C. 7:7E-3.1 through 3.48).

SUBCHAPTER 2. LOCATION, USE AND RESOURCE POLICIES

7:7E-2.1 Introduction

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Different policies are therefore required for different locations. This subchapter and subsequent subchapters define the Location, Use and Resource Policies of the Coastal Program. The application of the Location Policies, in conjunction with the Use and Resources Policies, for the purpose of evaluating the suitability of a development is also known as the Coastal Location Acceptability Method or CLAM. This presentation of the policies is lengthy and detailed because the coast is large, varied, and complex. The method of applying the policies is, however, relatively simple.

7:7E-2.3 Mapping and acceptability determination

(a) The Coastal Location Acceptability Method (CLAM) is a nine-step process which determines DEP policy for any proposed coastal use in any coastal location. The first six steps are the mapping and policy determination process to assess location acceptability. Steps 7 and 8 refine the location acceptability determinations by reviewing the proposed use in terms of Uses and Resources Policies. Step 9 is the synthesis of Location, Use and Resource Policies.

CLAM Location Policy Analysis:

Step 1. Identify and map site and surrounding region.

Step 2. Identify and map Special Areas.

Step 3. Determine the applicable Special Area Policies.

Step 4. Identify and map General Areas.

Step 5. Determine the applicable General Areas Policies.

Step 6. Map Final Location Acceptability and list Location Policy conditions.

CLAM Use Policy Analysis:

Step 7. Identify applicable Use Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list Use Policy conditions.

CLAM Resource Analysis:

Step 8. Identify applicable Resource Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list Resource Policy conditions.

CLAM Synthesis:

Step 9. Determine final acceptability of proposed use, summarize and synthesize the final acceptability of a proposed use at a proposed location in terms of the applicable Location, Use and Resource Policies. Approval will be given only if a proposal satisfies all three sets of policies. In particular, applicants should note that applications that do not satisfy Location Policies will not be approved even if the Use and Resource Policies are satisfied.

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.1 Introduction

(a) Special Areas are those 48 types of coastal areas which merit focused attention and special management policies. This subchapter divides Special Areas into Special Water Areas (See N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (See N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (See N.J.A.C. 7:7E-3.33

through 3.35), and Coastwide Special Areas (See N.J.A.C. 7:7E-3.36 through 3.48).

1. Special Water Areas extend landward to the mean high water line or the level of normal flow in non-tidal waters.

2. (No change.)

3. The Special Water's Edge Areas (see N.J.A.C. 7:7E-3.16 through 7:7E-3.32) can be further subdivided into three subcategories, depending on their locations:

i. Oceanfront, and Raritan and Delaware Bayfronts (N.J.A.C. 7:7E-3.16 through 3.19);

ii. Barrier and Bay Islands (N.J.A.C. 7:7E-3.20 and 7:7E-3.21); and

iii. Coastwide Special Water's Edge Areas (N.J.A.C. 7:7E-3.22 through 3.32).

4. Special Water's Edge Areas in (a)3i and ii above, are found only next to the ocean, major open bays and backbay waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters.

4. (No change in text.)

5. (No change in text.)

(b) (No change.)

(Agency note: N.J.A.C. 7:7E-3.2 through 3.15 are Special Water Areas.)

7:7E-3.4 Prime Fishing Areas

(a) Prime Fishing Areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins and public fishing piers or docks. Prime Fishing Areas also include all red line delineated features within the State of New Jersey's three-mile territorial sea illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish; Fishing Grounds and Fishing Facilities, Section III and IV or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984); recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988) "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay". While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, Prime Fishing Areas do occur throughout the coastal zone.

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

7:7E-3.6 Submerged Vegetation

(a) A "Submerged Vegetation" special area consists of estuarine water areas supporting rooted vascular seagrasses such as widgeon grass (Ruppie maritima), attached green algae (Ulva lactuca) and eelgrass (Zostera marina). Eelgrass beds are limited to shallow portions of the Shrewsbury River, Barnegat Bay and Little Egg Harbor. Widgeon grass is for the most part limited to shallow areas of upper Barnegat Bay. Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from DEP in the DEP-DCR sponsored study, The New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report) February, 1980, conducted by Earth Satellite Corporation.

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

7:7E-3.8 (No change.)

7:7E-3.9 (No change.)

7:7E-3.10 Marina Moorings

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

(d) New or maintenance dredging in the marina mooring area and access channel is conditionally acceptable, provided that the proposed dredging complies with the provisions applicable to new or maintenance dredging, N.J.A.C. 7:7E-4.11(f) and (g).

(e) (No change.)

7:7E-3.14 Wet Borrow Pits

(a) "Wet Borrow Pits" are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes but is not limited to, flooded sand, gravel and clay pits, and stone quarries. Where a Wet Borrow Pit is also a Wetland and/or Wetlands Buffer, Wetlands and/or Wetlands Buffer Policies shall apply (see N.J.A.C. 7E-3.27 and 3.28).

(b) All proposed dredging and filling activities shall comply with the applicable Freshwater Wetlands Protection Act Rules (see N.J.A.C. 7:7A).

(c) (No change in text.)

(d) Surface mining is conditionally acceptable provided condition (b) above is met and the Use Policies for Mining (see N.J.A.C. 7:7E-7.8) are complied with.

(e) (No change in text.)

(f) Disposal of dredge spoil is conditionally acceptable provided condition (b) above is met and that:

1.-2. (No change.)

(g) Filling of Wet Borrow Pits for construction is conditionally acceptable provided that:

1.-6. (No change.)

(h)-(i) (No change in text.)

7:7E-3.15 Intertidal and Subtidal Shallows

(a) (No change.)

(b) Development, filling, new dredging or other disturbance is generally discouraged but may be permitted in accordance with the Use Policy for the applicable water body type (see N.J.A.C. 7:7E-4).

1. If destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. However, dredging activities and specific filling activities found approvable under N.J.A.C. 7:7E-4.11(j)2iii(1) and (2) are exempt from this mitigation requirement.

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

7:7E-3.16 Dunes

(a) A "dune" is a wind or wave deposited or man-made formation of vegetated or drifting windblown sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist.

1. Formations of sand immediately adjacent to beaches that are stabilized by retaining structures, or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune".

(b) Development is prohibited on dunes, except for development that has no prudent or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are;

1. Demolition and removal of paving structures:

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;

3. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes;

5. Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation;

6. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and

7. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(c) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.17 Overwash Areas

(a) An "Overwash Area" is an area subject to accumulation of sand that is deposited landward of the beach or dune by the rush of water up onto the beach, following the breaking of a wave, which carries sediment over the crest of a beach berm, a dune or a structure. An overwash fan may, through stabilization and vegetation, become a dune.

1. The seaward limit of the Overwash Area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.

2. The landward limit of the Overwash Area is the inland limit of sediment transport.

3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) Development is prohibited in Overwash Areas except for development that has no prudent or feasible alternative in an area other than an Overwash Area, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes;

2. Demolition and removal of paving and structures;

3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;

4. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference with the beach and dune system;

5. The planting of native vegetation to facilitate dune development;

6. Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation;

7. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);

8. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1); and

9. Removal of newly deposited overwash fans from public roads or developed lots.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. On non-oceanfront lots where this is not feasible, mitigation may take the form of creation or enhancement of adjacent street end dunes, including the construction of appropriately designed walk over structures.

(d) A single story, beach/tourism oriented commercial facility located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City is acceptable provided that it meets the following conditions:

1. The site is located within an area currently used for beach related commercial use and is landward of the boardwalk;

2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and

4. The facility meets all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood Hazard Areas.

(e) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.18 Coastal High Hazard Areas

(a) "Coastal High Hazard Areas" are flood prone areas subject to high velocity waters (or V zones), as delineated on the Flood Insurance Rate Maps (FIRM) prepared by FEMA, and areas subject to wave run-up and overtopping of shore protection structures parallel to the shoreline.

(b) Residential development, including, but not limited to, hotels and motels, is prohibited in Coastal High Hazard Areas, except for single family and duplex infill developments which are conditionally acceptable provided that the standards of N.J.A.C. 7:7E-7.2(f) are met.

(c) In general, commercial development is discouraged in the Coastal High Hazard Areas. Beach use related commercial development in Coastal High Hazard Areas which is conditionally acceptable within areas that are already densely developed, provided that:

1. The site is landward of the boardwalk;

2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

3. The facility is open to the general public and supports beach/tourism related activities only, that is, retail, amusement and food services. Lodging facilities are excluded; and

4. The facility complies with all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood Hazard Areas.

(d) All permanent structures shall be set back a minimum of 25 feet from oceanfront shore protection structures, typically including bulkheads, revetments and seawalls and occasionally jetties and groins if constructed at inlets. This condition is applicable only to shore protection structures that are of sufficient height and strength to provide resistance to storm waves.

7:7E-3.19 Erosion Hazard Areas

(a) "Erosion Hazard Areas" are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms.

1. Erosion Hazard Areas may be identified by any one of the following characteristics:

i. Lack of beaches;

ii. Lack of beaches at high tide;

iii. Narrow beaches;

iv. High beach mobility;

v. Foreshore extended under a boardwalk;

vi. Low dunes or no dunes;

vii. Escarped foredune;

viii. Steep beach slopes;

ix. Cliffed bluffs adjacent to beach;

x. Exposed, damaged or breached jetties, groins, bulkheads or seawalls;

xi. High long-term erosion rates; or

xii. Pronounced downdrift effects of groins (jetties).

2. Erosion Hazard Areas extend inland from the edge of a stabilized upland area to the limit of the area likely to be eroded in 30 years, for one to four unit dwelling structures, and 60 years, for all other structures including developed and undeveloped areas. This distance is measured from the crest of a bluff for coastal bluff areas; from the most seaward established dune crest for unvegetated dune areas; from the first vegetation line from the water for established vegetated dune areas; and from the landward edge of a beach or the eight-foot National Geodetic Vertical Datum (NGVD) contour line, whichever is farther inland, for non-dune areas.

i. An established, unvegetated dune is a dune that has been in place for at least two winter seasons or has been constructed pursuant to a Waterfront Development Permit or a CAFRA Permit or with financial assistance from the Department.

ii. An established vegetated dune is a dune with an existing vegetative cover which has been growing on site for at least two growing seasons.

3. The extent of an Erosion Hazard Area is calculated by multiplying the projected annual erosion rate at a site by 30.

(b) Development is prohibited in Erosion Hazard Areas except for:

1. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1);

2. Shore protection activities which meet the appropriate Coastal Engineering Use Policies (N.J.A.C. 7:7E-7.11);

3. Single story, beach/tourism oriented commercial development located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City. Such development is acceptable provided that it meets the following conditions:

i. The site is located within an area currently used for beach related commercial use and is landward of the boardwalk;

ii. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

iii. The facility is open to the general public and supports beach/tourism related recreational activities, that is, retail, amusement and food services. Lodging facilities are excluded; and

iv. The facility meets all the flood proofing requirements of the Flood Hazard Area policy; and

4. Single family and duplex infill developments that meet the standards of N.J.A.C. 7:7E-7.2(f). ***Erosion Hazard Area for developments or redevelopment located within a designated Urban Renewal or Redevelopment District will be determined on a case-by-case basis.***

(c) Rationale: See the OAL Note at the beginning of this subchapter.

(Agency note: N.J.A.C. 7:7E-3.20 and 3.21 belong to the Barrier and Bay Islands subcategory.)

7:7E-3.20 Barrier Island Corridor

(a) "Barrier Island Corridors" are the interior portions of oceanfront barrier islands, spits and peninsulas. ***Along the New Jersey Coast, headlands are located between Monmouth Beach, Monmouth County and Pt. Pleasant Beach, Ocean County.***

1. The oceanfront barrier island corridor encompases that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges. Barrier Island Corridor does not include the headlands of northern Ocean County, Monmouth County, and the southern tip of Cape May County, which are part of the mainland.

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the criteria for High Development Potential are met, as defined in the policy for Land Areas (see N.J.A.C. 7:7E-5.5) and maximum acceptable intensities for development under the Land Area Policies are not exceeded.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.21 Bay Islands

(a) Bay Islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier islands.

1. In cases where a Bay Island is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), the more restrictive provisions of the two rules shall apply.

(b) On Bay Island sites which do not abut a paved public road and/or are not served by a sewerage system with adequate capacity, non-water dependent development is prohibited and water dependent development is discouraged. Water dependent development may be acceptable if there are no feasible alternatives and environmental impacts are minimized.

(c) On Bay Island sites which abut a paved public road and sewerage system with adequate capacity, water dependent development is conditionally acceptable, provided all other applicable Coastal Zone Management Policies are complied with. New non-water dependent development is acceptable only at Low Intensity Development as defined at N.J.A.C. 7:7E-3.6(d) except for Existing Lagoon Edges (N.J.A.C. 7:7E-3.24) where the acceptable intensity of development may be increased to a Moderate Intensity Development as defined in N.J.A.C. 7:7E-5.6(c).

(d) Redevelopment or modification of an existing above ground facility is conditionally acceptable subject to the following provisions:

1. The facility does not exceed the existing development density as to the following:

i. Number of units; ***or***

ii. Square footage of interior floor space; ***[or]*** ***and***

[iii. Square footage of habitable floor space; and]

2. The site development does not exceed either 80 percent impervious coverage of the site or the existing intensity of development, that is, existing, percent of impervious surface cover, whichever is less.

7:7E-3.22 Beaches

(a) "Beaches" are gently sloping unvegetated areas of sand or other unconsolidated material that extend landward from the mean high water line to either:

1. The vegetation line;

2. A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or

3. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

(b) Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.

(c) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization;

3. The reconstruction of existing amusement and fishing piers and boardwalks;

4. Temporary recreation structures for public safety such as first aid and lifeguard stations;

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and

6. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(d) Public access and barrier free access to beaches and the water's edge is encouraged. Coastal development that unreasonably restricts public access is prohibited.

(e) Rationale: See the OAL Note at the beginning of this subchapter.

(Agency Note: N.J.A.C. 7:7E-3.16 through 3.32 are Special Water's Edge Areas. Within these sections, N.J.A.C. 7:7E-3.16 through 3.19 belong to the Oceanfront, and Raritan and Delaware Bayfronts subcategory.)

7:7E-3.23 Filled Water's Edge

(a) "Filled Water's Edge" areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredge spoil disposal sites and excavation fill areas are Filled Water's Edge.

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of the navigable water's edge.

(c) On Filled Water's Edge sites with direct water access (that is, those sites without extensive Intertidal Shallows or Wetlands between the upland and navigable water), development shall comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.5(c) for definitions) or left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating; and

3. On large Filled Water's Edge sites, of 10 or more upland acres, where water dependent and water oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On Filled Water's Edge sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.

(e) On Filled Water's Edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July 1977, development shall comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the Filled Water's Edge the existing number of boat slips in the Marina mooring area (7:7E-3.14) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of uplands to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (i.e., modernized) to the maximum extent practicable; and

iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

(f) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where the proposed water dependent use is a public walkway, the walkway right-of-way shall be at least 30 feet wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

(g) The intensity of a development shall not exceed the maximum allowed under N.J.A.C. 7:7E-9.3 acceptability of development in General Land Areas.

(h) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are demonstrated to be infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent commercial, transportation, recreation, and compatible maritime support service uses;

2. The developed land uses closest to the water's edge are water-oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other Coastal Policies, with particular emphasis on water quality and fishing access, are met.

(i) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.24 Existing Lagoon Edges

(a) "Existing Lagoon Edges" are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. Existing Lagoon Edges extend upland to the limit of fill, or the first paved public road or railroad generally parallel to the water area, whichever is less.

(b) Development of Existing Lagoon Edges is acceptable provided that:

1. The proposed development is compatible with existing adjacent land and water uses;

2. Existing retaining structures are adequate to protect the proposed development;

3. New or reconstructed retaining structures are consistent with the Acceptability Conditions for Filling (N.J.A.C. 7:7E-4.11(i)), 7:7E-4.11(j)) and Structural Shore Protection (N.J.A.C. 7:7E-7.11(e)) policies; and

4. The intensity of a development does not exceed the maximum allowed under the Acceptability of Development in General Land Areas Policy (N.J.A.C. 7:7E-5.2).

(c) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.25 Flood Hazard Areas

(a) "Flood Hazard Areas" are the floodway and *[floodplain]* ***flood fringe area*** around rivers, creeks and streams as delineated by DEP under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), or by the Federal Emergency Management Agency (FEMA); or the Flood Hazard Area around other coastal water bodies as defined by FEMA. Flood Hazard Areas are areas subject to either tidal or fluvial flooding. Where Flood Hazard Areas have been delineated by both DEP and FEMA, the DEP delineations shall be used. Where Flood Hazard Areas have not been delineated by DEP or FEMA, limits of the 100-year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line.

1. A complete list of streams for which the Department has delineated the Flood Hazard Area can be found at N.J.A.C. 7:13.

2. The Federal Emergency Management Agency has delineated the tidal floodplain for all Coastal Zone municipalities.

3. Where portions of Flood Hazard Areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Existing Lagoon Edge, Alluvial Flood Margins, Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, Cranberry Bogs, Wet Borrow Pit Margins, Coastal Bluffs, and Intermittent Stream Corridors), the relevant Special Water's Edge policies shall apply in terms of location acceptability and Flood Hazard Areas policy shall apply in terms of setback and floodproofing requirements.

(b) Dedication of undeveloped Flood Hazard Areas for purposes of public open space is encouraged, especially where such areas are part of a regional greenway system such as those designated under the New Jersey Wild and Scenic Rivers System (see N.J.S.A. 13:8-45 et seq.).

(c) In undeveloped Flood Hazard Areas, development within 100 feet of a navigable water body is prohibited, unless the development is for water dependent use or low intensity use which does not reduce the flood dissipating value of the Flood Hazard Area or preclude water dependent use of the area. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-***[1.6]****1.5***(c).)

(d) Elsewhere in the undeveloped portions of Flood Hazard Areas, development is conditionally acceptable provided that:

1. The acceptable intensity of development does not exceed the maximum allowed under acceptability of development in General Land Areas (N.J.A.C. 7:7E-5.2) for sites that receive a Low Intensity Rating and does not exceed Moderate Intensity level for all other sites. Low and Moderate Acceptable Development Intensities are defined in N.J.A.C. 7:7E-5.6(c) and (d) (that is, up to three to five percent of the site for low or 30 percent to 40 percent of the site for moderate can be developed into paving and structures); and

2. It would not preempt use of the waterfront portion of the floodplain for potential water-dependent use.

(e) In general, detention and retention basins are prohibited in Flood Hazard Areas. However, retention and detention basins developed specifically for storm water management purposes are con-

ditionally acceptable provided they are constructed in accordance with criteria of the State Stormwater Management Regulations (N.J.A.C. 7:8).

(f) Development in areas subject to fluvial flooding shall conform with the Flood Hazard Area Control Act and rules adopted pursuant thereto. Development in areas subject to tidal flooding shall conform with applicable federal flood hazard reduction standards as found at 44 C.F.R. Part 60 and in the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(g) In developed areas, the intensity of a development shall not exceed the maximum allowed under the acceptability of development in the General Land Areas Policy (N.J.A.C. 7:7E-5.2).

(h) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.26 Alluvial Flood Margins

(a) "Alluvial Flood Margins" are mainland areas adjacent to, and upland from, floodplains. They extend inland to the limit of alluvial soils with a seasonal high water table equal to, or less than, one foot.

1. Alluvial soils are those developing in recent sediment deposited by surface water and exhibiting essentially no modification of the deposited materials.

2. Where an alluvial flood margin is also an intermittent stream corridor, only the Intermittent Stream Corridor Policies (N.J.A.C. 7:7E-3.27) shall apply.

(b) Wildlife refuge and low intensity recreational use is encouraged.

(c) Development is discouraged in alluvial flood margins unless no feasible alternative site exists, or it is a landward extension of a water-dependent use.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

(Agency note: N.J.A.C. 7:7E-3.22 through 3.32 belong to the Coastwide subcategory.)

7:7E-3.27 Wetlands

(a) "Wetlands" or "Wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

1. Wetlands are regulated pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) or the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.). In addition, projects in Wetlands that are exempt from the Freshwater Wetlands Protection Act may be regulated pursuant to other programs within the jurisdiction of the Department.

2. All *[coastal]* ***tidal*** Wetlands situated in the Raritan Basin, south along the Atlantic Ocean and north along Delaware Bay and River and delineated at a scale of 1:2,400 on official maps as listed under N.J.A.C. 7:7-2.2 are subject to the Wetlands Act of 1970.

3. All *[coastal]* ***tidal*** and inland Wetlands are subject to the Freshwater Wetlands Protection Act of 1987, unless the Wetland is located within the boundary of coastal Wetlands delineated on the official maps cited under (a)2 above or is located within the jurisdiction of the Hackensack Meadowlands Commission or the Pinelands Commission.

4. Generalized locations of both *[coastal]* ***tidal*** and inland Wetlands can be found at a scale of 1:24,000 on maps produced for the National Wetlands Inventory by the United States Fish and Wildlife Service.

i. (No change.)

ii. These maps shall be used only as an indicator to assist in the preliminary determination of the presence or absence of Wetlands. ***They have been determined to be unreliable for the purposes of locating the actual wetlands boundary.***

5. All *[coastal]* ***tidal*** and inland Wetlands, excluding the delineated tidal wetlands promulgated pursuant to N.J.A.C. 7:7-2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (*[i.e.]* ***that is***, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) In general, development of all kinds is prohibited in Wetlands, unless the Department can find that the proposed development meets the following four conditions (see also N.J.A.C. 7:7-2.2):

1. Requires water access or is water-oriented as a central purpose of the basic function of the activity (this policy applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.5.

2.-4. (No change.)

(c) In addition, development in Wetlands regulated under the Freshwater Wetlands Protection Act of 1987 is prohibited, unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules. N.J.A.C. 7:7A.

(d) (No change in text.)

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

(h) If an application to disturb or destroy Wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the Wetlands in accordance with the following:

1. When a permit allows the disturbance or loss of Wetlands (see N.J.A.C. 7:7E-3.25) by filling or other means, this disturbance or loss shall be compensated for as specified under (h)6 below unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be replacement of Wetlands of equal ecological value.

2. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb Wetlands and immediately after activities that will temporarily disturb these habitats.

3. Where the Department permits mitigation surface area on a basis of less than a 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of Wetlands from existing natural resources protected under the applicable Special Area Policies (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.

4. The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or N.J.A.C. 7:7E-3.15 and 3.27.

5. Future development on the mitigation site is prohibited.

6. The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to preactivity condition.

(1) Restoration shall be required at a ratio of one acre restored to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (h)6ii(2) below.

(2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of (h)6ii(3) below.

ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:

(1) A non-wetlands site; or

(2) A former Wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains Wetlands characteristics such that it meets the definition of a degraded Wetland pursuant to N.J.A.C. 7:7A-1.4, it is not

eligible for use in creation. Rather, it is only eligible for enhancement activities pursuant to (h)6iii, below. If the disturbance to a formerly Wetlands site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its discretion, condition an approval of a mitigation plan, or a permit, or both, on the resolution of the violation.

(3) Creation will be required at a ratio of two acres created to one acre lost or disturbed.

iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded Wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. *[Enhancement will be required at a ratio of seven acres enhanced to one acre lost or disturbed.]* ***The enhancement requirement will be determined on a case-by-case basis.***

iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible. This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater Wetlands. If money is donated, the Department will require an amount equivalent to:

(1) The cost of purchasing an area which was historically a wetland but which has been legally filled, and restoring that area to a functional wetland of equal ecological value to those which are being lost; or

(2) The cost of purchasing an area which was historically an upland, and creating and preparing wetlands of equal ecological value to those which are being lost.

v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the freshwater wetlands ecosystem.

7. All mitigation projects shall be carried out on-site to the maximum extent practicable.

8. If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.

7:7E-3.28 Wetlands Buffers

(a) "Wetlands Buffer or transition area" means an area of land adjacent to a Wetland which minimizes adverse impacts on the Wetlands and serves as an integral component of the Wetlands ecosystem. Wider buffers than those noted below may be required to establish conformance with other Coastal Policies.

1. A Wetlands Buffer of up to 300 feet in width shall be established around Wetlands regulated under the Wetlands Act of 1970.

2. A Wetlands Buffer or transition area of up to 150 feet in width shall be established around Wetlands regulated under the Freshwater Wetlands Protection Act (see Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A).

(b) Development is prohibited in a wetlands buffer around Wetlands regulated pursuant to the Wetlands Act of 1970, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and the surrounding upland. The precise geographic extent of the required actual wetlands buffer on a specific site shall be determined on a case-by-case basis using these standards.

(c) All Wetlands Buffers (that is, transition areas) associated with Wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(d) In areas of the coastal zone which are within the Pinelands Area (N.J.A.C. 7:7E-3.24) and the Hackensack Meadowlands District, the appropriate buffer width shall be determined *[by the method prescribed in Report 30B of the Pinelands Commission publication, entitled "Buffer Delineation Model for New Jersey Pinelands Wetlands, 1985,"]* ***in accordance with the requirement set forth in the Pinelands Comprehensive Management Plan for Wetlands Transition Areas, N.J.A.C. 7:50-6.14,*** and by the Hackensack Meadowlands District Zoning Regulations, respectively.

*[(f)]**(e)* (No change in text.)

7:7E-3.29 Cranberry Bogs

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

7:7E-3.30 Wet Borrow Pit Margins

(a) "Wet Borrow Pit Margins" are areas surrounding Wet Borrow Pits (see definition at N.J.A.C. 7:7E-3.14(a)). They extend from normal water level in the borrow pit below to the inland limit of a water quality buffer. The width of this buffer will vary by substrate texture. Where soils are coarse, that is sands or gravels, the width will be 100 feet; elsewhere, it will be 50 feet.

1. Where a Wet Borrow Pit Margin is also a Wetland and/or Wetlands Buffer, Wetlands and/or Wetlands Buffer Policies (N.J.A.C. 7:7E-3.27 and 3.28) shall apply.

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

7:7E-3.31 Coastal Bluffs

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

7:7E-3.32 Intermittent Stream Corridors

(a) "Intermittent Stream Corridors" are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contains an area or areas with a seasonal high water table depth equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a distance of 25 feet measured from the top of the channel banks, whichever is greater (see Figure 7).

1. Where an Intermittent Stream Corridor is also a Wetland (N.J.A.C. 7:7E-3.25), the Wetlands Policy shall apply.

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

(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules on State Open Waters (N.J.A.C. 7:7A-2.2).

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

(Agency note: N.J.A.C. 7:7E-3.33 through 3.35 are Special Land Areas)

7:7E-3.33 Farmland Conservation Areas

(a) "Farmland Conservation Areas" are ***defined as contiguous areas of 20 acres or more (in single or multiple tracts of single or multiple ownership)*** *[any county Agricultural Development Areas certified pursuant to N.J.A.C. 2:76, or areas of 20 or more on-site contiguous acres]* with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which ***are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm-dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as Christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.*** *[have been assessed as farmland by the local tax assessor for two years out of the five year period immediately prior to filing a coastal permit application.

1. "Agricultural use" means the use of land for common farmsite activities, including but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

2. "Board" means a county agriculture development board established pursuant to section 7 or a subregional agricultural retention board established pursuant to section 10 of the Agriculture Retention and Redevelopment Act as amended February 9, 1988 (N.J.S.A. 4:1C-11 et seq.).

3. "Committee" means the State Agriculture Development Committee established pursuant to section 4 of the Right to Farm Act, N.J.S.A. 4:1C-4.]*

(b) Farmland Conservation Areas shall be maintained and protected for open space or *[agricultural uses]* ***farming purposes. Farming or farm-dependent uses are permitted uses in farmland conservation areas.*** Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use Policy (N.J.A.C. 7:7E-7.8).

(c) Continued, renewed, or new farming is encouraged in Farmland Conservation Areas.

*[(d) Unless the Board or the Committee recommends otherwise, development other than for agricultural use is prohibited in certified Agricultural Development Areas and is conditionally acceptable elsewhere in the Farmland Conservation Areas provided that the loss of farmland will be adequately compensated.

1. In cases where the board or the Committee recommends that a development is an exception to this general ruling, the Department will consider the board's and/or the Committee's recommendations and determine the acceptability of that particular development on a case-by-case basis.

(e) All developments for non-agricultural use found acceptable in the Farmland Conservation Area shall adequately compensate for the loss of the farmland by ensuring that an area of equal acreage and soil capability will be placed under permanent protection from non-agricultural developments. This compensation shall be accomplished by:

1. Making a monetary contribution in the amount equivalent to the value of the development easement (as defined by the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 et seq., at N.J.S.A. 4:1C-13f) of the site to the board;

2. Dedicating a development easement purchased for an area of equal acreage and same soil capability near the site or within a Certified Agricultural Development Area to the board, which shall determine the appropriateness of the proposed mitigation prior to acceptance; or

3. Other comparable compensation measures approved by the Department.]*

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

7:7E-*[3.30]**3.34* Steep Slopes

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

(Agency note: N.J.A.C. 7:7E-3.35 through 3.48 are Coastwide and Regional Special Areas)

7:7E-3.35 Dry Borrow Pits

(a)-(j) (No change.)

(Agency note: N.J.A.C. 7:7E-3.35 through 3.48 are Coastwide and Regional Special Areas)

7:7E-3.36 Historic and Archaeological Resources

(a) "Historic and Archaeological Resources" include objects, structures, shipwrecks, neighborhoods, districts, and other features of the landscape and seascape, including archaeological sites, which either are on or are eligible for inclusion on the State or National Register of Historic Places. *[The criteria for eligibility are defined at N.J.A.C. 7:4.]*

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

(d) Scientific recordings and/or removal of the historic and archaeological resources or other mitigation measures must take place, if the proposed development would irreversibly and/or adversely affect historic and archaeological resources. Surveys and reports to identify and evaluate historic and archaeological resources potentially eligible for the State or National Registers shall be performed by professionals who meet the National Park Service's Professional Qualifications Standards in the applicable discipline. Professional procedures and reports shall meet the applicable Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the professional reporting and survey guidelines of the Office of New Jersey Heritage in the Division of Parks and Forestry, DEP, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The same qualifications and performance standards shall apply to documentation, investigations, and reports prepared pursuant to (e) below. A description of these qualifications and performance standards is available at the Office of New Jersey Heritage.

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

7:7E-3.*[40]**37* Specimen Trees

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

7:7E-3.38 Endangered or Threatened Wildlife or Vegetation Species Habitats

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

(c) The following wildlife species were listed as endangered on the State list in January, 1984 as amended on May 6, 1985 and July 20, 1987:

. . .

BIRDS

. . .

Loggerhead Shrike	Larnius ludovicianus

. . .

(d) The following wildlife species were listed as threatened species on the State list in January, 1984, as amended on May 6, 1985 and July 20, 1987:

. . .

BIRDS

. . .

American Bittern	Botaurus legtigimosos
Northern Goshawk	Accipiter gentilis
Black Rail	Laccipiter jamaicensis
Barred owl	Strix varia

. . .

(e) Refer to N.J.A.C. 7:5C-5.1 for the official State list of endangered plant species.

(f) For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the Plant species listed in Section 6-204 of the Pinelands Comprehensive Management Plan shall also apply (N.J.A.C. 7:50-6.24).

[(AGENCY NOTE: The official State list of endangered plant species was proposed by the Department in the January 16, 1990 New Jersey Register at 22 N.J.R. 94(a).)]

*[(f)]**(g)* (No change.)

7:7E-3.39 Critical Wildlife Habitats

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

7:7E-3.40 Public Open Space

(a) "Public Open Space" constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access, or wildlife protection or management. Public Open Space includes, but is not limited to, State Forests, State Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP owned and managed lands.

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

7:7E-3.41 Special Hazard Areas

(a) "Special Hazard Areas" include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11b-k are used or disposed, including adjacent areas and areas of hazardous material contamination.

(b) (No change.)

(c) Approvals from the DEP's Division of Hazardous Waste Management shall be obtained prior to the commencement of any hazardous substance investigations or clean-up activities at contaminated sites.

(d) (No change in text.)

7:7E-3.42 Excluded Federal Lands
(a)-(c) (No change.)

7:7E-3.43 Special Urban Areas
(a) Special Urban Areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178), qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The following 32 coastal municipalities qualify as Special Urban Areas in 1989:

Asbury Park	Keansburg	Paulsboro
Bayonne	Kearny	Pennsauken
Belleville	Lakewood	Penns Grove
Bridgeton	Long Branch	Perth Amboy
Camden	Millville	Pleasantville
Commercial Twp.	Neptune Twp.	Salem
Elizabeth	New Brunswick	Trenton
Gloucester City	Newark	West New York
Gloucester Twp.	North Bergen	Weehawken
Hoboken	Old Bridge	Woodbury
Jersey City	Passaic City	

(b)-(e) (No change.)

7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area
(a) (No change.)
(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).
1. Within the Pinelands National Reserve, the Pinelands Commission will serve as a reviewing agency for coastal construction permit applications.
2. The Division of Coastal Resources and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Division of Coastal Resources, Planning Group, CN 401, 501 East State, Trenton, New Jersey 08625.
(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials in freshwater wetlands and/or State open waters may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, or under an individual or statewide general permit program administered by the State under the provisions of the Federal Act and applicable State laws.
(d) (No change in text.)

7:7E-3.45 Hackensack Meadowlands District
(a)-(b) (No change.)
(c) Coastal activities under the jurisdiction of the HMDC shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws.
(d) (No change in text.)

7:7E-3.46 Wild and Scenic River Corridors
(a) "Wild and Scenic River Corridors" are components of the New Jersey Wild and Scenic Rivers System designated by the DEP Commissioner under N.J.S.A. 13:8-45 et seq. River corridors include the river and adjacent upland to the limit of the Flood Hazard Area or to the limit of State owned lands, whichever is furthest inland.
1. "Wild and Scenic River Corridors" shall also mean any river adopted into the National Wild and Scenic Rivers System or any rivers or segments thereof being studied for possible inclusion into that system pursuant to the Wild and Scenic River Act (16 U.S.C. §§1271-1278). River corridors established under the Federal Wild and Scenic River Act shall include the river and *[an]* adjacent *[upland area extending one-quarter mile on each side of the river]* areas defined as the Wild and Scenic River Corridor by the River Management Plan. ***For rivers under study for possible inclusion into the National System, the river corridor shall include the river and adjacent area extending one-quarter mile on each side of the river from annual mean high water.***
(b) Policy relevant to Wild and Scenic River Corridors is as follows:
1.-3. (No change.)
4. Development which would have an adverse effect on the values for which a river is being considered as a potential addition to the National Wild and Scenic Rivers System, including but not limited to the scenic, recreational, and fish and wildlife attributes of the river corridor, is prohibited.
5. Development *[which does not]* ***shall*** conform to the standards set forth by the *[Secretary of the Interior or the Secretary of Agriculture, as may be appropriate, pursuant to Section 6(c) of the National Wild and Scenic River Act or which would otherwise jeopardize the "outstanding remarkable" values for which a river corridor has been adopted into the Wild and Scenic River System is prohibited]* ***the locally adopted River Management Plan.***
(c)-(d) (No change.)

7:7E-3.47 Geodetic Control Reference Marks
(a)-(c) (No change.)

7:7E-3.48 Hudson River Waterfront Area
(a)-(d) (No change.)
(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance create a conservation easement in favor of the Department. The conservation easement shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:
1.-3. (No change.)
(f) (No change.)

SUBCHAPTER 4. GENERAL WATER AREAS

7:7E-4.9 Lakes, Ponds and Reservoirs
(a) (No change.)
(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2. In addition, all activities shall comply with all applicable Freshwater Wetlands Protection Rules, N.J.A.C. 7:7A.
(c) (No change.)

7:7E-4.11 Acceptability Conditions for Uses
(a)-(c) (No change.)
(d) Standards relevant to docks and piers (for cargo and commercial fisheries) are as follows:
1. "Docks and piers (for cargo and passenger movement and commercial fisheries)" are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with a single industrial or manufacturing facility or to commercial fishing facilities. Rules for docks and piers intended for multiple uses may be found under Use Policies for Ports (N.J.A.C. 7:7E-7.9). Policies for docks composed of fill and retaining structures may be found under the category "filling" (See (j) below).
2. Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable in most General Water Areas, provided that:
i. The width and length of the piers are limited to only what is necessary for the proposed use;

ii. They will not pose a hazard to navigation; and
iii. (No change in text.)
3. (No change.)
(e) Standards relevant to docks and piers (recreational) are as follows:
1. "Recreational and fishing docks and piers" are structures supported on pilings driven into the bottom substrate, or floating on the water surface, which are used for recreation or fishing, or for the mooring of boats used for recreation or fishing, except commercial fishing.
2. Recreational docks and piers*,* including mooring piles, are conditionally acceptable in General Water Areas provided that:
i.-ii. (No change.)
iii. The docks and piers and their associated mooring piles are located so as to not hinder navigation or conflict with overhead transmission lines;
iv. (No change.)
v. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively.
vi. The width of the structure shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide, whichever is closer to the structure, (measured from bottom of stringers) except for floating docks. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over marsh, wetlands and mudflats. The height of the structure over wetlands shall be a minimum of *[three]* ***four*** feet regardless of width;
vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and
viii. Breakwater attached to the structures shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three-inch spacing between planks.
3.-4. (No change.)
(f) Standards relevant to maintenance dredging are as follows:
1. "Maintenance dredging" is the removal of accumulated sediment from previously authorized navigation and access channels, marinas, lagoons***, canals*** or boat moorings, for the purpose of maintaining an authorized water depth and width for safe navigation. Dredging beyond those authorized dimensions is "new dredging" (see N.J.A.C. 7:7E-4.11(g)).
2. Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:
i. (No change.)
ii. A pre-dredging chemical and physical analysis of the dredge spoil may be required for upland disposal at sites where the Department suspects contamination of sediments. For ocean disposal of dredge spoils from sites suspected of being contaminated, additional testing, such as a bioaccumulation test, and bioassay of sediments, may also be required. The results of these tests will be used to determine if hazardous substances may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of a dredged material disposal site.
iii. (No change.)
iv. If predicated water quality parameters are likely to exceed State Surface Water Quality Standards, of if pre-dredging chemical analysis of sediments reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures or, in the alternative, may impose seasonal restrictions under the specific circumstances identified below.
v.-vii. (No change.)
3. (No change.)
(g) The standards relevant to new dredging are as follows:
1. "New dredging" is the removal of sediment from the bottom of a water body that has not been previously dredged, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width.
2. Acceptability conditions relevant to new dredging are as follows:
i.-ii. (No change.)
iii. New dredging or excavation to create new lagoons for residential development is prohibited in Wetlands, Wetlands Buffer, Endangered or Threatened Wildlife or Vegetation Species Habitats as defined in N.J.A.C. 7:7E-3.25, 3.26 and 3.40 and discouraged elsewhere.
iv.-v. (No change.)
vi. (No change in text.)
(h)-(s) (No change.)

SUBCHAPTER 5. GENERAL LAND AREAS

7:7E-5.3 Coastal Growth Rating
(a) The Coastal Zone is classified into 15 different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources (See Figure 12). For these regions, the Department uses three broad regional growth strategies:
1.-2. (No change.)
3. The Limited Growth Region contains large environmentally sensitive areas. Generally, only infill development is acceptable here.
(b) (No change.)
(c) The Bay Island Region is comprised of islands or filled areas situated between the uplands of the mainland and barrier islands, and is designated a Limited Growth Region.
(d) The Urban Area region consists of all Special Urban Areas. (See N.J.A.C. 7:7E-3.43) and Atlantic City. This region is a Development Region.
1. Atlantic: Pleasantville City.
2. Camden: Camden, Gloucester City, Gloucester Township and Pennsauken Township.
3. (No change.)
4. Essex: Belleville and Newark.
5. Hudson: Bayonne, Hoboken, Jersey City, Kearny, North Bergen, West New York and Weehawken.
6.-9. (No change.)
10. Salem: Penns Grove Borough and Salem.
11. Union: Elizabeth.
12. (No change in text.)
(e)-(g) (No change in text.)
(h) The Barnegat Corridor Region includes those portions of Ocean County south of Cedar Creek and north of Cedar Run Creek to the west of U.S. Highway 9 and north of State Highway 72 to the east of U.S. Highway 9, and is designated an Extension Region.
(i) The Mullica-Southern Ocean Region includes those portions of Ocean County south of State Highway 72 to the east of U.S. Highway 9 and south of Cedar Run Creek to the west of U.S. Highway 9 except for the Tuckerton Region, all of Bass River Township, Burlington County, and those portions of Atlantic County north of County Road 561 (Jimmy Leeds Road), located within the coastal zone, and is designated a Limited Growth Region.
(j)-(p) (No change in text.)

7:7E-5.4 Environmental Sensitivity Rating
(a) Environmental Sensitivity is an indication of the general suitability of a land area for development based on soils.
(b) High Environmental Sensitivity Areas are land areas with wet or high permeability moist soils.
1. "Wet or high permeability moist soils" are soils with a depth to seasonal high water table of three feet or less, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table of four feet or less.
(c) (No change.)
(d) Low Environmental Sensitivity Areas are areas with depth to seasonal high water greater than five feet*[.
1.]* ***or*** on-site paving or structures*[*; or
2. Areas with bare earth or herbaceous vegetation or early successional meadow with Agricultural Capability Class V-VIII Soils, except soils suitable for blueberry and cranberry production.
(e) Definitions of Environmental Sensitivity Factors are as follows:

1. "Forest vegetation" is defined as an area of trees and shrubs where a majority of the trees are four inches in diameter breast high (dbh) or greater.

2. "Wet or high permeability moist soils" are soils with a depth to seasonal high water table less than, or equal to, three feet, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table less than, or equal to, four feet.]

(f) (No change.)

7:7E-5.5 Development Potential

(a) (No change.)

(b) The standards relating to Residential Development Potential are as follows:

1.-3. (No change.)

4. Low Potential sites in *[Limit]* ***Limited*** Growth or Extension Regions meet any one of the following criteria:

i. Roads: A site located more than 1,000 feet from the nearest paved public road;

ii. Sewerage: sites located more than 1,000 feet from an adequate wastewater treatment system and characterized by soils unsuitable for on-site sewage disposal systems; or

iii. (No change in text.)

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

7:7E-5.7 Land Acceptability Tables

(a) Introduction: The Land Acceptability Tables, one for each of the three regional growth types, indicate the acceptability intensity of development of a site or parts of a site for each of the nine possible combinations of Environmental Sensitivity and Development Potential factors in each table. Since Development Potential applies to an entire site, each site can have a maximum of three different levels of acceptable intensity, if it has three areas with different levels of Environmental Sensitivity.

Land Acceptability Table: Development Region

(Urban Areas, Northern Waterfront, Northern, Central Absecon-Somers Point Regions, and Delaware River)

	DEVELOPMENT POTENTIAL			ENVIRONMENTAL SENSITIVITY			ACCEPTABLE DEVELOPMENT INTENSITY		
Area Type Number	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X			X		
5		X			X		X		
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Extension Region

(Southern, Western Ocean, and Barnegat Corridor Regions)

	DEVELOPMENT POTENTIAL			ENVIRONMENTAL SENSITIVITY			ACCEPTABLE DEVELOPMENT INTENSITY		
Area Type Number	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X				X	
5		X			X			X	
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Limited Growth Region

(Mullica-Southern Ocean, Great Egg Harbor River Basin, and Delaware Bayshore Regions)

Area Type Number	DEVELOPMENT POTENTIAL			ENVIRONMENTAL SENSITIVITY			ACCEPTABLE DEVELOPMENT INTENSITY		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X				X	
2	X				X			X	
3	X					X			X
4		X		X				X	
5		X			X				X
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

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

SUBCHAPTER 7. USE POLICIES

7:7E-7.2 Housing Use Policies

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

(f) Standards relevant to the development of a single family home or duplex located upland of the mean high water line are as follows:

1. All structures and on-site improvements shall comply with the Coastal Policies for Beaches, Dunes, Wetlands and Coastal Bluffs, and shall comply with other Coastal Policies by meeting the following minimum standards. Compliance with the applicable policies may require changes in building design and/or location.

i. On sites with shore protection structures, the residential structure shall be set back, at a minimum of 25 feet, from oceanfront shore protection structures, and at a minimum of 15 feet from bulkheads elsewhere. This distance is measured from the seaward face of a bulkhead or seawall and from the top of slope on the seaward face of a revetment.

ii. For sites adjacent to surface water bodies or wetlands, a silt fence shall be erected along the limit of disturbance parallel to the shoreline or wetlands limits. This fence shall have a 10-foot return on each end, be erected prior to construction and remain in place until all construction and landscaping is completed.

iii. For sites partially or completely within the Erosion Hazard Area or Coastal High Hazard Area, only infill developments meeting the following criteria are acceptable. Infill is defined as no more than two buildable vacant lots, as defined by the municipality and shown by the municipal record as such on or prior to October 3, 1988, with houses located on both sides of the vacant lot(s) ***perpendicular to the shoreline. Where an existing house or buildable lot is separated from the others by a street oriented perpendicular to the shoreline, the infill requirement for the side of the property adjacent to the street shall be determined by the status of the property adjacent to the other side of the street***.

(1) The lowest structural member must be at least one foot above the base elevation.

(2) The house shall be constructed as close to the landward site boundary as possible, and shall not be constructed waterward of the adjacent developments.

iv. For wooded sites, site clearing shall be limited to an area no greater than 20 feet from the footprint of the dwelling and to the areas deemed necessary for driveway, septic and utility line installations.

v. Indigenous coastal plants shall be used in landscaping wherever feasible. No plastic liners shall be used in the landscaped or gravel areas. All liners shall be made of filter cloth or other permeable material.

vi. All driveways shall be surfaced with permeable materials or pitched to drain all runoff onto permeable areas of the site.

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

***(i) Standards relevant to large-scale multi-use development are as follows:**

1. "Large-scale multi-use developments" are free standing, planned developments, such as planned unit developments, which combine at least 500 residential dwelling units with commercial, industrial, recreational, or other uses.

2. Large-scale multi-use developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, do not cause significant adverse secondary impacts, and will not induce growth outside the site boundary which is inconsistent with coastal policies.

3. Large-scale multi-use developments need not meet the Land Area Policies, except in the high and moderate environmental sensitivity portions of Limited Growth Regions, where only the roads and sewage criteria will be used in determining if the Development Potential is High, Medium or Low (See N.J.A.C. 7:7E-5.5(b)). Large scale multi-use development in Limited Growth Regions must, however, incorporate a buffer along the perimeter of the site of sufficient size to preclude scattered peripheral development.*

7:7E-7.3 Resort/Recreational Use

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

(d) Standards relevant to marinas are as follows:

1. "Marina" means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or collective control or management providing permanent or semi-permanent dockage to five or more vessels.

2. New marinas or expansion or renovation of existing marinas for recreational boating are conditionally acceptable if:

i. The proposed marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon the site conditions;

ii. The proposed marina posts prominent signs indicating discharges shall not be allowed within the basin and provides *[adequate and conveniently located pumpout stations,]* rest rooms and portable toilet emptying receptacles for wastewater disposal from boats. ***For marinas with dockage for 25 or more vessels or any one vessel with live-aboard arrangement, adequate and conveniently located pumpout stations shall be provided.***

iii. *[At]* ***Rest rooms and at*** least one portable toilet emptying receptacle shall be provided at a Marina. *[This]* ***The*** portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or rest room facility for this use; and

iv. All restrooms, pumpout facilities and portable toilet emptying receptacles shall dispose of the collected water in a manner acceptable to the Department as follows:

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewage disposal system constructed in accordance with N.J.A.C. 7:9-2; or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal.

3.-8. (No change in text.)

(e) (No change.)

7:7E-7.4 Energy Use Policies

(a) (No change.)

(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that includes both the Department and the Board of Public Utilities (BPU) (N.J.S.A. 52:27F-6 and 52:27-11 et seq.) according to the procedures defined in the Memorandum of Understanding between the Department and BPU on Coordination of Permit Reviews.

2. BPU will determine the need for future coastal energy facilities according to three basic standards. BPU will submit an Energy Report to the Department with its determination of the need for a coastal energy facility based on three required findings:

i.-iii. (No change.)

3. (No change.)

4. If BPU has submitted an Energy Report to the Department, the Department decision document shall refer to the BPU Energy Report and indicate the Department's reasons for differences, if any, between the Department decision and the BPU Energy Report.

5. Where BPU and the Department disagree on the acceptability of a specific proposed coastal energy facility (for example, on a specific proposed site for one type of energy facility), the disputed decision shall, in accord with State law, be submitted to the State's Energy Facility Review Board for final administrative action.

6. (No change.)

(c)-(h) (No change.)

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's coast to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by the Department of Environmental Protection and the BPU, and interested Federal, State and local agencies, affected industries, and the general public;

ii.-iii. (No change.)

iv. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries will be evaluated by DEP and the BPU in terms of the entire pipeline corridor through the State of New Jersey and the adjacent territorial sea;

v.-vii. (No change.)

2. (No change.)

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. (No change.)

2. Separation and dehydration facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by the Department and BPU.

3. (No change.)

(k)-(l) (No change.)

1. (No change.)

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system by the Department and BPU.

3. (No change.)

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by the Department and BPU; and are in compliance with United States Department of Transportation regulation.

2. (No change.)

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: they are consistent with all applicable Location and Resource Policies; there is a need for the facility as determined by BPU; and an Environmental Impact Statement determines that the facility will have no unacceptable impacts.

i.-iii. (No change.)

2. (No change.)

(p)-(q) (No change.)

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.

i. (No change.)

ii. NJDEP and BPU shall find the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that BPU has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

iii.-vi. (No change.)

2. (No change.)

(s) (No change.)

7:7E-7.5 Transportation Use Policies

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

(d) Standards relevant to parking facilities are as follows:

1.-2. (No change.)

3. The construction of intercept parking facilities along the main access routes to the barrier and bay islands and major urban centers is encouraged. Employee intercept parking *[to service at least 20 percent of all workers is required]* ***space must be furnished at a minimum rate of one space per five employees*** for all casino facilities located in Atlantic City and shall be located off Absecon Island. If off-island sites are not available, temporary use of other sites is conditionally acceptable.

4. (No change in text.)

7:7E-7.6 Public Facility Use Policies

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

7:7E-7.7 Industry Use Policies

(a)-(g) (No change.)

7:7E-7.8 Mining Use Policies

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas Policy, but shall comply with the Special Areas, and General Water Policies):

1.-7. (No change.)

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils, whenever feasible. The placement of soils may be acceptable at an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal policies.

7:7E-7.9 Port Use Policies

(a)-(g) (No change.)

7:7E-7.10 Commercial Facility Use Policies

(a) (No change.)

(b) Standards relevant to casino hotels are as follows:

1. (No change.)

2. Hotel-casino development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable.

i-ii. (No change.)

iii. Hotel-casino development shall comply with the High-Rise Structures (N.J.A.C. 7:7E-7.14) and Transportation Use (N.J.A.C. 7:7E-7.5) and Traffic (N.J.A.C. 7:7E-8.14) Policies.

iv. (No change.)

3. (No change.)

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

7:7E-7.11 Coastal Engineering

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

(e) Standards relevant to structural shore protection are as follows:

i. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including jetties, groins, seawalls, bulkheads, and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following seven conditions:

i.-vii. (No change.)

2. Maintenance or reconstruction of an existing bulkhead is conditionally acceptable, provided it does not result in extension of the structure or the upland by more than 18 inches in any direction. Maintenance or reconstruction of an existing bulkhead which results in extension of the structure or upland by more than 18 inches shall be considered new construction.

3.-5. (No change.)

7:7E-7.12 Dredge Spoil Disposal on Land

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

7:7E-7.13 National Defense Facilities Use Policy

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

7:7E-7.14 High Rise Structures

(a) *[High]* ***All high*** rise structures ***more than six stories or*** *[are buildings or structures]* more than 60 feet from existing pre-construction ground level *[to the mid-point of sloped roofs or top of parapet wall on flat roofs.]* ***are encouraged to locate in an area of existing high density, high-rise and/or intense settlements. Utility structures that have a demonstrated need are exempted from this policy, but must comply with all other applicable Coastal Rules. High-rise housing and structures are acceptable subject to the following conditions:***

1. High-rise structures within the view of coastal waters shall be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public except as provided by N.J.A.C. 7:7E-3.46;

2. The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters;

3. The proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, to the maximum extent practicable;

4. High-rise structures outside of the Hudson River Waterfront Special area as defined by N.J.A.C. 7:7E-3.46 shall not overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 20, and shall not overshadow waterfront parks year round;

5. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Resource and Development Policies;

6. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure;

7. The proposed structure must be architecturally designed so as to not cause deflation of the beach and dune system or other coastal environmental waterward of the structure.

*[(b) High rise structures are encouraged in areas of existing high density, high-rise and/or intense settlements. High rise housing and structures are acceptable subject to the following conditions:

1. High rise structures within 500 feet of the coastal waters, beaches, dunes or public walkways, whichever is farthest inland, are prohibited unless they are within the business or commercial district of a municipality located in a Development Region as designated under the Coastal Growth Rating Policy (see N.J.A.C. 7:7E-5.3);

2. High rise structures within the view of coastal waters in the Delaware Riverfront Region and the Northern Waterfront Region, except in the Hudson River Waterfront Area, are prohibited unless separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public. High rise structures located on piers or platforms along the Hudson River shall conform with the Hudson River Waterfront Area policy (N.J.A.C. 7:7E-3.48). For all other coastal areas, high rise structures are prohibited unless separated from the water, beach, dune or boardwalk, whichever is farthest inland, by a distance equal to twice the height of the structure;

3. High rise structures are prohibited unless the longest lateral dimension is oriented perpendicular to the beach or coastal waters;

4. High rise structures which block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, or that will be enjoyed from any planned public waterfront walkway or park are discouraged;

5. High rise structures are prohibited if they overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 7, and are discouraged where they overshadow waterfront parks, boardwalks and walkways located parallel to the water year round;

6. High rise structures are prohibited unless they are in character with the surrounding transitional heights and residential densities, or in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Resource and Development Policies;

7. High rise structures other than amusement rides are prohibited on piers, except along the Hudson River;

8. High rise structures are prohibited unless they provide combined sideyard setbacks equal to or greater than the structure's height and a minimum of 30 feet on either side. For high rise structures with low podium bases, the entire structure shall be set back in accordance to this sideyard requirement, except the height shall be the average of the components; and

9. High rise structures are prohibited unless 20 percent of the site is reserved as open space dedicated to and developed for public use. For projects that are acceptable due to their location as specified at (b) 1 above, at least two-thirds of the designated public open space must be located adjacent and parallel to the shore.]*

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

SUBCHAPTER 8. RESOURCE POLICIES

7:7E-8.2 Marine Fish and Fisheries

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

7:7E-8.4 Water Quality

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

7:7E-8.5 Surface Water Use

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

7:7E-8.6 Groundwater Use
(a)-(c) (No change.)

7:7E-8.7 Stormwater Runoff
(a)-(b) (No change.)
(c) Standards relevant to flood and erosion control are as follows:
1. For sites subject to fluvial flooding, the flood and erosion control standard for detention requires that volumes and rates be controlled so that after development the site will generate no greater peak runoff from the site than prior to development, for a two-year, 10-year, and/or up to 100-year storm event considered individually.
i. The appropriate flood control measures to be incorporated for detention purposes vary from one site to another, depending on a site's proximity to the drainageways of the watershed.
ii. These design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service when using United States Soil Conservation Service procedures, (such as U.S. Soil Conservation Service, "Urban Hydrology for Small Watersheds," Technical Release No. 55), or as the estimated maximum rainfall for the estimated time of concentration of runoff at the site when using a design method such as the Modified Rational Method. For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (if the lands are pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation.
(d)-(g) (No change.)

7:7E-8.9 Important Wildlife Habitat
(a)-(d) (No change.)

7:7E-8.10 Air Quality
(a) (No change.)
(b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27 and New Jersey SIP for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.
*[1. Major development may be required to conduct and/or contribute to air quality monitoring and studies, to ascertain a development's projected or actual impact to air quality.
2. If a development is found or projected to cause or exacerbate an air pollution violation, the Department will require that measures be implemented to attain and maintain the standard as set forth in the SIP.]*
(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportational services, as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b)).
(d) (No change in text.)

7:7E-8.11 Public Access to the Waterfront
(a) (No change.)
(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of waterfront experiences is discouraged.
1.-6. (No change.)
7. Development within the Hudson River Waterfront Special Area shall conform with the additional requirements of N.J.A.C. 7:7E-3.48.
8. Development along Raritan Bay within Monmouth County shall be consistent with the Bayshore Waterfront Access Plan (Monmouth County Planning Board and the Trust for Public Land for NJDEP, 1987).
9. Development elsewhere in the Coastal Zone shall conform with any ***adopted*** municipal, county or regional waterfront access plan, provided the plan is consistent with the Rules on Coastal Zone Management.
10. The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as conservation easements.
11.-12. (No change in text.)
(c) (No change.)

7:7E-8.12 Scenic Resources and Design
(a)-(c) (No change.)
*[(d) In all areas, except the Northern Waterfront Region and the Delaware River Region, new coastal development adjacent to a waterway, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall:
1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists;
2. Be separated from either the beach, dune or boardwalk, whichever is further inland, by a distance equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where this set-back requirement may be visually incompatible to the existing character of the area; and
3. Dedicate, at a minimum, one-half of the preserved open space parallel to the shore for public use.]*
[(e)] ***(d)*** (No change in text.)

7:7E-8.13 Buffers and Compatibility of Uses
(a) (No change.)
(b) Development shall be compatible with adjacent land and water uses to the maximum extent practicable.
1. (No change.)
2. A specific policy for buffers around wetlands may be found at N.J.A.C. 7:7E-3.28.

7:7E-8.14 Traffic
(a) (No change.)
(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.
1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, whenever feasible, incorporated into the design and management of a proposed facility, to reduce the number of individual vehicle trips generated as a result of the facility. ***Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.***
(c) When ***the level of service of*** traffic systems *[are]* ***is*** disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, and in a manner which is satisfactory to the New Jersey Department of Transportation and any regional transportation agencies.
(d) *[Development which will generate traffic]* ***Any development that causes a location on roadway to operate*** in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modifications or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. The determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.
(e) Coastal development shall provide sufficient on-site and/or off-site parking for its own use. In general, existing on-street parking spaces along public roads cannot be credited as off-site parking provided for a project. All off-site parking facilities shall be located either in areas within reasonable walking distance to the development or areas identified by any localor regional transportation plans as suitable locations. All off-site parking facilities must also comply with the standards relevant to parking facilities specified at N.J.A.C. 7:7E-7.5, Transportational Use Policies, where applicable.
(f) (No change in text.)

7:7E-8.15 Fertile Soils

(a) "Fertile soils" are soils that have Agricultural Capability Ratings, as defined by the United States Department of Agriculture, Soil Conservation Service, in the National Cooperative Soil Surveys of I, II, IIIe with a K value of less than 0.20, IIIw if well drained, or Woodland Suitability Rating of 1.

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

7:7E-8.3 Noise Abatement

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

(a)

COMMISSION ON RADIATION PROTECTION

Readoption with Amendments: N.J.A.C. 7:28

Proposed: March 19, 1990 at 22 N.J.R. 890(a).

Adopted: June 20, 1990 by the Commission on Radiation Protection, Max M. Weiss, Chairman, and July 27, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: July 30, 1990 as R.1990 d.427, **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. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7, 26:2D-9(f), 26:2D-9(h), and 26:2D-10.

DEP Docket Number: 007-90-02.

Effective Date: July 30, 1990, Readoption; August 20, 1990, Amendment.

Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by publication in the Newark Star-Ledger, the Camden Courier Post, and the Trenton Times, which are three newspapers of general circulation, and by direct mail to 20 owners of analytical x-ray units. The Department received comments from one person on the proposed readoption with amendments.

COMMENT: Not included in the proposed changes but related to N.J.A.C. 7:28-21.7(c) is the level of 0.25 mR/hr required by N.J.A.C. 7:28-21.5(b). Both of these levels are below the nationally accepted level of 0.5 mR/hr (that is the "television limit"). It is recommended that the radiation leakage limit in N.J.A.C. 7:28-21.5(b) and N.J.A.C. 7:28-21.7(c) be established as 0.5 mR/hr as measured five centimeters from any accessible surface during normal operation.

RESPONSE: The leakage limit of 0.25 mR/hr established in N.J.A.C. 7:28-21.5(b) is based on Part H of the Suggested State Regulations for the Control of Radiation, which is published by the Conference of Radiation Control Program Directors (CRCPD). This leakage limit represents a national standard established in 1972 by the American National Standards Institute (ANSI) as listed in "Radiation Safety for X-ray Diffraction and Fluorescence Analysis Equipment" produced under the sponsorship of the National Bureau of Standards, now called the National Institute of Standards and Technology.

As a result, the equipment in use today is manufactured to meet this requirement. As the nationally recognized industry-wide standard, 0.25 mR/hr is the appropriate leakage unit for open-beam analytical x-ray equipment.

COMMENT: N.J.A.C. 7:28-21.7, which establishes standards for equipment that operates below five kilovolts, is inappropriate because of the negligible hazard this equipment represents and because the best of conventional x-ray detection instruments are only capable of measuring energy limits on the order of five kilovolts and above. The effective energy of the radiation produced by x-ray tubes operating at 14 kilovolts is of the order of six to seven kilovolts or an energy sufficient to penetrate only the epidermis of the skin. The absorption in air of x-rays at five kilovolts and below is significantly attenuated. The following items are recommended:

1. A lower energy be specified in N.J.A.C. 7:28-21.7(a). Suggested wording is: "Analytical x-ray equipment with a high voltage supply that operates in the range of 5 to 16 kilovolts" and

2. Equipment which cannot operate at voltages above five kilovolts should be explicitly exempted from all requirements including registration.

RESPONSE: The Commission agrees with the comment that the absorption in air of x-rays below five kilovolts will be significantly attenuated by the inherent equipment shielding. Therefore, if the radiation survey reveals leakage levels below 0.1 mR/hr, N.J.A.C. 7:28-21.7 will exempt the unit from the requirements of N.J.A.C. 7:28-21.3 through 21.5 and N.J.A.C. 7:28-2.6(a)3 and (a)4. Under proposed N.J.A.C. 7:28-21.7, a registrant of a lower voltage unit (operating at 16 kilovolts or below) will be exempted from a significant number of safety requirements that are still applicable to other analytical x-ray units. This is based on the level of risk posed by these lower voltage machines. Because they are not entirely without risk, some level of regulation by the Department is necessary to protect those who may come into contact with these units.

COMMENT: The radiation level of 0.1 mR/hr in N.J.A.C. 7:28-21.7(c) is lower than the 0.5 mR/hr established in N.J.A.C. 7:28-3.2 for equipment exempt from registration. The radiation leakage limit in N.J.A.C. 7:28-21.7(c) should be changed to 0.5 mR/hr as measured five centimeters from any accessible surface during normal operation. Also, there is no mention of where the 0.1 mR/hr is to be measured.

RESPONSE: Because analytical x-ray units are designed to, and do, produce radiation, the potential radiation hazards they present, no matter how low the electric potential or how well-designed the shielding, are greater than those presented by electrical equipment not primarily intended to produce radiation. Therefore, in order to insure that units which will be completely exempted from virtually all safety controls do not pose a radiation hazard, the exemption "threshold" must be lower. The exemption reading of 0.1 mR/hr is to be measured five centimeters from any accessible surface in order to qualify for the exemption authorized by these amendments.

COMMENT: The fees associated with registering the analytical x-ray equipment covered by N.J.A.C. 7:28-21.7 should be in line with the low radiation hazard they represent. It is recommended that the initial application fee and annual registration fee should not exceed $25.00.

RESPONSE: The authority to assess fees is granted by N.J.S.A. 26:2D-9(1) of the New Jersey Radiation Protection Act. The fees charged in N.J.A.C. 7:28-3.12 are based on the costs incurred by the Department in registering and inspecting an analytical x-ray unit.

Summary of Agency-Initiated Changes:

The reference to N.J.A.C. 7:28-21.6(a)4, which was incorrectly included in N.J.A.C. 7:28-21.7(c), is deleted from that section. N.J.A.C. 7:28-21.6(a)4 duplicates N.J.A.C. 7:28-21.7(a)2; therefore, inclusion of N.J.A.C. 7:28-21.6(a)4 would result in a confusing redundancy.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:28.

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

7:28-21.7 Analytical x-ray equipment with a high voltage supply that cannot operate at potentials above 16 kilovolts

(a) No person shall use an analytical x-ray unit with a high voltage supply that cannot operate at potentials above 16 kilovolts or cause it to be used unless the following requirements are met:

1. The analytical x-ray unit is registered with the Department pursuant to N.J.A.C. 7:28-3.1;

2. The registrant has had a qualified individual perform a radiation safety survey of the analytical x-ray unit and has had the qualified individual prepare and submit a report of the results of the survey to the registrant. The survey shall be performed when the analytical x-ray unit is first capable of producing radiation and before the analytical x-ray unit is used for any purpose other than installation, assembly, or the conducting of radiation surveys; and

3. The registrant shall submit a copy of the radiation survey report to the Department within 30 days after the date of the survey, and shall maintain the radiation survey report at the analytical x-ray facility for review by the Department during an inspection. The registrant shall retain the radiation survey report in compliance with N.J.A.C. 7:28-8.

(b) The registrant shall not use an analytical x-ray unit with a high voltage supply that cannot operate at potentials above 16 kilovolts or cause it to be used when the unit has been moved to a location different from that identified in the initial radiation survey report or after any modifications have been made in the equipment that may

compromise radiation shielding integrity, unless the following conditions are met:

1. The registrant has had a qualified individual perform a radiation safety survey of the analytical x-ray unit and has had the qualified individual prepare and submit a report of the results of the survey to the registrant. The survey shall be performed when the analytical x-ray unit is first capable of producing radiation and before the analytical x-ray unit is used for any purpose other than installation, assembly, or the conducting of radiation surveys; and

2. The registrant shall submit a copy of the radiation survey report to the Department within 30 days after the date of the survey, and shall maintain the radiation survey report at the analytical x-ray facility for review by the Department during an inspection. The registrant shall retain the radiation survey report in compliance with N.J.A.C. 7:28-8.

(c) If the results of the radiation survey required by (a)2 and (b)1 above reveal that there are no radiation levels above 0.1 mR/hr when measured at all locations five centimeters from any accessible surface of the specific analytical x-ray unit, then this analytical x-ray unit is exempt from the requirements of N.J.A.C. 7:28-21.3, 21.4, 21.5 and 21.6(a)3 *[and 4]*.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Pesticide Program Fees

Adopted Amendments: N.J.A.C. 7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, and 9.3

Proposed: May 7, 1990 at 22 N.J.R. 1314(a).
Adopted: July 27, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: July 30, 1990 as R.1990 d.426, **without change.**

Authority: N.J.S.A. 13:1D-9 and 13:1F-1 et seq., particularly 13:1F-4, 13:1F-5 and 13:1F-9.

DEP Docket Number: 014-90-04.
Effective Date: August 20, 1990.
Expiration Date: December 4, 1992.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:30, the Pesticide Control Code, which regulates the sale, purchase, transportation, storage, use and application of pesticides. The adopted amendments will increase the fees for the Pesticide Control Program (the program) to enable the Pesticide Control Program to meet its commitments to the public.

The proposed rules were published in the May 7, 1990 New Jersey Register. The public comment period extended until June 15, 1990, during which time 91 written comments were received. Public hearings on the proposed amendments were held at the Cook College Student Center in New Brunswick, New Jersey on June 7, 1990 and at Gloucester County College in Sewell, New Jersey on June 8, 1990. The Department received 10 comments from the people who attended the hearings.

GENERAL COMMENTS

COMMENT: Several commenters either in the course of setting forth their specific views concerning the proposed fee amendments or as an independent comment, expressed either general support for or general opposition to the proposed amendments.

RESPONSE: While it is difficult to respond to general comments in support of or in opposition to the amendments, the Department would like to respond to these general comments by restating that the proposed fee amendments will positively serve the public health and environmental interests of the citizens of the State of New Jersey. The proposed fee amendments will enable the Department to maintain essential inspection, training, licensing and research activities, thereby reducing the risks to persons and the environment posed by the improper or unnecessary use of pesticides. In those instances where commenters made specific comments in conjunction with general comments, the Department is responding to the specific comments in the responses set forth below. The Department thanks all commenters for taking the time to provide their input into the rule promulgation process.

N.J.A.C. 7:30-1.3(g)

COMMENT: Several commenters were generally opposed to increases in pesticide product registration fees.

RESPONSE: The increase in fees to $200.00 per product is comparable with fees charged by other states. The increased fees could be passed onto the user which would result in a relatively small cost increase per unit of product.

COMMENT: One commenter suggests that different fees should be charged for agricultural products than for institutional products because agricultural products tend to sell in larger volumes. Another commenter submitted a related comment and suggests that the State of New Jersey should follow the Federal lead and take into consideration the differences between agricultural and non-agricultural pesticides. This commenter indicates that non-agricultural products are different from agricultural products in that they contain smaller amounts of active ingredients and are considerably less toxic. The commenter suggests that the Department make a distinction in its fee structure with respect to agricultural products and non-agricultural products. The commenter suggests that the Department reduce the proposed $200.00 registration fee to $125.00 and, if necessary, raise the registration fee for agricultural products.

RESPONSE: It is not universally true that agricultural products sell in greater volumes than institutional products or other non-agricultural products. Many agricultural products are small volume specialty products with a very limited distribution while many institutional and home use products, such as Dursban and Ficam, are sold in huge volumes. Accordingly, while non-agricultural products, on the whole, may contain a smaller percentage of active ingredients than agricultural products, the cumulative effect of the active ingredients found in certain non-agricultural products can be deleterious to human health and the environment. Since the activities of the pesticide program funded by the proposed fees are geared toward protecting the public health and environment from the harmful effects of the use and misuse of all pesticides, it is appropriate that all segments of the pesticide industry contribute to the cost of ensuring that pesticide use is safe to the public and the environment.

COMMENT: Two commenters suggest that there should be a fee cap to aid small businesses. One of the commenters suggested that the cap be $1,000.

RESPONSE: The establishment of a general fee cap for small businesses would require arbitrary determinations by the Department. Not all small businesses are situated in the same financial condition or occupy the same rank within the pesticide industry. Additionally, the risks posed by the activities of some small businesses can be substantial and the regulatory efforts required of the Department for such businesses are equal to the efforts expended for larger industry operations. The Department, therefore, believes that establishing a general cap for small businesses is inappropriate. However, the Department will examine the viability of establishing some type of a fee cap based on specific criteria in future regulatory activities.

COMMENT: Approximately 15 commenters stated that registration fees should be based on sales volume of the product to alleviate the disadvantage to small businesses caused by their inability to amortize the increased fees.

RESPONSE: Sales volume is not necessarily indicative of the level of regulatory effort that the Department must undertake with respect to pesticides. All pesticides require uniform registration processing procedures. The Department must also perform inspections of manufacturers of registered pesticide products and sales outlets handling such products regardless of volume. Additionally, some low volume products pose significant contamination risks and, in fact, have caused serious incidents which have necessitated substantial remedial efforts on the part of the Department. In short, small volume products, in many instances, require as much regulatory oversight as larger volume pesticide products. The Department, therefore, cannot accept fully the theory that sales volume justifies a divergent fee structure. The Department in evaluating the future fee structure for the Pesticide Program will be considering other funding sources as an alternative to increasing registration fees. However, in the event that future increases in the registration fees become necessary, the Department will consider basing registration fees on sales volume upon the application of specific criteria.

COMMENT: One commenter suggests that the Department's $200.00 registration fees be reduced to $100.00 for disinfectants and cleaners because such products do not pose serious contamination risks.

RESPONSE: Although most disinfectants and cleaners pose small contamination risks, the Department still must process registrations and conduct inspections of sellers and manufacturers of registered disinfec-

tants and cleaners. The costs to perform these tasks comprise a significant percentage of the Pesticide Program's overall costs. The Department, therefore, cannot justify charging different registration fees for disinfectants and cleaners.

COMMENT: Approximately 11 commenters expressed the opinion that the number of product registrations would decrease because manufacturers will pull their products from the New Jersey market as a result of the increased fees.

RESPONSE: For most products, the registration fee, when spread out over the total volume of sales for the product, represents only a very small cost per unit of product. Most manufacturers should, therefore, be able to successfully amortize the increased fee. However, the Department is aware that there is a possibility that some producers of marginal products may not reregister these products. The Department will be evaluating future amendments to the registration fee schedule in an effort to mitigate the loss of registrations.

COMMENT: Three commenters stated that fee increases would be passed on to consumers, driving the price of pesticide products up and thus contributing to inflation.

RESPONSE: The Department believes that the inflationary effect attributed to the increased fees will be minimal as they will be spread out over a large number of consumers.

COMMENT: Approximately 13 commenters stated that producers of small volume pesticides will be more adversely affected by the fee increases than large volume producers.

RESPONSE: As stated in the Department's earlier response to the comment concerning sales volume, the sales volume of a particular pesticide is not an indicator of the level of regulatory effort the Department must exercise to ensure that pesticide use conforms to all applicable rules and regulations. The Department is required to perform the same registration and inspection services for both low volume and high volume products. Low volume products, as well as high volume products, are involved in serious contamination incidents that necessitate expensive cleanups. Accordingly, the Department cannot justify the establishment of different registration fee schedules for low and high volume products on a general basis. The Department, however, recognizes that the increased registration fees can pose a hardship on some small manufacturers. The Department will be considering sales volume criteria when evaluating future amendment of the registration fee schedule.

COMMENT: One commenter stated that the high fee increases may cause industry groups to initiate litigation against the Department on Federal constitutional grounds.

RESPONSE: The Department believes that the fee rules are in accordance with provisions of the Pesticide Control Act ("the Act"), N.J.S.A. 13:1F-1 et seq., and that the Act and the fee rules are not in conflict with any Federal or State constitutional provision.

COMMENT: One commenter suggests that the Department cut program costs instead of increasing the fees.

RESPONSE: The Department's Pesticide Control Program is under the mandate of the Pesticide Control Act, N.J.S.A. 13:1F-1 et seq., to control and regulate the use of pesticides in the State of New Jersey. It also is required to meet commitments imposed upon the State of New Jersey by the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq. Prior to the State's current financial crisis, the Department was operating the Pesticide Control Program with the minimum staff and was incurring the minimum expense necessary to fulfill its statutory obligations and commitments. Budget cuts, working in tandem with static Federal funding and increasing administrative costs have left the Pesticide Control Program unable to meet its current statutory obligations and commitments. The increased fees are designed to enable the Department to meet only those obligations and commitments. They do not provide for the expansion of any aspect of the Pesticide Control Program. It is not possible for the Department to cut the program costs without impairing its ability to perform its required duties.

N.J.A.C. 7:30-1.3(i)

COMMENT: One commenter suggests that the increase in the registration late fee is excessive. The commenter indicated that other states and the United States Environmental Protection Agency mail out registration renewals at the same time as New Jersey, which results in excessive paperwork burdens being placed upon the registrant. Additionally, many times a state will mail out registration renewals late, adding to the registrant's burden. The commenter suggests that the Department grant the registrant a grace period of 60 days from its receipt of the renewal notice before assessing a late fee.

RESPONSE: The Department does not believe that the proposed late fees are too high or that a grace period, regardless of the length, is appropriate. Late fees for untimely registration renewals are assessed because the Department incurs substantial additional costs in processing late registration renewals. The proposed late fees reasonably reflect those additional costs. To provide for a grace period would deprive the Department of the extra revenue needed to process the late renewals and would also act as a disincentive for the registrant to timely file the renewal with the Department. In the event that the Department is late in mailing renewal notices, however, the Department would grant the registrants an extension of time prior to assessing a late fee.

N.J.A.C. 7:30-4.2(d)

COMMENT: Approximately seven commenters suggest that fees be collected from retail sales outlets which sell regulated pesticides. Retail outlets are not currently covered by the Department's pesticide dealer rules.

RESPONSE: The Department will be evaluating the regulation of retail outlets selling pesticides, including the development of a fee schedule encompassing such retail outlets, in its future regulatory initiatives.

N.J.A.C. 7:30-6 and 7

COMMENT: Approximately 52 commenters generally opposed the fee increases for licenses and permits.

RESPONSE: The fee increases are necessary because a reduction in funding from the State General Fund, coupled with rising administrative costs and static Federal funding, has made it impossible for the Pesticide Program to meet its current statutory obligations and commitments. The increased fees will be used to maintain the current regulatory program and to accomplish the Department's current commitments; they will not be used to expand the Pesticide Program.

N.J.A.C. 7:30-6.5

COMMENT: One commenter suggests that the increased applicator fees will force irresponsible landscapers to operate without the proper applicator license.

RESPONSE: Landscapers or others who choose to defy the law by applying pesticides without the proper license not only pose a potential hazard to the public health and environment but also undermine the professional image of the pest control industry. The Department is currently using its best efforts to identify and close down such applicators. The increased fees will allow the Department to continue these efforts by providing the necessary funds for enforcement activities. The increased fees will, therefore, benefit the public, the environment and the pest control industry.

COMMENT: Two commenters suggest that the increased application fees will encourage pesticide operators to forego certification as a pesticide applicator.

RESPONSE: Pesticide operators should desire to improve their professional status by being trained and certified as pesticide applicators. Such training and certification is advantageous to both the operator and his or her employer. Certified applicators have greater job responsibilities and have greater employment status than registered operators. Certified applicators also may give employers a competitive edge in these times of increased consumer awareness. Notwithstanding these advantages, the Department will be working to reduce any perceived incentive for a worker to remain a pesticide operator by upgrading its Pesticide Operator Program. The Department will be working to reduce the existing training disparity between pesticide applicators and operators and the attendant fee differences.

COMMENT: Three commenters suggest that local and State government agencies be exempted from the payment of applicator fees. Another commenter suggests that the Department establish an "educational class license" for school districts employing licensed pesticide applicators.

RESPONSE: There are approximately 2,000 State and local government employees currently licensed as pesticide applicators, including those employed by school districts. The Department incurs substantial administrative costs in overseeing the activities of these applicators and, in fact, a significant portion of the Department's registration and enforcement workload relates to these applicators. The Department, therefore, is not in favor of granting an exemption from the fee requirements to State or local governments nor does it believe that an "educational class license" is appropriate.

COMMENT: One commenter suggests that homeowners using pesticides be charged a fee.

RESPONSE: The broad scope of homeowner pesticide usage makes it impracticable for the Department to directly license homeowners. However, the cost of ensuring that homeowners use and dispose of pesticides properly is indirectly borne by homeowners through the amortization of pesticide registration fees. The Department also has attempted to reduce the costs associated with homeowner use of pesticides by providing homeowner education. The Department has established a public outreach program which provides homeowners with information about the proper use and disposal of pesticide products and the consequences of the misuse of pesticides.

COMMENT: Approximately five commenters suggest that the fee increases be imposed on an interim basis pending the implementation of alternate sources of funding. One of these commenters also suggests that the Department set "sunset dates" for the fee increases.

RESPONSE: The Department anticipates that the need for the increased fees will continue for the foreseeable future and has structured the new fee schedule to provide funding for the Pesticide Program's current regulatory obligations and commitments for the next few years. It is not possible for the Department to predict the duration of the financial crisis currently being experienced by the State of New Jersey. The Department cannot, therefore, determine when the program will experience a significant influx of State funds. As such, the Department is not in the position to implement the amended fee schedule on a temporary or interim basis nor can it set "sunset dates" for the fees. The Department will, however, be studying alternate sources of funding in the future.

COMMENT: Two commenters suggest that a portion of the Pesticide Program's funding come from the State General Fund.

RESPONSE: The Pesticide Program's funding from the State General Fund was cut from the Department's budget due to the State's financial crisis. The Department does not anticipate receiving any significant State funding for the coming fiscal year and is uncertain when it can expect such funding to resume. Because of the budget cuts and rising administrative costs, it became necessary to increase the Pesticide Program's fees to enable it to meet its current regulatory obligations and commitments.

N.J.A.C. 7:30-7.2(b)

COMMENT: Two commenters stated that the increased fees place an excessive burden on small businesses. Four commenters conveyed a related comment, indicating that the fee increases will force many small businesses to close.

RESPONSE: The cost of the fee increase should be a relatively small part of overall business expenses. As with other business expenses, the cost of the fee increase can be passed on to the customer. The markup per unit of product attributed to the fee increase should be relatively small, as the fee increase will be spread across the spectrum of a business' customers. However, the Department will be evaluating, in greater detail, the impact of the increased fees on small businesses when considering future amendments to the Pesticide Program's fee structure.

N.J.A.C. 7:30-9.3(f)

COMMENT: Five commenters stated that the $75.00 fee for the aquatic use permit is excessive. One of these commenters indicates that the fee would place an excessive burden on persons needing to treat a single body of water, as multiple permits for one body of water are often required. Another of the commenters suggests that the aquatic use permit for which the $75.00 fee is charged should be valid for a three-year period rather than for one year as proposed.

RESPONSE: The $75.00 fee is justified by the costs associated with administering the Aquatic Use Permit Program. The amount of the permit fee was based only on the personnel costs of administering the program. To review and issue all Aquatic Use Permits, perform the necessary field inspections, analyze the records of application data, and maintain the computer database, one workyear of professional time and two tenths of a workyear of clerical time are required. The personnel costs relating to aquatic use permits are as follows:

Professional—1 Workyear		**Clerical—.2 Workyear**
Average Salary:	$30,000.00	Temporary Clerical Rate: $10.00/hr.
27.65% for fringe benefits	$ 8,295.00	.2 work year: 364 hours
32.7% for indirect costs	$12,523.00	
		Clerical
Total	$50,818.00	Cost: $3,640.00
	Total Personnel Cost	
	Professional	$50,818.00
	Clerical	$ 3,640.00
		$54,458.00

The Department anticipates that 700 Aquatic Use Permits will be subject to Departmental review in 1991. It will cost $77.80 per permit to cover personnel costs alone. Therefore, the Department believes that the $75.00 permit fee is reasonable.

It is unlikely that the permit fee will place an excessive economic burden upon applicants because of multiple permit requirements for a single body of water. A permit can be issued for a maximum of three different pesticides, each of which can be applied on a maximum of three dates (except the copper compounds where more than three treatment dates are allowed). Thus, multiple permits for one body of water are rarely necessary.

The Department also does not agree that multiple year permits are appropriate. Although many applications are similar to the previous year's permit, new field inspection data, changes in pesticide labeling requirements and other regulatory changes require an annual permit review process. Pesticide regulation is not static. Multi-year permits are, therefore, inappropriate.

The Department would also like to note the permit review process is not dependent upon the size of the body of water being treated. The Department's costs in reviewing and processing aquatic use permits is the same regardless of the size of the job. Therefore, there is no justification for adjusting the permit fee based on the size of the body of water treated.

COMMENT: One commenter suggests that more funds be available to the New Jersey Department of Health (DOH) to defray the costs incurred by DOH in answering public health inquiries concerning pesticides. Another commenter suggests that additional funds be made available for the Poison Information and Education System (PIES) because of PIES increased workload in handling pesticide related health inquiries.

RESPONSE: This comment does not directly pertain to the proposed fee increases that were the subject of the public comment period. However, the Department would like to state that funding for DOH and PIES may be considered in the future depending upon budgetary constraints. The Pesticide Program's fee increases only provide enough funding to maintain the Department's present program commitments.

COMMENT: One commenter suggests that the Department create a registry for chemically sensitive individuals and that it develop and implement a pesticide exposure reporting system with the DOH.

RESPONSE: This comment does not directly pertain to the proposed fee increases that were the subject of the public comment period. The Department is, however, in general accord on the matter and will evaluate the issue in future regulatory initiatives.

COMMENT: One commenter suggests that the Department create and disseminate educational materials which summarize the notification requirements set forth in N.J.A.C. 7:30-9 and inform pest control operators of those requirements.

RESPONSE: This comment does not directly pertain to the proposed fee increases that were the subject of the public comment period. However, in response, the Department is presently conducting education and outreach programs for both the public and the pest control industry. Fact sheets and educational materials are currently being distributed throughout schools and pesticide industry training seminars.

COMMENT: One commenter suggests that notification requirements for outdoor applications be extended to require pre-notification upon request for persons situated within 300 feet of the application site.

RESPONSE: This comment does not pertain to the proposed fee increases that were the subject of the public comment period. However, in response, the Department would like to indicate that the applicable rule, N.J.A.C. 7:30-9.12, provides for pre-notification of persons who

request it regardless of the distance involved. Pre-notification obligations could, therefore, extend to distances greater than 300 feet. The Department will be periodically reviewing its notification rules to determine if revisions are required.

COMMENT: One commenter suggests that the Department support Integrated Pest Management (IPM) options.

RESPONSE: This comment is not related to the proposed fee increases which were the subject of the public comment period. However, in response, the Department would like to state that it strongly supports and actively encourages techniques to reduce pesticide use and the problems associated with such use.

COMMENT: One commenter suggests that the Department develop and implement testing for pesticide residue on food, including foods marketed as organic, and for pesticides in groundwater.

RESPONSE: This comment does not directly pertain to the proposed fee increases which were the subject of the public comment period. However, the Department would like to respond by stating that it is working with the United States Food and Drug Administration in analyzing pesticide residue in food crops. The Department is also involved in developing strategies for groundwater protection. These projects will continue in the future.

Full text of the adopted amendments follows:

SUBCHAPTER 1. PESTICIDE PRODUCT REGISTRATION AND GENERAL REQUIREMENTS

7:30-1.3 Registration

(a)-(f) (No change.)

(g) Before holding, using, distributing, selling or offering for sale any pesticide in this State, the applicant or registrant shall pay an annual registration fee of $200.00 to the Department or its authorized representative for each pesticide to be registered. All such registrations shall expire on December 31 of each calendar year.

(h) (No change.)

(i) If the renewal of a pesticide registration is not filed prior to January 1 of any one year, an additional fee of $100.00 per product may be assessed and added to the total registration fee and must be paid by the registrant before the renewal registration for any pesticide(s) shall be issued. The payment of such additional fee shall not preclude any other actions deemed necessary by the Department.

(j)-(l) (No change.)

SUBCHAPTER 3. PESTICIDE DEALERS

7:30-3.3 Certification

(a) (No change.)

(b) An examination fee of $10.00 will be charged for each examination.

(c) (No change.)

7:30-3.4 Registration

(a) Within 12 months after a person has become certified and eligible to register as a pesticide dealer, the certified pesticide dealer shall complete and file with the Department an application to register and shall include as an integral part of the application an annual registration fee of $75.00. A fee not to exceed $10.00 may be charged for each duplicate registration certificate issued. Any certified pesticide dealer who fails to file within the 12 month period will lose certification status and must again become certified in accordance with provisions of this subchapter.

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

7:30-3.5 Reregistration

(a) A certified pesticide dealer shall reregister annually with the Department and pay the reregistration fee of $75.00.

(b) (No change.)

SUBCHAPTER 4. PESTICIDE DEALER BUSINESSES

7:30-4.2 Registration

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

(d) An annual registration fee of $150.00 shall be paid to the Department at the time of registration for each separate registration. The registration period shall end on June 30 of each calendar year.

(e)-(i) (No change.)

SUBCHAPTER 5. PESTICIDE OPERATORS

7:30-5.4 Registration

(a) At the completion of training, the pesticide operator shall file with the Department, on forms provided by the Department, an application to register. The application shall be co-signed by a certified and registered responsible pesticide applicator who was responsible for the training and shall indicate that the co-signer will be the responsible pesticide applicator for pesticide applications performed by the pesticide operator. An annual registration fee of $30.00 shall be included as an integral part of the application to register a commercial pesticide operator.

(b)-(i) (No change.)

7:30-5.5 Reregistration

A pesticide operator shall reregister annually with the Department and, for commercial pesticide operators, pay the reregistration fee of $30.00.

SUBCHAPTER 6. COMMERCIAL PESTICIDE APPLICATORS

7:30-6.4 Certification

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

(c) An examination fee of $10.00 will be charged for each examination.

7:30-6.5 Registration

(a) Within 12 months after a person has become fully certified and eligible to register as a commercial pesticide applicator, the certified commercial pesticide applicator shall complete and file with the Department an application to register, and shall include as an integral part of the application an annual registration fee of $75.00. A fee not to exceed $10.00 may be charged for each duplicate registration certificate issued. Any certified pesticide applicator who fails to file within the 12 month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

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

7:30-6.6 Reregistration

(a) A certified commercial pesticide applicator shall reregister annually with the Department and pay the registration fee of $75.00.

(b) (No change.)

SUBCHAPTER 7. PESTICIDE APPLICATOR BUSINESSES

7:30-7.2 Registration

(a) (No change.)

(b) An annual registration fee of $150.00 shall be paid to the Department at the time of registration. The registration period shall end on September 30 of each calendar year except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

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

SUBCHAPTER 8. PRIVATE PESTICIDE APPLICATORS

7:30-8.3 Certification

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

(c) An examination fee of $10.00 will be charged for each examination.

(d) (No change.)

SUBCHAPTER 9. PESTICIDE EXPOSURE MANAGEMENT

7:30-9.3 Aquatic Use Permits

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

(f) A $75.00 fee will be charged for each aquatic use permit.

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

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television

Readoption with Amendments: N.J.A.C. 14:18
Adopted Repeal and New Rules: N.J.A.C. 14:18-3, 4, and 7

Proposed: May 7, 1990 at 22 N.J.R. 1330(b).

Adopted: July 26, 1990 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: July 26, 1990 as R.1990 d.415, **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. 48:5A-10.

Effective Date: July 26, 1990, Readoption; August 20, 1990, Amendments and New Rules.

Expiration Date: July 26, 1995.

The purpose of this rulemaking is the readoption, with amendments, to the Office of Cable Television's (OCTV) substantive regulations governing cable television operators and franchising.

Notice of Preproposal on N.J.A.C. 14:18 was published at 22 N.J.R. 327(c) on February 5, 1990. A notice of hearing was also published in the State's major daily newspapers at least 15 days prior to a public hearing on February 20, 1990. Individual notices were sent to all cable television operators, legislators and municipalities.

The Notice of Proposed Readoption, Repeal, and New Rules was published in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330(b), with a hearing on May 15, 1990. Notice of the hearing was published in 10 daily newspapers throughout the State. Letters to all municipalities gave notice of the hearing and summarized the proposed changes in the rules. Notice of the full text of the agency proposal was sent to all cable television systems, their attorneys, legislative committees concerned with cable television, parties who provided oral or written comment on the preproposal, persons attending the preproposal hearing and any other interested parties who requested copies or otherwise had been identified by the Office of Cable Television as having an interest in the proceeding. Following the hearing, comments were accepted until June 6, 1990. The proposal was discussed and approved for adoption with substantive changes noted herein at the Board's July 18, 1990 public meeting.

Summary of Public Comments and Agency Responses:

COMMENT: The Township of Irvington and the Borough of Lavallette submitted a Resolution in support of the Board's readoption of, and proposed amendments to N.J.A.C. 14:18.

RESPONSE: The Resolution was affirmatively noted by the Board.

COMMENT: The Township of Ocean (Monmouth County) asked that the Board better define "reasonable proximity for business office location," such as within a five to 10 mile radius. (N.J.A.C. 14:18-5.1) It also suggested rate change notices be mailed separately 30 to 60 days in advance. (N.J.A.C. 14:18-4.10)

RESPONSE: The OCTV is proposing that the Board promulgate an amendment to N.J.A.C. 14:18-5.1 governing office locations and closings (Docket No. CX90060591, see proposal in this Register). It does not consider a specific distance standard appropriate. The Board has found that 30 days, the normal billing period, is a reasonable notice of a rate change which gives subscribers the opportunity to change service in response. More advanced notice becomes confusing.

COMMENT: A Councilman from Stone Harbor stated that the number of channels in basic service has been reduced 57 percent, but the cost has only been reduced by 18 percent; rates went up 38.4 percent after deregulation in 1987. Cable must be reregulated.

COMMENT: An individual cable subscriber wrote that the Board gives rate increases whenever asked, but does not care about the consumer. She stated that the only phone number to call in her system is always busy. Outage credits are not given for outages lasting less than six hours.

RESPONSE: Under Federal law, 47 U.S.C. §543 and 47 C.F.R. §33, the Board has no power to act on rate increases. The OCTV proposes that the Board promulgate an amendment to expand outage credits based on total of six hours of intermittant interruptions in the course of a day (Docket No. CX90060594). See the Comment and Response two below regarding company phone systems.

COMMENT: The League of Municipalities focused on the role of municipalities, which the League claims is ignored in the proposal, as follows: Municipalities should be involved throughout the life of the franchise; they should be provided with more information concerning performance, programming, channel selection, and ownership and control of the systems; all reports, test results, records required by OCTV should be available to the municipality upon request; complaint records should be kept more than one year.

RESPONSE: The roles of municipalities and the Office of Cable Television are defined by the State Cable Television Act, N.J.S.A. 48:5A-1 et seq. The State's regulatory scheme insures that local cable related needs are met through the municipal ordinance and renewal assessment stages, while the Board provides uniform standards and procedures, along with cable expertise and technical support. The Board serves as the ultimate franchising authority.

As the Official Complaint Officer for the majority of New Jersey municipalities, the Office interfaces daily with the public and municipal officials.

The Office of Cable Television has an ongoing outreach program, known as the Municipal Assistance Program, to provide information and advice to municipal officials about cable television franchising and problems. Over the past 1½ years, OCTV staff has attended over 126 municipal meetings. The OCTV has organized and/or participated in several county-wide/regional renewal workshops and seminars specifically designed for Cable TV Liaison Officers. Together the number of cable advisory committees actively working in conjunction with Municipal Assistance Program has grown from two in 1988 to 85 in 1990.

The Office continues to promote a public-oriented information network and continues to take a proactive instrumental role in franchising and re-franchising.

Public availability of individual subscriber complaint information may conflict with State and Federal cable privacy acts. N.J.S.A. 48:5A-54 et seq., 47 U.S.C. §551. Aggregated complaint information which does not identify individuals may be obtained from the Board's Office of Cable Television (OCTV). The OCTV already makes such data available to municipalities. Complaint statistics are vital to the renewal evaluations franchising authorities must make.

Pursuant to the OCTV records retention schedule established by the Department of State, Division of Archives and Records Management, complaint records must be retained for a period of seven years after which time said records may be destroyed or disposed.

COMMENT: A resident of Whiting wrote that subscribers should be able to reach their customer service representatives instead of getting a busy signal constantly.

RESPONSE: The OCTV is proposing to the Board a rule in BPU Docket No. CX90050381, which would impose reporting requirements on cable television companies in order to enable the Board to track the efficiency of their phone systems.

COMMENT: The Borough of Madison presented the Board with numerous letters from Borough residents outlining complaints in connection with the following subjects: poor service, lack of itemizing billing, extra costs for descrambling and converters, incompatability of hardware, outages, poor response time on service calls, inability to schedule convenient service hours, poor reception, leaky lines/filters, additional set charges and shorter term franchise contracts.

RESPONSE: The types of complaints received by the Borough of Madison are representative of complaints received by the Board's Office of Cable Television by subscribers on a Statewide basis. Such comments have formed the basis for the proposed new rules and amendments to N.J.A.C. 14:18 which are being adopted concurrently with the readoption. For example, out of 25 complaint categories tracked by the OCTV, the numbers of leading complaints, as a percentage of a total of 14,600 for 1989, were as follows:

1989	Complaints	Percentage of Total
Billing	1526	10%
Outages	875	6%
Poor Service	1373	9.4%
Reception (other than outages)	1162	8%
Service Appts.	1002	7%
Rates	1061	7%
Auxiliary Equipment	513	4%

The Board notes that the term of the franchise is in the purview of the municipality in the bifurcated franchising process.

COMMENT: A resident from Denville asserted that regulatory compliance now accounts for 22 percent of the service fees, and that any more regulation adding to the cost of service is without merit.

RESPONSE: This estimate of the regulatory burden is high. The figure of 22 percent for the cost of regulation cited by the commenter comes from a 1982 study by Ernst & Whinney of Tacoma, Washington. That report is outdated. The costs referred to in that report arise primarily from excessive municipal franchise requirements, not State regulatory reporting requirements.

The major costs referenced in that report are those for local origination and/or access studio and advertising for their availability, franchise fees, cost to obtain the franchise, and increased cost caused by company's attempts to meet the franchisor's imposed construction timetable.

COMMENT: A resident from Park Ridge related that he was told by UA Columbia Cable that it could not remove the additional outlet charge without the State's approval.

RESPONSE: The issue of additional set fees is preempted by Federal law. State approval is not required to alter additional set charges.

COMMENT: Counsel for East Hanover Township submits that placing the burden on the subscriber to schedule AM/PM service is inappropriate and that N.J.A.C. 14:18-3.12 be amended to require the cable operator to inform subscribers of such scheduling alternatives. Counsel further asserts that the cable industry should be required to provide evening service hours, which would cut down on multiple truck rolls. N.J.A.C. 14:18-3.15 should eliminate all downgrade or discontinuance charges. Utilities do not charge for these transactions.

RESPONSE: The Board encourages cable operators to inform subscribers of their scheduling procedures when it comes to AM, PM or evening service appointments without subscriber inquiry. However, the Board believes that it would place an undue burden on cable operators to require that they notice subscribers of scheduling options. As noted in response to other comments, complaints regarding service appointments historically equal six to nine percent of total OCTV complaints.

The Board seeks to further explore the undefined burden of requiring all cable operators to offer set evening hours after 5 P.M. for installation and service. In an attempt to solicit comments on the feasibility of requiring evening hours from the regulated community, an additional rulemaking to extend the scope beyond traditional working hours will be proposed.

The Board is currently preempted by Federal law from regulating rates for services such as downgrade, disconnects, and installations. Therefore the Board cannot expand the proposed scope of N.J.A.C. 14:18-3.15 are suggested by the comment. The rule remains limited to ensuring that consumers will not be disadvantaged by taking a service for a specifically offered sample period.

COMMENT: A resident from Englewood asserts that cable companies should not be permitted to bill in advance inasmuch as picture quality is poor in inclement weather. This individual also commented that her cable operator expressed that credit for service outages are not applied to a subscriber's account unless service is interrupted for 24 hours.

RESPONSE: N.J.A.C. 14:18-3.5 requires credit for outages in the event the outage lasts six hours or more. Numerous cable television companies are currently interpreting this rule to mean that subscribers are only entitled to a credit if service is interrupted on a six-hour continuous basis. Inasmuch as the industry's interpretation of this rule is contrary to the Board's original intent upon promulgation, the OCTV has proposed to the Board an amendment to this rule, BPU Docket No. CX90060594, concurrent with the readoption of N.J.A.C. 14:18, which requires credit for service outages when such outages accumulate to six hours or more within a 24-hour period.

COMMENT: A residential subscriber from Newark, New Jersey, asserts that service in Newark is substandard, cable rates are high, too many remotes are needed and cable companies are inaccessible by phone.

RESPONSE: The operator was contacted about specific problems. The system is not set up for impulse pay per view, so early ordering, promoted by the company, is emphasized to subscribers. Another concern was scrambling, which the Board addressed already by determining that the FCC has preemptive jurisdiction over scrambling, in *North Bergen v. Riverview Cablevision,* BPU Docket No. CC90030182.

COMMENT: A commissioner from Warren Township observed: (1) A one hour call ahead provision for service calls is preferable to the proposed AM/PM scheduling; (2) A 24-hour answering service does not transfer personal messages back to the cable operator; (3) Staffing for average busy hour and busy day to allow subscriber's to reach representatives should be required. The commissioner timed himself being placed on hold for at least 23 minute on one occasion, and as a remedy, he asked that the State have standards for the number of times one gets a busy signal per 100 calls.

The commissioner further asserted that information notice requirements should be more specific and that rules should more clearly offer step by step procedures for subscribers for pursuing unresolved complaints.

The commissioner submitted that the subscriber should have the option of owning and maintaining internal wiring as with phone wiring and noted that cable companies do not accept prewiring installed by the builders.

RESPONSE: The Board finds that AM/PM scheduling is reasonable and provides subscribers with flexibility with respect to scheduling service calls.

The Board notes that a one-hour call ahead provision has advantages for both the cable subscriber and the cable operator. Many cable systems have implemented this practice on a selective and voluntary basis. Unfortunately, cable systems cannot implement a one-hour call ahead provision without direct two-way communication between its service employees or contractors. Many cable systems use outside contractors to perform and complete cable installations. These contractors use their own vehicles, tools and equipment. A majority of these contractors do not have direct two-way communication with the cable operator. Therefore, the Board believes that the one-hour call ahead provision should be left to the discretion of the cable operator.

With respect to the customer's ability to reach the business office, the OCTV has proposed to the Board, concurrent with the readoption of N.J.A.C. 14:18, comprehensive telephone filing and performance measurement rules, 14:18-7.6 and 7.7 (BPU Docket No. CX90050381) which would require operators to file phone system performance information, that is, total calls received, hold times, calls receiving busy signals and abandonment rates.

The Board has not determined whether customer ownership of premises wiring for cable television is entirely analogous to telephone service but has the issue under consideration. Existing law does not prohibit private ownership of wiring for cable service as long as it meets all codes, is compatible with the cable system, and enables the cable operator to protect against theft. More study is required before the Board can promulgate a rule which addresses the complexities of the issue, such as responsibility for maintaining and enforcing FCC compliance by individuals under combined Federal, State and local jurisdictions.

COMMENT: A resident from Point Pleasant asked if the State could expand the local franchise fee limit from two percent to five percent and expand the revenue base to gross revenues, including advertising fees.

RESPONSE: The Federal Cable Communication Policy Act of 1984 limits franchise fees to five percent of gross revenue. Within that limit, franchise fees are set and capped at two percent by the New Jersey Legislature. Therefore, the Board cannot change the rate by rulemaking.

COMMENT: A representative of the Holmdel Township Franchise Renewal Committee stated that the OCTV should do more to prepare municipalities for the renewal process. Five-year renewals and competition make sense.

RESPONSE: As noted in response to a prior comment, the Office of Cable Television has an outreach program to convey franchise and regulatory information to municipal officials in 567 municipalities. In the past 1½ years, Office staff has attended over 126 municipal meetings. The OCTV has organized and/or participated in several county-wide/regional renewal workshops and seminars specifically designed for Cable TV Liaison Officers. Today over 85 municipalities have CATV Advisory Committees actively working in conjunction with the Municipal Assistance Program.

The Board expects the OCTV to continue to promote a public-oriented information network and continue to take a proactive role with municipalities in franchising and re-franchising. The Board supports competition and notes that the length of renewals is determined at the municipal level.

COMMENT: A resident of Paterson asked that the Board disallow late charges prior to the end of the month for which service was purchased or used; and that determination of payment date be based on mailing date.

RESPONSE: The new rule at N.J.A.C. 14:18-3.9 requires cable companies to specify the due date and establish a minimum time for the subscriber to make payment. The OCTV has proposed that the Board address a new rule for late payment charges in Docket No. CX90050379.

COMMENT: A resident of Franklin Park urged that the Board eliminate unregulated monopoly status of cable TV. It is hard to find

the right address, since billing, service, and corporate offices are at different addresses, according to the resident.

RESPONSE: These newly adopted rules will increase information to the subscriber but do not address the monopoly issue. Cable franchises are not exclusive in New Jersey.

COMMENT: The New Jersey Knights of Columbus noted that only 10 of the 50 systems in the State carry EWTN, a Catholic religious network, even though 40 percent of the State's population is Catholic. The group requested rules requiring channels to be set aside for denominations which represent at least 33 percent of the State's residents.

As an alternative to a channel requirement, the Knights of Columbus proposed a five-year maximum on franchises to make operators more responsive to the communities.

RESPONSE: The Board notes that franchising authorities have very limited jurisdiction to act on such programming requests. The Cable Communications Policy Act of 1984 confines such requirements to "broad categories of video programming or other services" (47 U.S.C. §544(b)(2)). Any such requirements would also be subject to First Amendment constraints. The Board notes that the length of renewals is determined at the municipal level.

COMMENT: The New Jersey Association of the Deaf asked that cable operators provide equal access to cable services and facilities for the deaf and noted:

(1) Operators do not provide devices which decode special signals and closed captions which translate audio signals into a form which communicates with the deaf and hard-of-hearing.

(2) Deaf and disabled people must pay extra for additional equipment and facilities to receive services such as cable television.

(3) Cable television operators should sell these decoders on a monthly payment plan, instead of requiring lump sum payments.

(4) The deaf receive a 25 percent discount on TTY (teletypewriter) bills from the telephone company; they should get cable television discounts on the same basis as seniors and disabled.

(5) Cable TV offices should have a 24-hour TDD (telecommunication decoder devices, which are more versatile) or TTY device, to enable the deaf to transact business with the cable operator.

RESPONSE: The scope of the Board's rules allowing discounts to seniors and the disabled are defined in N.J.S.A. 48:5A-11.1. Such discounts are optional on the part of the cable operator. If a discount is offered by the operator, the customer must meet statutory definitions (age 62 and PAAD qualifications).

The Board has considered the NJAD comments and decided at this time to adopt the present proposal without change. Requiring an extended payment plan is a substantive change which the Board continues to examine separately. The proposal should be general enough to cover a range of devices which may meet the varied needs of the deaf or hearing impaired. While decoders and closed caption devices are not presently supplied by cable operators, companies will make service calls to connect them to the TV sets.

The Board does not require the utilities to have a TDD or TTY device to enable the deaf to transact business. However, the Board is sensitive to the needs of the hearing impaired and has initiated a Request for Proposal for Dual Party Relay Service (DPRS) (BPU Docket No. TX 8905-0481) which would enable anyone to take calls from the deaf through a translator service.

COMMENT: The Shore Cable Company, which has pending applications for competitive franchises, stated several points:

(1) The cable regulations should at least meet the minimum standards of what the industry has voluntarily established.

(2) Local officials should be made aware of all State testing and FCC communications regarding signal leakage.

(3) The FCC has pre-empted one of the definitions which now appears in the rules.

(4) The Board should clarify the property owner's right to own wiring for cable service within his building.

(5) "As-built" plant drawings should be required from telephone and cable companies.

(6) The standards for overbuild applications should be made clear by rule.

(7) There should be more interaction among operators, the OCTV, and municipal officials regarding complaints.

(8) Shore Cable also asked that New Jersey take the lead in supporting Federal legislation to require equal access for cable operators to programming services, noting that Shore Cable has had trouble negotiating with TNT, HBO, and ESPN for programming.

RESPONSE: (1) The Board agrees that the rules should at least meet the National Cable Television Association's (NCTA) voluntary minimum service standards. Proposed N.J.A.C. 14:18-3.2(b) should be changed to reflect the NCTA's 7-day time limit; however this is a substantive change which would require reproposal and has been recommended by the OCTV for Board consideration.

(2) The OCTV has proposed that the Board promulgate procedures for action when radio signals from cable systems exceed FCC standards for interference (Docket No. CX90060952).

(3) The Board believes the technical sections of the proposed rules are consistent with FCC regulations and decisions. The amended rules eliminate pre-empted and superseded provisions from the expiring rules. No commenting party has directed the Board's attention to any specific inconsistency.

(4) As noted in response to a prior comment, the Board has not determined whether customer ownership of premises wiring for cable television is entirely analogous to telephone service but has the issue under consideration. Existing law does not prohibit private ownership of wiring for cable service as long as it meets all codes, is compatible with the cable system, and enables the cable operator to protect against theft. More study is required before the Board can propose a rule which addresses the complexities of the issue, such as responsibility for maintaining and enforcing FCC compliance by individuals under combined Federal, State and local jurisdictions. The Board has requested that the OCTV provide a detailed analysis of the issues.

(5) The Board believes the request for a rule to require cable companies and utilities to maintain "as built" plant maps as overly burdensome. With 30,000 miles of plant in place, such a requirement would create substantial cost.

The service area and design maps filed by cable operators serve the needs of the OCTV and are available for review by the public. The OCTV can identify no adequate reason to require that as-built maps be maintained and filed. We note that as-builts serve the needs of cable operators by providing a final record of plant construction and most operators do maintain them for that purpose. However, there is no basis or need for the crafting of a rule to require them.

(6) The OCTV is concurrently proposing a rule to the Board which will establish the standards, information on construction and existing utility plant rearrangements which applicants for competitive franchises must provide (Docket No. CX90060590).

(7) The Board notes that any complaint information requested by the municipality which is not personally identifiable is available from the OCTV. It finds that municipalities usually have a liaison contact person with their cable operator. It would be unrealistic and unmanageable for the cable industry to designate a specific individual who the subscriber can contact directly with an inquiry. A solution is to make the municipality's designated complaint officer more visible to cable subscribers. The rules have been changed upon adoption to require notice of the designated complaint officer on a quarterly, instead of annual basis.

(8) Equal access to programming services for any multichannel provider so as not to impede competition is an issue that would require enabling Federal legislation. The Board views equal access as an appropriate means to achieve economically sound competition.

COMMENT: Counsel for The New Jersey Cable Television Association (NJCTA) directed the Board's attention to the comments it filed at the preproposal stage and made additional comments on the proposal. The four general points of the NJCTA comments are:

(1) The rules would impose greater burdens on cable TV than the BPU's rules for essential utilities. The comments specify as examples: 1. Installation deadlines in N.J.A.C. 14:18-3.2(b); 2. Providing complete copies of tariff in N.J.A.C. 14:18-3.3(d); 3. Notice and availability of outage credits in N.J.A.C. 14:18-3.5; 4. Availability of agents for 24-hour answering in N.J.A.C. 14:18-3.6; 5. Longer time allowed subscriber for bill payments before disconnection in N.J.A.C. 14:18-3.9; 6. Daypart service call scheduling in N.J.A.C. 14:18-3.12; 7. Having a technician on duty 24 hours a day for emergency repairs in N.J.A.C. 14:18-3.13; 8. Notice and approval for business office closings in N.J.A.C. 14:18-5.1(c); 9. Complaint record retention in N.J.A.C. 14:18-6.5; 10. A threshold for reportable service interruptions in N.J.A.C. 14:18-6.6; 11. Filing of various reports with the OCTV, including notice of rebuilds, upgrades, and headend relocations in subchapter 7.

RESPONSE: The Board does not accept the NJCTA's position that cable operators should be confined to the same regulations applied to essential utilities. While the Board recognizes most of the foregoing items are not required of utilities, it also recognizes the uniqueness of cable television. In response to the specific examples, the following:

1. Although the Board does not have rules setting deadlines for installation, such requirements have been imposed on cable television companies since the first regulations in 1974. The expiring version of the rule allowed a longer time period (30 days) in recognition of the demands of the initial construction and wiring era. The present era of slower growth makes 30 days an unreasonable delay; at this time the Board is adopting 20 days pending the proposal of an amendment for a seven-day rule which parallels the cable industry standard. Utilities generally target a three-day standard. Telephone companies must complete 75 percent of installations within five days (N.J.A.C. 14:10-1.10(b)).

2. The purpose of providing a copy of the portions of the tariff applicable to a particular customer is to enable informed decisions when selecting among available services. This requirement is less than required of utilities, which have an affirmative duty to assist customers in selecting the most favorable service, rates, and schedules (N.J.A.C. 14:11-7.4).

3. N.J.A.C. 14:10-2.3 requires telephone billing adjustments if phone service remains out more than 24 hours after reported. The Board, when initially adopting the outage credit rule, considered the length of the average viewing day, the time value to viewing a program or event, when it may be on-time opportunity, as well as frequency of complaints. Other utility services can be postponed or are metered, so there is less need for adjustment.

4. All utilities, except for some small water and solid waste companies have 24-hour answering centers, as a matter of practice, which enable customers to reach a representative or agent. There are no formal utility regulations requiring such. In the experience of the Board and the OCTV, frequent difficulty in reaching a responsive cable company representative for assistance or information is an almost universal experience for subscribers.

5. Utilities' subscribers have 10 days from mailing to pay utility bills, after which the utility must mail a shut-off notice demanding payment within 10 days; after those 10 days, the utility must wait another seven days before disconnecting. As a matter of practice, utilities allow more time for payment before disconnection than the minimum in the regulations. The Board believes at this time that cable subscribers may need more time to resolve billing disputes with cable operators.

6. Utilities are not required by regulation to provide day-part service scheduling. Generally, utility service and repair does not require access to the home, or else utility responsibility ends at the service entrance to the house. This is rarely the case for cable television. Cable television technicians usually must be able to check the home set reception to determine and correct the problem.

7. Utilities are not specifically required to have emergency crews on duty on a 24-hour-a-day basis. Cable service is unmetered, so there is less revenue incentive for prompt service restoration than for metered services. Telephone utilities have a 24-hour restoration requirement (N.J.A.C. 14:10-1.7) but responsiveness is also governed by lengthy and detailed performance criteria (N.J.A.C. 14:10-1.10). Electric utilities always have crews on duty, but there is no formal requirement. The Board notes that for cable, the impact of an outage will be the greatest during the prime viewing hours on weekends and evenings, not during regular business hours.

8. Although utilities have been required to obtain approval of office closing and relocations as a matter of policy, it has never been codified as a regulation. However, the Board has authorized publication of a rule proposal, BPU Docket No. AX90060555, to impose this requirement to utilities. Cable companies, which are not legally considered to be utilities, are usually required to maintain a local office under the terms of their franchises.

9. Utilities must retain their complaint records for one year under N.J.A.C. 14:3-6.2(d) and 6.5, which is identical to the requirement for cable components in N.J.A.C. 14:18-6.5.

10. Utility requirements for reporting service interruptions to the Board are established in N.J.A.C. 14:3-3.9. Prior to September 1986, the OCTV had a similar reporting requirement, which the Board, after a lengthy procedure, changed to the stricter standards (BPU Docket No. 828C-6930), adopted at 18 N.J.R. 1831(a) (September 8, 1986). None of the comments in the present proceeding convince the Board that it should change its previous determination.

11. Utilities are generally required to file detailed reports in many areas. For example, N.J.A.C. 14:3-6.2(a) is comparable to N.J.A.C. 14:18-7.4. Telephone companies must produce detailed performance records and reports (N.J.A.C. 14:10-1.10). For gas and electric companies, information on rebuilds, plant changes, etc., is required by statute.

The present Federal law prohibiting rate regulation does not eliminate regulation or the need for a balancing of the interests of the public and consumer against the power of what is a local market monopoly. The Board finds that the requirements adopted herein are reasonable and appropriate, given the OCTV's experience and expertise. In promulgating these rules the Board has not acted in a vacuum, but in response to very real consumer concerns and complaints which have grown noticeably since Federal deregulation took effect in 1987. Problems which were the subjects of complaints filed with the OCTV have totalled as follows:

YEAR	NO. OF PROBLEMS WHICH WERE THE SUBJECT OF COMPLAINTS
1986	10,122
1987	14,497
1988	11,989
1989	14,600

The Board finds that these rules address many long standing problems of a dimension which call for a regulatory solution under the statutory mandates of the state's Cable Television Act, N.J.S.A. 48:5A-1 et seq. The Board has carefully considered both the preproposal and proposal comments of the NJCTA. Responses to the NJCTA's further comments on particular provisions are set forth below.

COMMENT: (2) The NJCTA stated that there are no legislative facts to support the imposition of the rules and the disparate treatment of cable from utilities. If strict enforcement of rules is to continue, the language in the rules must be specific, further an appropriate regulatory purpose, and be supported by adequate factual basis. The NJCTA suggests rules should be in the form of "suggested guidelines."

RESPONSE: The Board finds that these rules are developed from a thorough record of hearings, comments, and filings in this proceeding, as well as the public complaint records and the Board's experience with over 16 years of cable regulation. The Board further finds that these rules serve a variety of regulatory purposes: consumer protection, informational, enforcement, performance monitoring, and assessment of cable related needs, and that they are responsive to specific needs brought to the Board's attention in these proceedings.

The Board rejects the suggestion that the rules only be "guidelines". The NJCTA proposal is tantamount to accepting regulation as long as it is not enforced.

COMMENT: (3) The NJCTA asked that the proposed rules set out the specific information required with each specific form. Operators should know what they are expected to provide in order to obtain approvals.

RESPONSE: The Board has concluded that changes or additional proposals regarding forms are not necessary. The forms are always available from the OCTV. The OCTV staff will assist any operators with questions on completing the forms.

COMMENT: (4) The NJCTA noted that the proposed reporting and notice requirements would cost an additional $400,000 Statewide for each bill stuffer mailing.

RESPONSE: The Board recognizes operators will incur increased costs to provide notice to subscribers. Most of the required notices can be consolidated in a single annual notice. Two of the notices (identity and phone number of complaint officer, and outage credit rule) must be provided quarterly. Some items, such as the complaint officer, can be included on the bill itself. The cost per subscriber, using the NJCTA figure, for an annual consolidated bill stuffer would amount to 22.8 cents. The Board finds that the value of this information to the subscriber outweighs that cost.

In proposing these rules, the OCTV has considered the impact of the technical and operational requirements these rules would have on the cable industry. The OCTV considered the costs the cable companies would be faced with and determined from past history that the cable industry can be expected to pass some of these costs to its subscribers. The Board is keenly aware of the heightened tension between the subscribers and municipalities on one hand and cable operators on the other. As noted in a prior response, this is reflected by complaints to the OCTV since deregulation. The Board believes these rules are necessary in order to adequately protect the safety and interests of the general public and cable television subscribers. The Board agrees with OCTV that the benefits from the rules exceed the burdens of the costs.

COMMENT: At the hearing, the NJCTA commented that national studies show that 22 percent of the cost to a cable subscriber is due to regulation.

RESPONSE: The figure of 22 percent for the cost of regulation cited by the NJCTA comes from a 1982 study by Ernst & Whinney of Tacoma, Washington. That report is outdated. The costs referred to in that report

arise primarily from excessive municipal franchise requirements, not state regulatory reporting requirements.

The major costs referenced in that report are those for local origination and/or access studio and advertising for their availability, franchise fees, cost to obtain the franchise, and increased cost caused by the company's attempts to meet the franchisor's imposed construction timetable.

The NJCTA also provided comments on specific sections and language in the proposal, as noted below:

COMMENT: Proposed N.J.A.C. 14:18-2.1, adopting electrical codes and pole licensing agreements by reference, is an unconstitutional delegation of legislative authority. These items should be subjects of separate rulemakings.

RESPONSE: The Board disagrees that N.J.A.C. 14:18-2.1 elevates pole, trench and conduit agreements to the status of law. Changes from the expiring rules in the references to safety codes have been made to ensure that operators comply with the most recent editions of the National Electrical Code and and National Electrical Safety Code. New, revised editions are published every three years.

COMMENT: N.J.A.C. 14:18-2.3(c) should be changed upon readoption to clearly indicate that cable goes underground only when so required of utilities.

RESPONSE: The Board rejects the suggestion. The Board believes the rule is clear that the cable companies must follow utility lines "where practicable", and that it allows cable companies discretion where adherence is not indicated for reasons of safety or design.

COMMENT: N.J.A.C. 14:18-3.2(b) should have a requirement for an explanation by the operator to the subscriber why service cannot be provided within 20 days.

RESPONSE: The Board accepts the recommendation and has changed the adopted rule accordingly.

COMMENT: The NJCTA asserted that proposed N.J.A.C. 14:18-3.3(c), which requires cable operators to provide a description of in-home equipment and how it interfaces with subscriber equipment, is vague and difficult to comply with for all possible equipment combinations in a single document. The comment notes that the NJCTA Engineering Committee found at least 27 different configurations of connections of home devices. The NJCTA observed that most companies provide general information which would comply in most instances, but there are tradeoffs between simplicity for the subscriber and the use of home electronic features.

RESPONSE: The Board agrees with the comment. It is not the Board's intent that operators provide a description of every possible configuration. As noted by the NJCTA, most operators already provide diagrams to cover the most common situations. The number of these configurations is multiplying as systems change over to scrambling signals and subscribers buy equipment with more features.

COMMENT: Proposed N.J.A.C. 14:18-3.3(d) lacks factual support for requiring that the whole tariff be provided to subscribers; basic terms and conditions as now provided suffice.

RESPONSE: The Board has found that marketing materials routinely provided during inspections show that disclosure of services and rates to the subscriber varies greatly from system to system. Misinformation is a frequent source of billing complaints and disputes. The Board's objective is to insure that the customer is fully aware of all available packages and options, not just those emphasized by salespeople. The Board also recognizes the burden of providing a full tariff to each new subscriber. Therefore, the Board adopts N.J.A.C. 14:18-3.3 with changes to limit the scope of the tariff provided to those rates, terms and conditions applicable to the category or classification covering the subscriber, for example, residential, commercial, hotel/motel, etc. The Board notes that the full tariff is still available to the subscriber upon request pursuant to N.J.A.C. 14:18-3.4.

COMMENT: The NJCTA contended that proposed N.J.A.C. 14:18-3.6 is without factual support for a 24-hour answering requirement. Many companies may have already purchased automatic response units (ARU) which might not be in compliance with this rule. The NJCTA proposed that the rule state: "Cable television companies shall provide for 24 hour per day answering of telephones in order to allow subscribers to report service interruptions."

RESPONSE: The record and experience of the OCTV considered by the Board is replete with complaints and references to the inability of the subscriber to get through to people who can assist or inform the subscriber. The Board believes use of ARU's would comply with the rule as long as the ARU's enable the caller to "escape" out the ARU and speak to a company agent, and has so clarified the text.

COMMENT: The NJCTA asks for a one-year period for operators to implement the itemized billing required by N.J.A.C. 14:18-3.7. The NJCTA also proposed that the word "identification" instead of "description" should be used at N.J.A.C. 14:18-3.7(a)2 in reference to services offered.

RESPONSE: The Board agrees that an implementation period for itemized billing is necessary and finds that six months is a reasonable and sufficient amount of time for implementation of itemized billing. The rule has been changed to include a six-month implementation period. This will enable companies with yearly coupon books to use the books already distributed for 1990. The Board will allow operators to apply for an extension upon showing good cause. Such an extension would only be extended once for a six-month period, provided that the operator can show a diligent effort in converting and conforming with the requirement.

The Board does not expect operators to provide a detailed description of the service in the bill. For example, it is not necessary to list all channels in the basic service. However, generally the name of each service which the company offers at a separate rate will suffice. Accordingly, the rule text is changed to use the word "identification". Also added is language which gives the operator the option of filing a sample of its itemized bill for review and approval of its sufficiency by the Board.

COMMENT: Proposed N.J.A.C. 14:18-3.8 would require operators to discount bills for all customers, because all subscribers are billed in advance.

RESPONSE: The Board agrees the proposed language would have the unintended effect noted by the NJCTA, and has changed N.J.A.C. 14:18-3.8 for clarity upon adoption so that advance payment discounts apply only to advance payments exceeding the standard cable and utility practice of billing for service one month in advance.

COMMENT: Proposed N.J.A.C. 14:18-3.9 requires the cable company to wait 15 days after the postmark on a bill for a due date, then at least another 30 days from the due date before sending a notice of discontinuance for nonpayment, and still another 15 days before actually disconnecting. This timetable, the NJCTA contends, would preclude any effective action to collect past due bills for 60 days after transmittal, creating a potential Statewide subscriber "float" of 80 million dollars.

RESPONSE: The Board has considered several factors in reviewing proposed rule N.J.A.C. 14:18-3.9, most notably the fact that most bills are monthly, and require payment in advance. For this reason, the Board believes the "float" cited by the cable industry is exaggerated. The Office has re-evaluated the impact of the above proposal and believes the following modification should be made: "Such notice shall not be issued until 15 days beyond the due date on the previous bill." The Board notes that this reduced time is still longer than that granted to utility customers, but it is generally consistent with both utility and cable industry practice which grants subscribers the longer period.

The change from 30 to 15 days will still provide sufficient protection to cable subscribers. This slight modification will still give the cable consumers about 30 days (15 days from postmark to due day, and then 15 days until a disconnect notice is mailed) to pay their bill before they are subjected to disconnection or termination notice, and another 15 days before actual disconnection (for a total of 45 days). Staff notes that bills are labelled "payable on receipt" as much as 11 days prior to receipt. Additionally, this rule will ensure that the cable subscribers have received the cable service before they are subjected to the company's disconnection procedures, and eliminate premature notices that have caused complaints.

The OCTV has proposed to cover the subject of late payment fees in a separate rulemaking, BPU Docket No. CX90050379.

COMMENT: The NJCTA is unaware of any factual analysis which suggests day part scheduling should be required as in proposed N.J.A.C. 14:18-3.12.

RESPONSE: The Board finds that this new provision, for AM/PM (or evening if service available) scheduling, addresses one of the complaints more commonly heard by OCTV investigators. It was strongly supported by consumer complaints in the preproposal comments. Complaints in the service appointments category have historically comprised six to nine percent of the OCTV's total complaints. This type of requirement has been adopted in New York. The Board also notes that the National Cable Television Association's voluntary guidelines call for morning, afternoon or all day scheduling of service appointments.

COMMENT: Proposed N.J.A.C. 14:18-3.13 does not indicate that the requirement to have someone "on duty" as distinguished from "on call" materially increases the response time for emergencies.

RESPONSE: Most operators now have emergency repair persons "on call" during non-business hours. The persistence of comments and com-

plaints regarding delays to line repairs and significant outages demonstrate that the status quo has not been sufficient. For example, the OCTV has a record of outages of three days in May of 1988, and 72 hours, in December of 1989 affecting over 10,000 subscribers which might have been remedied more promptly had N.J.A.C. 14:18-3.13 and 14:18-3.6 been in effect. However, the Board believes further comment on N.J.A.C. 14:18-3.13 is appropriate and does not adopt it at this time, reserving it for reproposal with changes.

COMMENT: Proposed N.J.A.C. 14:18-3.14 should allow cable companies to recover overhead costs in providing the required items. The requirements of A/B switches and parental locks go beyond FCC and the Federal Cable Communication Policy Act (CCPA) provisions.

RESPONSE: The Board agrees with the NJCTA that cable operators be permitted to recover the cost plus a reasonable overhead for devices for the hearing impaired equipment mandated by the Board. The words "purchase cost" include reasonable overhead, but not profit. Operators may incur overhead costs such as shipping and storage, but are not expected to incur a loss as a result of this requirement. The Board further notes that to require they be available on a lease or payment plan as requested by the New Jersey Association for the Deaf would be a substantive change requiring reproposal. Accordingly, the Board will continue to examine payment options.

It also agrees that Federal law does not permit regulation of rates for input selector (A/B) switches or parental guidance locks which allow subscriber blocking of specific channels.

Proposed N.J.A.C. 14:18-3.14 is therefore adopted with those changes not requiring reproposal as reflected in the text below.

COMMENT: Proposed N.J.A.C. 14:18-3.15 requires indefinite retention of special marketing records. Ninety days is sufficient to retain records of promotional service trials.

RESPONSE: The Board agrees with the comment that there should be a time limit for retention of such records. The purpose of this rule is to assure adequate records to investigate any complaints arising out of such promotions. Therefore, the Board changes the text upon adoption to include the same one-year retention period required for complaint records in N.J.A.C. 14:18-6.5.

COMMENT: Proposed rule N.J.A.C. 14:18-3.16, which requires notice of rate changes, should permit cable operators to lower rates without prior notice.

RESPONSE: The Board rejects any proposals to eliminate the notice requirement entirely for lowered rates. It will consider requests for waivers for lowering rates with shorter notice as long as only rates are affected. If programming in service packages is being altered, individual circumstances for waiving notice to lower rates will have to be examined. The Board will not waive notice requirements for rate increases, however. An amendment currently under consideration by the Board would limit exceptions to the rate notice period (Docket No. CX90060593).

COMMENT: The NJCTA operators expressed concern that advance notice of programming changes under proposed N.J.A.C. 14:18-3.17 present some constitutional difficulties because the rule could restrain operators' First Amendment rights, noting it affects:

(1) Their ability to delete or change obscene or other programming which subjects them to legal liability.

(2) Negotiations with programming services, where the rule limits operators' options.

NJCTA proposed the following exemptions:

"When timely notice, pursuant to Subsections (a) and (b) is not practicable, either as a result of circumstances beyond the control of the cable television company or because such change is required to protect the cable television company against either civil or criminal liability, or because such change is indicated by exigent circumstances, the cable televison company, in that case, shall provide notice in a manner reasonably calculated to provide such information as soon as practicable after the cable television company has become aware of such change or within 10 days of such change, whichever is earlier. In such case, the cable television company shall provide to the Office an explanation as to why such change was made, why notice under this regulation could not be given, and what notice was given."

The NJCTA also proposed the term "signal carriage" as more precise than "channel allocation."

RESPONSE: In readopting notice requirements for changes in channel allocation, the Board notes that the rule does not cover blackouts and deletions required by law, or individual program changes on a station, network, or service. It clarifies the rule upon adoption by changes to include a listing of what must be shown to obtain a waiver of the usual advance notice requirement. The operator must still provide notice at the earliest possible date, but need not meet the time requirements when compliance is impossible (1) because the operator reasonably believes he would be subject to civil or criminal penalties if he waited to make the change; or (2) because of unforeseen actions of third parties beyond the operator's control; or (3) because the provider has unexpectedly discontinued or withdrawn the service from the market; leaving the operator with insufficient time to comply or (4) because a substantial benefit to subscribers would be irretrievably lost.

Finally, the Board rejects the use of the term "signal carriage" as overly broad for purposes of this rule, and its use could limit the information available to subscribers. "Signal carriage" is a broad term describing the selection and importation of television stations and programming services. "Channel allocation" refers more specifically to particular frequencies/channels. The rule is principally concerned with the deletion and rearrangement of services. It is designed to advise subscribers of programming changes to minimize confusion and to provide information so subscribers can decide to alter their service in response to programming changes. Neither term precisely denotes all of the possible situations of channel alterations but the term "channel allocation", the Board believes, is better suited to describe the rule.

COMMENT: Proposed N.J.A.C. 14:18-6.5 has no factual basis for requiring cable operators to retain records of complaints which have been amicably resolved to the customer's satisfaction. Requiring retention of these records makes them public records, conflicting with privacy acts.

RESPONSE: The Board rejects the NJCTA assertion that retention of complaint records makes them public records. The purpose of their continued retention is to insure that they are in fact resolved. Even records of resolved complaints can provide information on patterns of complaints and problems with a system.

COMMENT: Specific due dates for reports required under proposed N.J.A.C. 14:18-7.1 should be set forth in the rules.

RESPONSE: The due dates for other periodic reports and filings appear on the face of the forms, or as otherwise required by law.

The Board notes that expiring rule N.J.A.C. 14:18-6.3(a) was properly indicated for deletion in the proposed readoption, but its readoption and recodification as N.J.A.C. 14:18-7.1(b) was inadvertently omitted. The provision requires filing of financial summary by March 31st, as mandated by N.J.S.A. 48:5A-44(c), and therefore the change to include it does not change the burden upon, or affect the rights of, any parties.

The foregoing response covers deadlines for all periodically required forms in Appendix A.

COMMENT: Language in N.J.A.C. 14:18-7.2 should be corrected to limit accident reports to that which relates to providing cable TV service.

RESPONSE: The Board believes the proposal is sufficiently clear in this regard. It relates only to the provision of Cable TV service.

COMMENT: Proposed N.J.A.C. 14:18-7.3 reporting and filing requirements are burdensome and should be required only on an "as needed" basis. The NJCTA claimed that no regulatory purpose is shown, especially for filing pole attachment agreements, and FCC documents kept locally.

RESPONSE: The Board believes the Federally mandated renewal process makes public recordkeeping and retention essential for performance review, both with respect to customer complaints and interruptions and outages.

COMMENT: Proposed N.J.A.C. 14:18-7.4, which requires notification before any rebuild, upgrade, headend relocation, and/or significant changes in system design, is particularly burdensome. The NJCTA states that the purpose of the requirement is not clear, and that the BPU is precluded from regulating technical attributes of a system.

RESPONSE: The Board finds this requirement needed to enable the OCTV to monitor compliance with renewal commitments, review service quality, and respond to complaints. The Board also notes that this requirement is informational in nature, and does not necessarily call for Board approval.

COMMENT: The NJCTA stated that proposed rules N.J.A.C. 14:18-9.1, 9.2, and subchapter 10 are redundant to the extent they are consistent with FCC requirements, and that to the extent it exceeds FCC requirements; it is preempted, therefore, it should be deleted entirely.

RESPONSE: The Board rejects the NJCTA conclusion. The Board may hold cable operators to technical standards which are consistent and do not exceed FCC regulations. In making its readoption proposal, the Board deleted provisions which were obsolete or inconsistent with FCC regulations. The Board recognizes technical standards as essential to the quality of service it must insure.

COMMENT: Event Marketing, a cable television consulting company, stated that the proposal bypasses local authority; curbs competition; and

broadens the scope of the OCTV beyond Congressional intent in the 1984 Cable Act. Event Marketing reiterated several points covered by previous comments.

Event Marketing asserted that the OCTV role should be to monitor FCC technical standards, not develop them. Event Marketing's representative noted that Federal law has at least eight very technical definitions of terms such as "cable operator", "cable system", etc. Event Marketing contends that the proposed rules alter these Federal definitions, putting "private cable" under the control and regulation of the OCTV.

RESPONSE: The Board notes that the scope of State and local authority with respect to cable television is established by the Cable Television Act, N.J.S.A. 48:5A-1 et seq. Neither these rules nor the 1984 Federal Cable Act alter that relationship. The Board finds that these rules do not change any existing definitions for "cable operator", "cable system", etc. The definitions in its rules are those set forth in the State Cable TV Act, and have never been identical to the Federal definitions.

The amended and readopted rules contain only two entirely new filing requirements (notice of rebuilds and copies of local FCC filings). The remainder of reporting and filing requirements are either codifications of orders or directives, or readoption of existing requirements. The OCTV has proposed that the Board promulgate rules that will insure that the same make-ready information is required of all cable operators. The proposal contains no new technical rules. In fact, existing rules which would conflict with FCC rules are eliminated.

COMMENT: Mr. Joseph O'Donnell, representing Clover Cable and Chester Mendham Cable as a principal, stated that operators can accept the cost of the rules because serving the customer is the common goal. The small operator is more carefully scrutinized and the rules are more applicable than they are to the large operator: you have to give more information, prove more, provide more, increasing the cost. The more rules you have, the more likelihood you will break one of those rules.

RESPONSE: The Board notes that the only provision which provides for different treatment of small and large operators is the rule requiring an emergency technician on duty in systems over 10,000 subscribers (N.J.A.C. 14:18-3.13), which the Board is reserving for further comment and consideration.

COMMENT: New Jersey Bell proposed that N.J.A.C. 14:18-2.10(a) be revised as follows:

"(a) ***In the event of a dispute over pole attachment rates, either party**** to a pole attachment agreement under N.J.A.C. 14:18-2.9 may petition the Board for ***resolution of such dispute**** by filing a petition with supporting documentation in accordance with N.J.A.C. 14:17-6.1 through 6.5."

RESPONSE: The Board agrees with New Jersey Bell that the language proposed by Bell should reflect N.J.S.A. 48:5A-20(b) more closely, and encourage negotiation of rates without Board intervention. It has been changed accordingly. However the Board notes that under N.J.S.A. 48:5A-21, the rates, terms and conditions still require Board approval, and are subject to its jurisdiction in th same manner and to the same extent that rates and charges of public utilities are generally subject to Board jurisdiction.

COMMENT: New Jersey Bell has suggested that N.J.A.C. 14:18-13.3 be clarified so that no municipal consent or approval is required if a provider of video programming does not place any of its facilities in the public right-of-way. Bell noted that use of telephone wires for such service is not covered by N.J.S.A. 48:5A-22, which refers to cable television operators who place their facilities in the public right-of-way.

RESPONSE: The Cable Television Act, N.J.S.A. 48:5A-20 and 21, contemplates that cable television services could be provided over telephone company facilities. The Board believes Bell is requesting a significant policy change which would exempt utilities from certification if they were to provide any more than common carrier services for cable television. The Board rejects the comment at present because such a decision would require amendment of portions of the State Cable Television Act.

COMMENT: The NJCTA noted a typographical error in readopted rule N.J.A.C. 14:18-2.5(a)3 where the word "truck" appears in place of "trunk".

RESPONSE: The Board includes the correction in its readoption.

Note: Agency-initiated changes include technical corrections of inadvertent omissions or typographical errors which have been made in N.J.A.C. 14:18-2.1, 2.5, and 3.3 and which do not change the substance of the rules. In addition, several other agency-initiated changes have been made upon adoption. "Nonstandard installations" are often included in the generic term "line extension"; by specifying both terms at N.J.A.C. 14:18-3.2(b)ii this is clarified. The word "safe", inadvertently omitted was inserted at N.J.A.C. 14:18-3.3(a). N.J.A.C. 14:18-3.15 is clarified to insure that the subscribers will be aware that they have taken a trial service. N.J.A.C. 14:18-4.4 was changed to include authorized agents of the company who are not employees, but must have access to facilities. N.J.A.C. 14:18-6.6 was changed to specify information already required by the OCTV for outage records. N.J.A.C. 14:18-11.19 has been changed to clarify that a written acceptance is mandatory for valid acceptance of the municipal consent.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 14:18.

Full text of the adopted amendments and new rules follows (additions to proposal indicated by boldface with asterisks ***thus****; deletions from proposal indicated in brackets with asterisks *[thus]).

14:18-1.1 Scope of regulations

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

(d) These regulations do not limit the duties now imposed upon these companies, but merely serve to define such duties and to establish standards for their performance.

14:18-1.2 Definitions

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

. . .

"Cable communications system" or "cable communications service" means any communications service other than cable television reception service delivered through the facilities of a cable television system and for which charges in addition to or other than those made for cable television reception service are made or proposed to be made.

. . .

"Class I, Class II, Class III, and Class IV cable television channels" means signaling paths as defined in Subpart A, Section 76.5, subsections (t), (u), (v), and (w) respectively, of the FCC rules and regulations adopted on February 2, 1972, as amended.

14:18-2.1 Plant construction

(a) Every cable television company shall construct and install its facilities with the applicable provisions of the National Electrical Safety Code, and subsequent amendments thereto, the National Electrical *[Safety]* Code, and subsequent amendments thereto, as well as all Federal, State, and local laws, and any pole, conduit, or trench licensing agreements with utilities.

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

(d) Every cable television company shall file with the Board, in association with its application for approval of a municipal consent, a schedule for the construction of its facilities. This schedule shall require significant completion of construction within one year of receipt of the certificate of approval.

14:18-2.5 Identification of property; poles or structures supporting or connecting wires or cable

(a) Each cable television company owning solely or jointly (with a utility) poles, pedestals or structures supporting or connecting wires or cables along, under or over public highways shall properly mark each such pole, pedestal, or structure with the initials of its name, abbreviation of its name, corporate symbol or other distinguishing mark or code by which ownership may be readily and definitely ascertained and with number or symbol or both by which the location of each such pole, pedestal or structure may be determined on office records:

1.-2. (No change.)

3. In the case of such structures erected upon private rights-of-way or on public highways, of such character that the construction may be deemed to be a through or transmission *[truck]* ***trunk**** line, such mark need be affixed only to every fifth structure, provided, however, that each and every structure situated within the limits of any "built-up" community shall be marked.

4.-5. (No change.)

6. Each cable television company should make reasonable efforts to prevent the placing upon its poles and pedestals of any marks, signs, placards, bulletins, notices or any foreign object other than as provided in N.J.S.A. 27:5-1.

14:18-2.7 Inspection of property

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

(c) Each pole, post, tower, pedestal, or other structure owned by the cable television company shall be inspected by the company owning it with sufficient frequency and comprehensiveness to disclose the necessity for replacement or repair in order to maintain service in accordance with established practice.

14:18-2.8 Construction work near cable television facilities

(a) (No change.)

(b) Nothing herein shall affect the duties and obligations of persons working in the vicinity of high voltage lines as set forth in N.J.S.A. 34:6-47.1 et seq.

14:18-2.10 Rate changes and disputes

(a) ***In the event of a dispute over pole attachment rates, any*** *[A]* party to a pole attachment agreement under N.J.A.C. 14:18-2.9 may petition the Board for a *[change in pole attachment rates]* ***resolution of such dispute*** by filing a petition with supporting documentation in accordance with N.J.A.C. 14:17-6.1 through 6.5.

(b) In the event of a dispute over terms and conditions, any party to a cable television pole attachment agreement may petition the Board for resolution.

SUBCHAPTER 3. CUSTOMER RIGHTS

14:18-3.1 Scope

It shall be the duty of every cable television company to furnish and maintain safe, adequate, economical, and efficient service.

14:18-3.2 Requests for service

(a) Applications by a customer for the establishment of service may be made at the CATV company office either in person, by mail or by telephone. If the CATV company requires a written application, the same may be subsequently submitted to the customer for signature.

(b) Within 20 days of ordering service, a subscriber is entitled to one of the following:

i. Installation of service;

ii. Cost estimate for line extension ***or nonstandard premises installation*** where applicable; or

iii. If access has been denied by a landlord or property owner, a copy of a letter to the landlord or property owner requesting access*[.]**; **and**

(c) In the event that an operator cannot comply with (b) above, the operator shall provide to the subscriber an explanation of why service cannot be provided within such time.*

14:18-3.3 Customer information

(a) Each CATV company shall, upon request, furnish its subscribers with such information as is reasonable, in order that the customers may obtain ***safe*** adequate, efficient and economical service.

(b) Each CATV company shall inform its customers, where peculiar or unusual circumstances prevail, as to the conditions under which sufficient and satisfactory service may be secured from its system.

(c) The cable operator shall provide prospective customers, and existing customers upon any changeover to a new type of equipment, with a written description of any auxiliary equipment necessary to receive cable television service, such as converters or remote control units, required for service with an explanation of how such equipment interfaces with subscriber owned equipment such as VCR's, remote control units, "cable ready" sets, etc.

(d) Every new subscriber shall be provided with a complete copy of the cable company's tariff containing all rates, terms, and conditions ***applicable to that type of subscriber, for example, residential, commercial, etc***.

14:18-3.4 Tariff information

(a) Upon request, the cable television operator shall provide, at no charge, a complete copy of the cable television company's tariff showing all rates, charges, and services.

(b) The cable television company shall post a complete copy of its tariff showing all rates, charges, and services in a prominent location in its local business offices.

14:18-3.5 Outage credit

(a) The cable television operator shall credit subscribers for outages, as defined in these rules, as follows:

1. In the event of an outage lasting six or more hours, the company shall make an appropriate credit on the subscriber's bill.

2. The amount of credit shall be in one-day units, prorated on the basis of the subscriber's monthly rate for each service not available.

3. For outages which extend more than 24 hours, subscribers shall receive a credit for each calendar day or part thereof if greater than six hours, during which service is out.

4. The cable television company shall not be liable to a subscriber for any indirect or consequential damages resulting from the outage unless the cable television company expressly agrees to such liability.

5. In order to obtain a credit, subscribers must notify the cable television company by phone or in writing within 30 days after any such outage, or else within 30 days notify the Office or other designated complaint officer.

6. A cable television company may, at its option, provide a subscriber with a rebate rather than a credit on the subscriber's bill to fulfill the requirements of this subsection.

(b) A cable television company shall not be required to provide a credit or rebate under (a) above if:

1. The cable television company can demonstrate that restoration of service was not possible within the six-hour period due to factors beyond the control of their company; and

2. If service is restored within six hours after the restoration of service becomes possible.

(c) Any cable television company may petition the Board for a waiver of providing credit required by (a) above in the event such credits would create an undue hardship on the cable television company.

(d) In instances where a subscriber is without cable television service for at least 24 hours, and the loss of the service is not the result of an outage, the company shall credit or rebate, at the company's option, the subscriber for one day unit for each 24-hour period in which the subscriber was without service. No cable company shall be required to provide a subscriber with a rebate or credit if the loss of service was caused by an act on the part of the subscriber requesting such a credit or rebate.

(e) Intermittent or cumulative service interruptions and other service related complaints are to be analyzed in accordance with the complaint procedure pursuant to N.J.A.C. 14:17-7.1.

(f) Each company shall quarterly inform its subscribers of the procedures by which a subscriber may obtain a credit.

14:18-3.6 Access to company representatives

Subscriber phone calls shall be answered by a representative or agent of the cable company 24 hours a day. Such representative or agent shall be able to contact appropriate personnel of the company in the event an emergency situation exists. ***If used by the cable system, an Automatic Response Unit (ARU) must allow an escape option by which a subscriber can speak to the next available operator.***

14:18-3.7 Bills for service; form of bill

(a) *[The]* ***Any*** bill ***issued after January 29, 1991*** shall show the following:

1. The name, address, and telephone number of the cable television company;

2. *[A description]* ***Identification*** of each service for which a separate charge is imposed and the rate for each service;

3. The amount due during the current period;

4. The amount past due;

5. The date by which payment is due;

6. Any appropriate credits to the bill;

7. Any separate charges for equipment provided by the cable television company;

8. Any other separate fees;

9. The period of service covered by current charges on the bill;

10. The late charge rate, if any;

11. The amount of accumulated late charges; and
12. Periodic interest credits on deposits held by the cable television company pursuant to N.J.A.C. 14:18-4.6 and 4.7.

(b) Each CATV company shall adopt some method of informing its subscribers as to the address of an office where complaints, service inquiries and bill payments will be received.

(c) Each CATV company shall keep a record of each subscriber's account in such a manner as will permit computation of the bill for any billing period occurring within three years.

(d) Prior to introduction of a new billing format pursuant to this section, a cable operator may submit a sample for review and approval by the Office.

(e) A cable operator may obtain a single six month extension of the implementation period for this section upon prior application and upon showing diligent efforts to conform to the requirement and good cause why it cannot do so.

14:18-3.8 Method of billing

(a) Bills for cable television service shall be rendered monthly, bi-monthly, quarterly, semi-annually or annually and shall be prorated upon establishment and termination of service. In unusual credit situations, bills may be rendered at shorter intervals.

(b) Cable television seasonal service may be billed in accordance with reasonable terms and conditions of service set forth in the filed tariff.

(c) A CATV company may, under uniform nondiscriminatory terms and conditions, require payment, in advance, for a period not to exceed that for which bills are regularly rendered, as specified in its applicable filed tariff. *[Such]* ***Any such*** advance payment ***for a greater period*** shall reflect appropriate discount for the ***additional*** period involved. Unless otherwise provided for in the applicable filed tariff, initial and final bills shall be prorated as of the date of the initial establishment and final termination of service. Nothing herein shall preclude a CATV company from issuing "payment books" which conform to the above requirements.

14:18-3.9 Due date of payment and notice of discontinuance

(a) The specified due date for payments shall be no less than 15 days from the postmark on the bill; if there is no postmark, the burden of proving the date of mailing shall be upon the cable company.

(b) Prior to disconnection for non-payment, a subscriber must receive 15 days' written notice from the cable television company. Such notice must be mailed separately and not as part of the periodic bill. Such notice shall not be issued until *[30]* ***15*** days beyond the due date on the previous bill.

(c) A new notice shall be served by the CATV company each time the company intends to discontinue service for nonpayment of a bill.

(d) In case of fraud, illegal use or when it is clearly indicated the subscriber is preparing to leave, immediate payment of accounts may be required.

(e) A subscriber wishing to discontinue service must give notice to that effect. Where such notice is not received by the CATV company, the subscriber shall be liable for service until such notice is received by the CATV company.

(f) Notice to discontinue service will not relieve a subscriber from any minimum or guaranteed payment under any contract *[of]* ***or*** rate.

14:18-3.10 Basis for restoration of discontinued services

Service shall be restored upon proper application when the conditions under which such service was discontinued are corrected, and upon the payment of all proper charges due from the subscriber provided in the tariff of the CATV company if the Office so directed when a complaint involving such matter is pending before it.

14:18-3.11 Disputes

(a) A CATV company shall not discontinue service because of nonpayment of bills in cases where a charge or service is in dispute, provided a request is made to the Office for an investigation of the disputed charge or service, and, in the case of a disputed bill, the undisputed charges are paid to the CATV company and a check in the amount of the disputed charges is placed with an escrow agent designated by the Office.

(b) In such cases, the CATV company shall notify the subscriber that unless steps are taken to invoke formal or informal action by the Office within five days, service will be discontinued for nonpayment.

14:18-3.12 Service call scheduling

(a) When a service call is scheduled to a subscriber's home, the cable operator shall inform the subscriber upon request whether the service call is scheduled for morning, afternoon, or, if provided, evening.

(b) If the cable operator is unable to keep the scheduled appointment, the cable operator shall inform the subscriber and the appointment shall be rescheduled within 24 hours, unless good cause is shown.

14:18-3.13 *[Technician on duty]* ***(Reserved)***

[For cable television systems having more than 10,000 subscribers, the cable television operator shall ensure that there be at least one technical person on duty 24 hours a day to provide emergency service and repairs to the plant affecting two or more subscribers and to provide any other emergency services, as necessary.]

14:18-3.14 Availability of special equipment

(a) The cable television operator shall provide, upon the request of the subscriber, the following equipment:

1. A/B (input selector) switches to allow switchover to subscriber's antenna as required by 47 C.F.R. § 76.66;
2. A parental lock to allow subscriber blocking of a specified cable service or channel as required by 47 U.S.C. § 544(d)(2)(A); and
3. Devices to insure adequate access to cable television service for hearing-impaired persons pursuant to 47 U.S.C. § 543(f)(2).

(b) The cable television operator may impose fees to the subscriber for any equipment listed in (a)*[1 through]* 3 above, which shall not exceed the purchase cost ***plus overhead***.

14:18-3.15 Trial services

(a) Subscribers who ***affirmatively agree to*** take a service marketed by the cable television operator for a specified trial period on a free or reduced rate basis shall not be charged for the disconnection or downgrade of the service provided the subscriber notifies the operator prior to the end of the trial period that they no longer want the service.

(b) Cable television operators shall maintain records of all such trial services for public inspection ***for a period of one year*.**

14:18-3.16 Notice of rate change

(a) If the rates and charges of a cable operator are not subject to prior approval by the Board:

1. A cable TV company implementing a change in its rates shall file with the Office revised tariff sheets reflecting any rate changes at least 35 days prior to the effective date.
2. Each cable TV company shall individually notify, in writing, its subscribers and affected municipalities of a rate change at least 30 days prior to the effective date, with a simultaneous copy of the notice to the Office.
3. The notice requirements of (a)1 and 2 above are not applicable to limited time promotional activities provided the cable television company maintains a file for public inspection showing the nature of the promotional activity, the rates to be charged, and the time period of the promotional activity.

14:18-3.17 Notice of alteration in channel allocation

(a) Each cable TV company shall file with the Office written notice of an alteration in channel allocation, on a form prescribed by the Director, at least five days prior to the effective date for new additions which do not require deletions or cutbacks in other services. For all other changes the operator shall provide notice at least 35 days prior to the effective date.

(b) Each cable TV company shall notify its subscribers and affected municipalities of an alteration in channel allocation at least five days prior to the effective date for new additions which do not require deletions or cutbacks in other services. For all other changes the operator shall provide notice to the Office at least 35 days prior to the effective date and 30 days prior to the effective date to the

subscribers in a manner reasonably calculated to provide such information.

[(c) When timely notice pursuant to this section cannot be met because of factors beyond the cable operator's control, the operator shall provide the earliest possible notice along with the reasons for the change and an explanation of why notice required by (a) and (b) above could not be given.]

***(c) The Office may relax the time for providing notification upon a showing by the cable television operator that the operator has acted to provide the required notice at the earliest possible date and:**

1. The operator reasonably believes that timely compliance with this subsection might subject the operator to penalties under State, Federal, or local law;

2. Timely compliance with this subsection is impossible due to the unforeseeable actions of third parties beyond the operator's control;

3. The programming service has been discontinued or withdrawn by the provider in such a manner as to leave the operator without sufficient time to comply; or

4. A substantial benefit to subscribers would be irretrievably lost.*

14:18-3.18 Periodic notices to subscribers

(a) The cable operators shall provide annual notice to each subscriber of the following:

1. Notice of all monthly service packages and corresponding rates available according to the subscriber's billing classification (for example, residential, commercial, hotel/motel);

2. The privacy notice as required by 47 U.S.C. § 551(a) and N.J.S.A. 48:5A-56(b);

3. Notice of the advance payment discount if the cable television operator's filed tariff provides for payments more than 30 days in advance, as required by N.J.A.C. 14:18-3.8(c);

4. Notice of the availability senior citizens/disabled discounts in systems where offered, pursuant to N.J.A.C. 14:18-20;

5. Notice of the availability of devices for hearing impaired as required by N.J.A.C. 14:18-3.14(c);

6. Notice of the availability of A/B (input selector) switches as required by N.J.A.C. 14:18-3.14(a) and 47 C.F.R. § 76.66(a);

7. Notice of the availability of parental lock devices as required by N.J.A.C. 14:18-3.14(b) and 47 U.S.C. § 544(d)(2)(A); and

[8. Notice of the complaint officer and the Office's toll free telephone number as required by N.J.S.A. 48:5A-26(c).]

(b) ***The cable operators shall provide quarterly notice to each subscriber of the following:**

1.* Notice of the outage credit availability as outlined in N.J.A.C. 14:18-3.5 *[shall be provided to each subscriber quarterly.]****; and**

2. Notice of the complaint officer and the Office's toll free telephone number as required by N.J.S.A. 48:5A-26(c).*

(c) The form and content of such notices shall meet the requirements of the applicable State or Federal law specifying such; in all other instances, the notice shall reasonably convey enough information for consumers to make informed decisions.

14:18-3.19 Interest on uncorrected billing errors

(a) Subscribers are entitled to credit for simple interest for any overpayments due to a billing error which are not refunded or corrected within two billing cycles after the subscriber notifies the cable operator in writing.

(b) The interest rate shall be equal to the average yields on six month Treasury Bills for the 12 month period ending each September 30. Said rate, which shall be rounded up or down to the nearest half percent, shall become effective on January 2 of the following year.

(c) The Board ***annually*** shall perform *[the annual]* calculation to determine the applicable interest rate and shall notify the cable companies of said rate.

14:18-3.20 Discounts for senior and disabled citizens

(a) Prior to offering, altering, or discontinuing a senior and disabled citizen discount, a cable company shall:

1. Specify the rates, terms, and conditions for the discount, and which services are included;

2. Provide at least 30 days advance notice to each subscriber and municipality served; and

3. Provide at least 35 days advance notice to the Office of Cable Television along with revised tariff sheets showing any such changes.

(b) New subscribers shall be informed in writing when a senior and disabled citizens discount program is available and the eligibility requirements for participation.

(c) Subscribers shall establish eligibility for this discount program by either:

1. Presenting a Pharmaceutical Assistance card and certifying that the subscriber is at least 62 years of age and that no more than one other person under the age of 62 resides in the same dwelling unit; or

2. Executing and notarizing a standard form of affidavit stating:

i. The subscriber's name and that he or she is at least 62 years of age;

ii. The subscriber's address and that he or she has been a permanent resident of this State for at least 30 days;

iii. That no more than one other person under the age of 62 resides in the same dwelling unit; and

iv. That the subscriber is:

(1) Single with an income less than $13,650 per year, including social security income benefits;

(2) Married, with a combined income of less than $16,750 per year including social security income benefits; or

(3) Such other limits as subsequently may be established for Pharmaceutical Assistance to the Aged and Disabled under N.J.S.A. 30:4D-21, as amended.

(d) Participation in a senior and disabled citizens discount plan shall not affect a subscriber's eligibility for other generally offered discounts and marketing promotions.

14:18-3.21 Avoidance of interruption; prompt restoration

Each CATV company shall exercise reasonable diligence to avoid interruptions, curtailments or deficiencies of service and, when such interruptions occur, service shall be restored as promptly as possible, consistent with safe practice.

14:18-3.22 Notice of planned interruptions

Planned interruptions for operating reasons shall always be preceded by reasonable notice, preferably on the local origination channel, to all affected subscribers, and the work shall be planned to minimize subscriber's inconvenience.

SUBCHAPTER 4. CABLE OPERATOR RIGHTS

14:18-4.1 Permits

(a) The CATV company, where necessary, shall make application for any street opening permits for installing its cables and shall not be required to furnish service until after such permits are granted.

(b) The municipal charge, as set forth in N.J.S.A. 48:5A-1, for use of the streets shall be paid annually by the CATV company.

14:18-4.2 Refusal to connect

A CATV company may refuse to connect with any customer's installation when it is not in accordance with the standard terms and conditions of the tariff schedules of the CATV company furnishing the service which have been filed with the Office, and with the provisions of applicable governmental requirements.

14:18-4.3 Basis of discontinuance of service

(a) The CATV company shall, upon reasonable notice, when it can be reasonably given, have the right to suspend or curtail or discontinue service for the following reasons:

1. For the purpose of making permanent or temporary repairs, changes or improvements in any part of its system;

2. For compliance in good faith with any governmental order or directive, notwithstanding such order or directive subsequently may be held to be invalid;

3. For any of the following acts or omissions on the part of the subscriber:

i. Nonpayment of a valid bill due for service furnished at a present or previous location in accordance with the further requirements stipulated in N.J.A.C. 14:18-7.9. However, nonpayment for business service shall not be a reason for discontinuance of residence service without the prior approval of the Office;

ii. Tampering with any facility of the CATV company;
iii. Fraudulent representation in relation to the use of the service within the subscriber's premises;
iv. Subscriber moving from the premises, unless the subscriber requests that service be continued;
v. Providing cable television service to others through the "tapping" of the CATV company's system without approval of the company;
vi. Refusal to contract for service where such contract is required by the filed tariff;
vii. Failure to make or increase an advance payment or deposit as provided for in these regulations or the tariff;
viii. Connecting and operating in such manner as to produce disturbing effects on the service of the CATV company or other subscribers;
ix. Failure of the subscriber to comply with any reasonable standard terms and conditions contained in the CATV company's tariff;
x. Where the condition of the subscriber's installation presents a hazard to life or property;
xi. Failure of subscriber to repair any faulty television or FM receiver or other CATV receiving facility belonging to the subscriber.
4. For refusal of reasonable access to subscriber's premises for necessary purposes in connection with rendering of service, including the proper and legal maintenance or removal of the CATV company's property.
(b) A subscriber wishing to discontinue service must give notice to that effect. Where such notice is not received by the CATV company, the subscriber shall be liable for service until such notice is received by the CATV company.

14:18-4.4 Access to customer's premises
(a) The CATV company shall have the right of reasonable access to subscriber's premises, and to all property furnished the CATV company at all reasonable times for the purpose of inspection of premises incident to the installation of service, inspecting, testing or repairing its facilities used in connection with supplying the service or for the removal of its property.
(b) The subscriber shall obtain, or cause to be obtained, all permits needed by the CATV company for access to the company's facilities at the subscriber's terminal.
(c) Access to the CATV company's facilities shall not be given except to authorized employees ***or agents*** of the company or duly authorized governmental officials, who shall present proper identification.
(d) In the case of defective service, the subscriber shall not interfere or tamper with the apparatus belonging to the CATV company but shall immediately notify the CATV company to have the defects remedied.

14:18-4.5 Compensation for taking because of installation of cable television facilities
(a) A cable television operator shall award $1.00 to a fee owner, as defined by N.J.S.A. 48:5A-49(b)(1), in consideration of the access granted pursuant to the Cable Television Act, N.J.S.A. 48:5A-49.
(b) Unless cable television service is being currently provided to a certain multi-family property, a cable television operator shall serve written notice to the fee owner, landlord or agent of its intent to install cable television service or facilities upon the fee owner's property at least 30 days prior to commencing such installation. The Director of the Office of Cable Television has prescribed that notice be served by certified mail and that the form and content of such notice include at a minimum:
1. The name and address of the cable operator;
2. The name and address of the fee owner, manager or superintendent;
3. The approximate date of the installation;
4. Citations from the Cable Television Act and New Jersey Administrative Code, specifically N.J.S.A. 48:5A-49 and N.J.S.A. 48:5A-51, and N.J.A.C. 14:18-4.5;
5. A general description of the proposed method of installation;
6. Notice that the amount of $1.00 in consideration for the access granted pursuant to the Cable Television Act will be tendered when an agreement is signed.
(c) If no response to the notice is forthcoming within 30 days, the cable operator has a statutory right and a franchise obligation to provide cable television service. In order to enforce this right and satisfy said obligation, a company must apply for an administrative approval for access. To apply, said company must submit to the Board of Public Utilities, copies of its notice and a specific description of the proposed method of installation.
1. If a response is received pursuant to (b) above and an agreement for access is not reached within 45 days of said response, the cable operator may apply to the Director for approval to install its cable television facilities. At such time the Director will either recommend to the Board that such an administrative order issue or alternatively deem such matter contested. In the event of the latter, the matter shall be handled in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules of the Office of Administrative Law, N.J.A.C. 1:1-1.1 et seq.
(d) Upon notice served pursuant to (b) above, except when such notice does not apply to multi-family properties currently receiving cable television service, fee owners may apply to the Office of Cable Television for just compensation. The owner has the burden of proof to clearly demonstrate:
1. The value of the applicant's property before the installation of cable television facilities;
2. The value of the applicant's property subsequent to the installation of cable television facilities;
3. The criteria, data, method or methods used to determine such values;
4. Out of pocket costs directly attributed to the installation and presence of cable television facilities in the multi-unit dwelling;
5. Any extraordinary costs to be borne by the applicant associated with the installation and presence of cable television facilities.
(e) The Director may, upon good cause shown, permit the filing of additional information to supplement the application. Copies of the application filed with the Office of Cable Television shall be served upon the cable television company in compliance with N.J.A.C. 14:17-5.1 et seq. Answers, if any, shall be filed within 20 days in compliance with N.J.A.C. 14:17-8.1 et seq. If said filing is limited to an application for compensation, the Director may permit the installation of cable television facilities provided that all issues relating to indemnification and protection of property have been satisfied.
(f) The Director shall determine whether an application filed consistent with (d) above establishes a contested case for compensation pursuant to (d). In such an event the matter shall be handled in accordance with the Administrative Procedure Act, N.J.A.C. 52:14B-1 et seq., and the rules of the Office of Administrative Law, N.J.A.C. 1:1-1.1 et seq.
(g) All executed access agreements must be filed with the Office of Cable Television pursuant to N.J.S.A. 48:5A-9(b).

14:18-4.6 Deposits to insure credit
(a) Where the credit of a subscriber is not established or where a subscriber is in default in the payment of bills, the CATV company may require a reasonable deposit as a condition of supplying service or continuing service.
(b) The credit established, by whatever method, shall apply at any location within the area of the CATV company furnishing the service; that is, service is not to be regarded as restricted to a particular location.
(c) The amount of a deposit shall be reasonably related to the charge for service during a billing period, provided such period does not exceed two months.
(d) In all cases where bills are rendered quarterly, semi-annually or annually, the amount of deposit shall not exceed the estimated average charge for service during any two months of the billing period.
(e) In determining the amount of any deposit, there shall be excluded from the average bill such portion thereof, if any, for which payment is received in advance.
(f) Simple interest, at the prevailing rate determined pursuant to N.J.A.C. 14:18-3.19, shall be paid by the cable television company on all credit deposits held by it, provided the deposit has remained

with the company for at least six months. Moneys collected as deposits, pursuant to this section, shall be held in a separate account and shall not be used for any purpose other than the maintenance of subscriber accounts.

(g) Where a subscriber is in default in the payment of bills, service shall not be discontinued for failure to make such deposit except after proper notice, in accordance with N.J.A.C. 14:18-3.9(b).

(h) If a subscriber who has made a deposit fails to pay a bill, the CATV company may apply such deposit insofar as is necessary to liquidate the bill and may require that the deposit be restored to its original amount.

14:18-4.7 Deposits on auxiliary equipment

(a) When a CATV company supplies auxiliary equipment, such as a converter or other modifying device, to a subscriber's CATV receiving facility, the company may require the payment of a reasonable deposit thereon, provided, however, that said deposit shall not exceed the replacement cost of the unit(s).

(b) The simple interest provision of N.J.A.C. 14:18-4.6 shall apply to auxiliary equipment deposits. However, moneys collected as deposits pursuant to this section may be used by the CATV company to defray the cost of and service to such unit(s).

(c) If the CATV company is required to replace or repair the unit(s) because of subscriber abuse, the company may apply such deposit insofar as is necessary and may require that the deposit be restored to its original amount.

14:18-4.8 Receipts and records

(a) The CATV company shall furnish a receipt to each subscriber who has made a deposit.

(b) Where return of the deposit is made in cash, surrender of the receipt or, in lieu thereof, proof of identity may be required.

14:18-4.9 Return of deposits

(a) Upon closing any account, the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor with interest due.

(b) With reference to N.J.A.C. 14:18-4.6, deposits to insure credit, each CATV company shall review a subscriber's account at least once every two years, and if such review indicates that the subscriber has established credit satisfactory to the CATV company, then the outstanding deposit shall be refunded to the subscriber.

(c) With reference to N.J.A.C. 14:18-4.7, deposits on auxiliary equipment, the amount of deposit shall be refunded to the subscriber upon termination of service and return of the unit(s) in good condition, reasonable wear and tear excepted. If any portion of the deposit is required to offset the cost of replacement or repair necessitated by customer abuse to such unit(s), the difference between such cost and the amount of deposit shall be refunded to the subscriber.

14:18-4.10 Consolidated notice

All notices required by N.J.A.C. 14:18-3.18***(a) or (b)*** may be provided to subscribers in a single ***annual or quarterly*** notice***, respectively,*** to each subscriber as long as all required information for each item is included.

14:18-5.1 Location

(a) Each cable television company shall maintain, in or within reasonable proximity of its service area, a local business office, the current location of which shall be furnished to the Office where applications for service, complaints, service inquiries, bill payments, and so forth will be received.

(b) Each cable television company shall furnish the Office with the current location of its offices where maps and records showing the various services areas and facilities are available to supply, upon reasonable request, information to subscribers, governmental bodies, utilities, other CATV companies and contractors.

(c) No local business office shall be closed or relocated without approval of the Board after 30 days' notice to subscribers and municipalities in the affected service area.

14:18-6.2 Plant and operating records

(a) Each cable television company shall maintain adequate maps and records reflecting the latest available information and data concerning the size, type, location, and date of construction and installation of its major units of property.

(b) (No change.)

(c) Each local business office shall maintain copies of filings required by the FCC related to the operation of that particular system.

Recodify existing 14:18-6.4 as 14:18-6.3 (No change in text.)

14:18-6.4 Public records

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

14:18-6.5 Complaints records

Each CATV company shall keep for a period of one year, a record of complaints in regard to service received at its office or offices, which shall include the name and address of the subscriber, the date, the nature of complaint, the test conducted and corrective action taken if required, and the final disposition. The record shall be available for inspection by the Office staff.

14:18-6.6 Reporting and records of interruptions and outages

(a) All outages where service to subscribers is interrupted for at least two hours and which affect 50 or more subscribers shall be reported by each cable television company to the Office on a form prescribed by the Director.

1. Such reports shall be collected and forwarded to the Office monthly, and shall be sent to the Office within 15 days of the end of the month for which the report is filed.

2. Cable companies must report to the Office by telephone during the course of the outage all outages which exceed one hour in length and affect more than 500 subscribers.

(b) Records of outages shall be kept in a manner suitable for analysis for the purpose of minimizing possible future interruptions and shall include the time, cause and duration of the interruptions as well as the remedial action taken.

(c) Each CATV company shall keep a record of each outage for a period of one year ***showing location, duration and estimated number of subscribers affected*.**

SUBCHAPTER 7. REPORTS AND FILINGS

14:18-7.1 Periodic Reports

(a) Each certified cable television company shall file with the Office a Cable Facts Questionnaire as listed in Appendix A of this Chapter, no later than March 1st of each year.

(b) Each CATV company shall file with the Office on or before March 31 of each year a summary of its finances and operations for the preceding calendar year on forms prescribed and furnished by the Office.

*[(b)]**(c)* Other periodic reports shall be filed on or before the due date noted on the report form ***or as otherwise required by law*.**

14:18-7.2 Special reports

(a) In special instances, cable television companies may be required to submit reports quarterly, monthly or at any other interval as directed by the Board or Office.

(b) Cable television companies shall promptly report to the Office details of all accidents involving a death or serious injury.

14:18-7.3 Other filings

(a) All cable television companies shall file with the Office copies of any executed pole attachment agreements and amendments thereto.

(b) Each CATV company shall file with the Office and keep current a list of names, addresses and telephone numbers of responsible officials to be contacted in connection with routine matters during normal working hours.

(c) Each CATV company shall also furnish to the Office and keep current a list of names, addresses and telephone numbers of responsible officials who may be contacted in event of emergency during other than normal working hours.

(d) Each cable television company shall file with the Board, and keep open to public inspection, tariffs applicable to the services available, pursuant to the provisions of N.J.S.A. 48:5A-1 et seq., as applicable, with revised sheets to reflect any changes.

(e) Each cable television company shall file with the Office of Cable Television a copy of any FCC document required to be kept locally by N.J.A.C. 14:18-6.2(c).

14:18-7.4 Notification of system rebuilds, upgrades, hub and headend relocations

(a) A cable television company shall provide at least 30 days' written notification to the Office prior to any system rebuild, upgrade, headend or hub relocation, and/or significant changes in system design as described in the company's initial filing for certificate of approval or renewal thereof.

1. Notice of significant system design changes shall be accompanied by new theoretical system performance specifications.

2. Notice of headend or hub relocation shall include new signal surveys for off-air channels and other appropriate satellite or microwave surveys.

SUBCHAPTER 9. TESTING OF SERVICE

14:18-9.1 Equipment for testing

(a) A list of testing equipment by which system performance tests may be conducted pursuant to the rules now promulgated or which may be promulgated by the FCC or the Office and the location of such equipment shall be kept on file at the local cable company office. Such equipment shall be available, upon reasonable request by the Office, for such additional or special tests as may be required.

14:18-9.2 Proof of performance

(a) Each cable television company shall be required to conduct annual tests to show compliance with FCC technical standards of 47 C.F.R. §76.605 (a)(1) through (a)(10).

(b) These tests shall be conducted and filed with the Office prior to the closing of each calendar year.

(c) The tests shall be submitted in a form suitable for analysis by the Office and shall reflect the actual operating condition of the system at not fewer than three locations at the extremities of the system.

14:18-10.2 FCC Standards

Every cable television system providing cable television service shall be required to do so in accordance with the technical standards specified in the FCC rules and regulations, Part 76, Subpart K.

14:18-10.3 Requirements for Class II, Class III and Class IV channels

Class II, Class III and Class IV cable television channels shall be transmitted without material degradation and without objectionable interference to reception of Class I channels.

14:18-10.4 Initial performance tests for new builds, extensions, and substantial reconstructions

(a) Within 60 days of the commencement of service to new segments of subscribers on any portion of a new cable television system or on any extension of such system or on any substantial reconstruction or extension of a cable television system on which operations commenced on or after April 15, 1973, technical performance tests shall be conducted by the system operator directed at determining the extent to which the system complies with the technical standards set forth in N.J.A.C. 14:18-10.1, 10.2 and 10.3.

(b) The engineer or technician responsible for conducting the tests shall determine the methods to be used and the specific characteristics to be measured at each location with respect to the relevant technical standards set forth or referenced herein and shall develop the forms to be used for reporting purposes.

(c) The report on initial performance measurements shall be kept on file with the cable company for a period of two years in a manner suitable for inspection by the Office.

14:18-10.5 Monitor point tests

(a) (No change in text.)

(b) The following date shall be collected at each monitor point at least once each calendar month, at intervals not to exceed 40 days:

1. Signal levels of each visual and aural carrier and all pilot carriers, if any.

2. Signal carrier to noise ratio at not fewer than three frequencies within the pass-band of the system. This measurement should be performed without interrupting service to subscriber.

3. (No change.)

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

14:18-10.6 Additional tests to ensure compliance

The Office of Cable Television may request certain specific tests at any time and, where necessary and feasible, to show compliance with this subchapter.

14:18-11.19 Acceptance by company

(a) The municipality shall serve the applicant with a copy of the consent ordinance within two working days after a final vote upon second reading of the ordinance.

(b) A cable television company *[must]* ***shall*** accept the consent ordinance, and its terms and conditions, ***in writing*** within 10 days of service.

14:18-12.1 Filing for a certificate of approval

(a) (No change.)

(b) A petition for a certificate of approval filed pursuant to N.J.S.A. 48:5A-17(d) (Arbitrary Refusal) shall:

1. Be filed within 30 days of the date of service of a final ordinance by a municipality in accordance with N.J.A.C. 14:18-11.19; and

2. Be served upon the clerk of the respondent municipality; and

3. Where failure to act is alleged as arbitrary refusal, be filed within 30 days of the appropriate statutory deadline.

(c) A municipality contesting the petition shall then have 20 days in which to file an answer to the petition.

14:18-13.1 Initiation of renewal process

(a) (No change.)

14:18-13.2 Optional pre-proposal phase

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

(e) A municipality which has begun the ascertainment process and determines not to issue a report shall promptly notify the Office in writing stating the reasons therefor.

(f) This subsection authorizes a municipality to conduct the ascertainment proceeding, consistent with these rules, the record and report for which may be used in lieu of one conducted by the Board.

14:18-13.3 Municipal consent

(a) The operator shall file for a municipal consent in the following manner:

1. (No change.)

2. If the municipality fails to issue a report at least 12 months prior to the expiration of the certificate of approval, the operator shall file for municipal consent no later than nine months prior to the expiration of the certificate of approval.

(b) (No change.)

14:18-13.7 Hearing before an Administrative Law Judge

(a) (No change.)

(b) At least one hearing for public comment shall be held in the affected municipality.

Recodify existing 14:18-14.7 and 14.8 as 14:18-14.5 and 14.6 (No change in text.)

APPENDIX A
LIST OF FORMS

Form CATV-1
Form CATV-2
Form F99
Form 100
Channel Allocation Form
Cable Facts Questionnaire
Line Extension Policy Form

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long-Term Care Manual
Patient Care and Reimbursement
Adopted Amendments: N.J.A.C. 10:63-1.2 through 1.5, 1.14, 1.16, 3.3, 3.8, and 3.19
Adopted New Rules: N.J.A.C. 10:63-1.6 and 1.7

Proposed: January 16, 1990 at 22 N.J.R. 118(a).
Adopted: July 31, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: July 31, 1990 as R.1990 d.428, **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. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b, c; 30:4D-12; 30:4D-17.10 et seq., specifically 30:4D-17.15 (P.L. 1988 c.97); 1919 (e)(7) of the Social Security Act.

Effective Date: August 20, 1990.
Operative Date: October 1, 1990.
Expiration Date: November 28, 1990.

Summary of Public Comments and Agency Responses:

There were approximately 300 comments on this proposal. The commenters included the New Jersey Association of Non-Profit Homes for the Aging, Inc., The New Jersey Association of Health Care Facilities, professional associations, physicians, nursing home staff, including administrators, licensed nurses, aides, social workers, and nursing home patients and their families.

The commenters' concerns focused mainly on nurse staffing and reimbursement methodology. The commenters also requested clarification of several definitions in areas such as medical services, social services, nursing services, and the assessment and care planning process.

COMMENT: Concerns were expressed regarding the elimination of unit staffing and the allocation of the registered professional nursing hours to licensed practical nursing hours.

RESPONSE: The elimination of unit staffing and the allocation of the registered professional nursing hours to licensed practical nursing hours is based upon the minimum nurse staffing standards established by the Department of Health and found in the New Jersey Administrative Code at N.J.A.C. 8:39-25.2.

Comments and responses regarding specific sections follow:

N.J.A.C. 10:63-1.2 Definitions

COMMENT: The requirement that the intermediate care patient meet the criteria for 2.5 hours per day is too prescriptive. Additionally, use of the terms "skilled nursing facility" and "intermediate care facility" is incorrect, since the Department of Health licenses Long-Term Care Facilities.

RESPONSE: It is correct to state that the Department of Health uses the term "Long-Term Care Facilities" in its licensing rules; however, the Department of Human Services will not be using that term. The Department of Human Services has deleted the definition for intermediate care patient, as the intermediate level of care has been deleted by amendments to Section 1919 of the Social Security Act. Effective October 1, 1990, Medicaid facilities will be termed "nursing facilities" and Medicare facilities will be termed "skilled nursing facilities." The Department of Human Services will, therefore, be using the term "nursing facilities."

COMMENT: Clarification was requested on the definitions of Comprehensive Assessment and Care Plan and Interdisciplinary Care Plan and the relationship between the two.

RESPONSE: A comprehensive assessment is a total evaluation of the patient. An interdisciplinary care plan is developed by the interdisciplinary team, based upon the comprehensive assessment of the patient. Amendments have been made to both definitions to clarify this relationship.

N.J.A.C. 10:63-1.3 Required services

COMMENT: Commenters were concerned about the effect of the use of the term "at least".

RESPONSE: The Department has deleted this term, to clarify that the requirements are those stated in the rules. The nursing requirements remain the same as proposed.

COMMENT: Commenters questioned the meaning of the term "licensed nursing personnel."

RESPONSE: The Department has amended N.J.A.C. 10:63-1.3(f)1 to clarify that the requirements include professional nurses, practical nurses and nurse aides.

COMMENT: Commenters questioned the meaning of the term "environmental manipulations" at N.J.A.C. 10:63-1.3(f)3ii(17).

RESPONSE: The Department has deleted this requirement, due to the possibility of multiple interpretations and inconsistent implementation.

COMMENT: Commenters questioned the meaning of the term "multiple sites" at N.J.A.C. 10:63-1.3(f)4i.

RESPONSE: Multiple sites means two or more distinct lesions on different anatomical sites.

COMMENT: Commenters questioned the meaning of the term "advanced neuromuscular care" at N.J.A.C. 10:63-1.3(f)4vii(2) and asked for specification regarding when such care is necessary.

RESPONSE: Advanced neuromuscular care needs are those identified by the physician on the occasion of an unstable episode or where there is advanced and progressive deterioration in the patient. The Department points out that it is important for the patient to be evaluated by the physician during a period of significant change.

COMMENT: Under N.J.A.C. 10:63-1.3(k) (recodified as (m) on adoption) Patient Activities, some commentators wanted the words "psychological" and "vocational" removed from the sentence.

RESPONSE: The Department's professional staff feel that both "psychological" and "vocational" are legitimate categories recognized by therapeutic recreation associations that address activity needs of nursing facility residents. The words, as used in this context, are not intended to imply clinical assessment.

COMMENT: Inquiries were made about the necessity for yearly training of staff as indicated in N.J.A.C. 10:63-1.3(k)4iii. The Department was requested to limit this provision to direct care staff.

RESPONSE: The Department agreed with the comment and added the limiting language.

COMMENT: With respect to the functions of social services, there was a question about legal problems being included (N.J.A.C. 10:63-1.3(l)3ii(11). (Recodified as (n) on adoption.)

RESPONSE: Language has been added to indicate that it is a proper function of social workers to discuss concerns relating to legal problems with patients.

COMMENT: Clarification was requested about the functions not included in social services (N.J.A.C. 10:63-1.3(l)6i). (Recodified as (n) on adoption.)

RESPONSE: The subparagraph will now indicate that social services do not include clerical or billing activity.

N.J.A.C. 10:63-1.8 Medical Services and Clinical Records

COMMENT: As indicated previously, there were concerns about the language in comprehensive "assessment and care plan" and "interdisciplinary care plan" in N.J.A.C. 10:63-1.8(a)2iv(3)(4)(5).

RESPONSE: The phrase "care plan" has been deleted. Language has been added to the interdisciplinary care plan indicating that this must be reviewed every three months for Track II patients, every six months for Track I patients, and whenever there are changes in the patient's condition (reference is made to sub-subparagraph (4)).

Sub-subparagraph (5) is being deleted and integrated with N.J.A.C. 10:63-1.8iv(7), which is described as the "medical plan of care and treatments" and sets forth the information that should be in this document. The amendment is really a transfer of the requirements set forth in sub-subparagraph (5) to sub-subparagraph (6).

COMMENT: With respect to physician visits, the Department was requested to delete the words "immediately" and "time spent." (N.J.A.C. 10:63-1.8(a)(4)iv(13)(c), recodified as (12)(c) on adoption).

RESPONSE: The Department agrees to delete the reference "time spent," but retains the word "immediately." Documentation is necessary to insure quality patient care and to comply with Federal and State criteria for physician visits.

COMMENT: Commenters also requested that physicians be allowed seven days rather than 48 hours to countersign telephone orders (N.J.A.C. 10:63-1.8(a)(4)iv(10), recodified as iv(9) on adoption).

RESPONSE: The Department needs additional time to study this issue. The 48-hour requirement is current agency policy.

Summary of Changes between Proposal and Adoption

The following changes are being made either in response to public comments mentioned above or by Department initiative.

N.J.A.C. 10:63-1.2 Definitions

The references to Long Term Care Facility (LTCF) have been changed to nursing facility (NF).

A definition of case management has been added to define the role of the Division's Medical Social Care Specialist in monitoring a NF. All Medicaid professional staff have a duty to monitor NFs. The definition of "clinical audits" is being amended to contain a general description of the Medicaid RN's overall responsibility. A definition of a Medical Social Care Specialist, an employee of the Department, has also been added.

The commenters requested clarification of the correlation between the comprehensive assessment, and the interdisciplinary team and interdisciplinary care plan. These functions are all related to activities performed by the NF. Therefore, the Division deleted the phrase "care plan" from the comprehensive assessment, took some of the language that appeared in the proposed definition of "comprehensive assessment" regarding meeting the patient's medical, nursing, dietary, and psychosocial needs, etc. and inserted similar language into both the definitions of the interdisciplinary care plan and the interdisciplinary care team. Therefore, the added definitions clarify the composition of the interdisciplinary team and their role in planning for the needs of the patient.

The definitions of "intermediate care patient" and "skilled nursing facility patient" are being deleted because the reference is no longer appropriate. Instead, the definition "Long Term Care Services for each patient" describes the basic services indicating the need for said services in a NF.

The Division has retained the definition of a skilled nursing facility (SNF) and amended it to indicate that an SNF must be both licensed and certified by the Department of Health in order to participate in the Medicare (Title XVIII) Program.

N.J.A.C. 10:63-1.3 Required services

The Division added paragraph (c), "consultant services" to clarify that, as in the past, if a NF has recurring problems, the NF shall be required to provide appropriate consultation until the problem is resolved. This addition resulted in recodification of the remaining paragraphs.

The phrase "at least" was deleted from N.J.A.C. 10:63-1.3(e)3 at the request of the commenters. The nursing requirements remain the same.

With respect to patient utilization, the Division clarified the need for yearly training to staff that provides direct patient care. It was also considered appropriate for social workers to discuss (with a patient) concerns relating to legal problems, and to indicate that social services do not include clerical or billing activity.

N.J.A.C. 10:63-1.4 Additional services

There were no changes in this section.

N.J.A.C. 10:63-1.5 Utilization control

With respect to the transfer summary prepared by a NF when a patient is discharged or transferred from the facility, the transfer summary must include the most current copy of the PASARR (PreAdmission Screening Annual Resident Review) for mentally ill or mentally retarded individuals, as well as a copy of the neurological evaluation for individuals with Alzheimer's Disease or related dementias. The Department considers this language necessary to insure compliance with Federal legislation.

N.J.A.C. 10:63-1.6 Authorization process

The Division has added subsection (h) to clarify that, as previously required, NFs must assess patients to classify nursing service needs and to determine continued need for this service. Medicaid RSNs shall review the NF's assessments, classifications and may recommend alternatives to NF stay or deny continued stay. Medicaid medical social care specialists will provide monitoring of the NF delivery of services.

N.J.A.C. 10:63-1.7 Reimbursement by case mix patient classification

The Division has deleted the reference to the N.J. DOH rules and added the reference to N.J.A.C. 10:63-3 as the basis for reimbursement. Payment to NFs will be based upon rules that are promulgated by the Division, but which have their rate-setting base in the DOH rules at N.J.A.C. 8:39-25.

N.J.A.C. 10:63-1.8 Medical services and clinical records

The explanation of comprehensive assessment and care plan was amended in order to insure consistency with the amended definition in N.J.A.C. 10:63-1.2. The amended language indicates the assessment is the process of evaluating the patient's needs by NF staff, and the care plan is developed following the assessment (N.J.A.C. 10:63-1.8(a)2iv(3)). The Division also deleted N.J.A.C. 10:63-1.8(a)2iv(5), regarding the assessment and care plan, and incorporated similar language into N.J.A.C. 10:63-1.8(a)2iv(6), regarding the Medical Plan of Care and Treatment. The deletion of N.J.A.C. 10:63-1.8(a)2iv(5) also resulted in recodification of the following sub-subparagraphs upon adoption.

The Division also amended the requirement for physicians recording their visit (examination) of the patient. The Division deleted the requirement that the physician list "time spent", but retained the requirement that the physician record the visit immediately (N.J.A.C. 10:63-1.8(a)2iv(12)(C)).

The Division also deleted the reference to skilled and/or intermediate level of care patients and defined time frames for physician visits to patients in the following terms. For the first 90 days, each patient shall be visited and examined every 30 days. After the first 90 days, the interval between visits may be extended for up to 60 days with written justification in the patient's record. These time frames for physician visits represent the maximum allowable time between physician visits. The patients can be seen more frequently if their condition warrants. (Reference is made to N.J.A.C. 10:63-1.8(a)2iv(12)(A) in the proposal.)

N.J.A.C. 10:63-1.14 Records

This section is predicated on the statutory requirement that Medicaid providers are required to maintain individual records to fully document the name of the recipient receiving the service, date of service, and nature of the service rendered, etc. (N.J.S.A. 30:4D-12).

The adoption is deleting the reference to the level of care and incorporating a generic reference to the patient's need for NF care. The time for completion of the nursing care plan is once every 30 days for the first ninety days following admission. Thereafter, the nursing care plan must be completed at least every three months and whenever the patient's clinical status changes. The proposal contained essentially the same time frames with differentiation based on SNF or ICF level of care. Since there is only NF care, the time frames were consolidated. LTCF (NF) providers have always been required to examine patients and document their findings on periodic intervals.

N.J.A.C. 10:63-1.16 Admission policies

The Department is adding clarifying language to N.J.A.C. 10:63-1.16 by inserting subsection (c) and recodifying the remaining subsections. The additional language explains that, as is current practice, patients transferred from a NF to acute care hospital or psychiatric hospital with a primary admitting diagnosis of a major mental illness will require a PASARR Level II Active Treatment Screen and NF assessment prior to admission or re-admission to a NF. The PASARR Level II screens shall be performed by a psychiatrist and the results forwarded to the Division of Mental Health and Hospitals for final determination.

The Department has added this language to be in compliance with Section 1919(e)(7) of the Social Security Act.

N.J.A.C. 10:63-3.3, 3.8, 3.19 Reimbursement

Many comments were received objecting to Medicaid basing reimbursement for nursing services on the minimum nurse staffing standards established by the Department of Health. Since the Cost Accounting Rate Evaluation (CARE) system was developed in 1977, the limit for the nursing care component of the nursing facility per diem rate has been based upon the Department of Health minimum licensing staffing standards. The Division is not changing its approach of basing limits for nursing reimbursement on DOH standards. N.J.A.C. 10:63-3.3, 3.8 and 3.19 have been revised to reflect the changes to minimum nurse staffing requirements included in N.J.A.C. 8:39-25.

Many of the commenters appeared to presume that Medicaid reimbursement is limited to DOH minimum nurse staffing requirements. It should be noted that the nurse staffing screen calculation continues to include an increment to the nursing limit of 15 percent in order to allow variations in staffing patterns and mix of nursing personnel. (N.J.A.C. 10:39-3.8(b)6.)

Many commenters objected to the discontinuation of the recognition of unit staffing in the calculation of the nursing limit. They cited the possible negative impact caused by a reduction in reimbursement for licensed nursing personnel in certain facilities. The Department of Health

Licensure Reform Project was conducted over several years and involved the direct participation of the nursing home industry. A major focus of licensure reform was in the area of nurse staffing requirements. The Project undertook a total re-evaluation of the existing system and made comprehensive changes to the minimum nurse staffing requirements for nursing home licensing. The new DOH nurse staffing rules contain no explicit reference to or implicit requirement for unit staffing and, apparently, makes continued unit staffing discretionary with the facilities. Absent the requirement to staff nurses on a unit basis, the CARE methodology does not reimburse for discretionary staffing, other than that which may be allowed by the 15 percent increment included in N.J.A.C. 10:63-3.8(b)6.

Several commenters objected to the limiting effect on Medicaid reimbursement resulting from the interchangeable use of RN or LPN time to satisfy the basic 20 percent requirement for licensed nursing time. (N.J.A.C. 8:39-25.2(f).) Since the CARE system is based on minimum nurse staffing requirements, the methodology for the calculation of the nursing cost limit presumes the use of LPN coverage for all licensed staff time other than basic RN requirements contained in N.J.A.C. 8:39-25.2. The CARE methodology is designed to reimburse basic patient care as defined by Department of Health licensing standards.

Some commenters noted the need for clarification of basic rate methodology and the methodology and timing of rate adjustments for changes in patient mix. The adoption includes additional detail and clarification of the rate methodology and timing.

One commenter requested clarification of the appeal process for rate adjustments related to facility patient mix. The standard appeal process in N.J.A.C. 10:63-3.20 will be employed for the process.

One commenter wanted an explanation of the manner in which reimbursement for patients requiring additional nursing services would be included in the rate. The additional hours related to patients with specified conditions (N.J.A.C. 8:39-25.2(b)) will be included in the calculation of the nursing limit as part of the minimum required nurse staffing hours. Because there will be a single per diem rate for each facility, reimbursement for the cost of these additional nursing services will be distributed through all patients' per diem rates.

Several commenters made suggestions of alternative procedures to calculate the nursing component of Medicaid per diem. The Department acknowledges and appreciates the input (of commenters) as to alternative reimbursement methodology. However, the suggested changes do not appear to lend themselves to a system of case mix reimbursement for nurse staffing as proposed by the Department.

The agency's response to the public comments is that the reimbursement methodology being adopted is basically the same as was originally proposed, but does contain additional explanation and detail regarding the manner in which routine annual prospective rate changes (N.J.A.C. 10:63-3.8(b)), and patient mix rate adjustments (N.J.A.C. 10:63-3.19(a)5) will be made. The additional text also includes an explanation of how patient mix will be counted for rate calculations/adjustment purposes (N.J.A.C. 10:63-3.19(a)5i, ii). NFs need this information in order to maintain the necessary data to arrive at an accurate reimbursement rate.

General Statement

The Division does not believe that the changes create any additional burden upon the regulated public. The changes were primarily made for clarification and were in response to public comments.

The requirements for NF staff evaluating patients, physician visitation, making a record on the chart, and providing documentation available to the State for review are long-standing program requirements.

The changes in reimbursement methodology provide additional explanation to NFs as to the method by which they will be reimbursed. These changes augment the basic methodology presented in the proposal.

The Department is continuing to study the issue of nurse staffing.

Full text of the adoption follows. Additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

10:63-1.2 Definitions

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

"Case management" means the process by which the Division's Medical Social Care Specialist monitors the provision of nursing facility care in order to assure the delivery of timely and coordinated services.

["Clinical audits" means a process of professional review performed by Regional Staff Nurses (RSNs) of the 2.5 hour/day patients at least once in a 12 month period and a professional review of individuals with one or more of the additional nursing services at least once every six months.]

"Clinical audits" means a monitoring mechanism which will be conducted by Regional Staff Nurses (RSNs) to evaluate the nursing facility's patient classification and patient classification reporting process.

"Comprehensive Assessment *[and Care Plans]*" means a total evaluation and plan of care of a patient prepared by ***members of*** an interdisciplinary team in conjunction with the patient and his or her family or legal representative*[, as appropriate. This includes measurable objectives and timetables to meet the patient's medical, nursing, dietary, and psychosocial needs that are identified at the assessment.]* ***that results in an interdisciplinary care plan.***

. . .

"Department of Health" (DOH) means the New Jersey State Department of Health.

"Division of Developmental Disabilities" (DDD) means the Division of Developmental Disabilities within the New Jersey ***State*** Department of Human Services.

"Division of Mental Health and Hospitals" (DMHH) means the Division of Mental Health and Hospitals within the New Jersey State Department of Human Services.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the RSN during the Pre-Admission Screening (PAS) assessment process. The HSDP reflects each patient's ***current or potential*** problems and required care needs, is forwarded to the authorized care setting and is attached to the patient's medical record upon admission to a nursing facility or when the patient receives services from *[certified home health]* ***Medicaid approved home*** care agencies.

"Initial Assessment and Care Plan" means the evaluation and plan of management of the patient developed on the day of admission which includes at the least: hygiene, immediate dietary needs, medication, level of activities, and special therapies.

Interdisciplinary care plan means the care plan developed by the interdisciplinary team which includes measurable objectives and time tables to meet the patient's medical, nursing, dietary and psychosocial needs that are identified through the comprehensive assessment process.

Interdisciplinary team shall consist of representatives from nursing, dietary, patient activities and social work staff and, when necessary, a physician. The interdisciplinary team shall be coordinated by a registered professional nurse and may also include other health professions relative to the provision of needed services. The interdisciplinary team performs comprehensive assessments and develops the interdisciplinary care plan.

["Intermediate care facility (ICF)" means a free-standing institution or an identifiable part of an institution which is both licensed and certified by the State Department of Health as an ICF, meeting all the State and Federal requirements for participating in the New Jersey Medicaid Program as an ICF.]

["Intermediate care patient" means a patient who meets the criteria for 2.5 hours per day of nursing services and who has physical and/or mental and/or social dysfunction requiring substantial assistance on a daily basis with personal care needs involving activities of daily living. Such nursing services are provided 24 hours a day by licensed and nonlicensed personnel under the general direction of a registered professional nurse, pursuant to N.J.A.C. 10:63-1.3. These patients require continued restorative and psychosocial services pursuant to this chapter.]

. . .

"Long Term Care Services for each patient" means an individually planned program of care and rehabilitation as appropriate, in addition to the basic requirements for food and shelter. The services address medical, nursing, personal care, rehabilitative, recreational and social needs. Rehabilitative services and restorative nursing care are provided as required by the individual needs of the patient with the degree of skill appropriate to the provision of services required by this chapter.

"Medical Director" means a physician licensed under New Jersey State law who is responsible for the direction and coordination of medical care in a nursing facility.

"Medical Evaluation Team (MET)" means a team consisting of a Medicaid Physician Consultant, a Regional Staff Nurse, a Regional Pharmaceutical Consultant, a Medical Social Care Specialist I (MSCS I) and a Medical Social Care Specialist II (MSCS II) who are assigned to the Medicaid District Office (MDO). A MET has the responsibility to review the medical, nursing, and social information obtained at the time of the patient's assessment as well as any other supporting data in order to evaluate the need for long term care, determine the care needed, the feasibility of alternate care, the quality of care given and the outcome of service. Members of the MET may review each patient as individual team members or may perform the reviews as a multidisciplinary team.

. . .

"Medical Social Care Specialist (MSCS)" means a social worker employed by the Division of Medical Assistance and Health Services who performs case management as required by N.J.A.C. 10:63 et seq.

"Medical staff" means one or more duly licensed physicians who act as the attending physician(s) to Medicaid eligible patients in a nursing facility.

["Mixed Skilled Nursing Facility and Intermediate Care Facility" means a free-standing institution or an identifiable part of an institution which is both licensed and certified by the State Department of Health as a SNF/ICF and meets all the State and Federal requirements for participation in the New Jersey Medicaid Program as both a SNF and ICF.]

"Nursing facility" means an institution (or a distinct part of an institution) certified by the State Department of Health for participation in Title XIX Medicaid and primarily engaged in providing:

1. Nursing care and related services for patients who require medical, nursing care, and social services;

2. Rehabilitative services for the rehabilitation of injured, disabled, or sick; or

3. Health-related care and services on a regular basis to patients who because of mental or physical condition require care and services above the level of room and board; the care and treatment of mental disease.

4. However, the nursing facility is not primarily for the care and treatment of mental diseases ***which require continuous 24-hour supervision by qualified mental health professionals***.

"Occupational therapist" means a person who is registered by the American Occupational Therapy Association or is a graduate of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association. ***If treatment and/or services are provided in a state other than New Jersey, the occupational therapist shall meet the requirements of that state, including licensure, if applicable, and also shall meet all Federal requirements.***

"Periodic Medical Review (PMR)" means a process of professional review at least once in a 12 month period by the New Jersey Medicaid Program MET of the adequacy and quality of nursing facility care provided by the NF.

"Physical therapist" means a person who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent; and, if practicing in the State of New Jersey, is licensed by the State of New Jersey, or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable, and also meets all applicable Federal requirements.

"Physician's Services" means those services provided within the scope of practice of his profession as defined by the laws of New Jersey and those services which are performed by or under the direct personal supervision of the physician.

1. "Physician" means a doctor of medicine or osteopathy licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners.

2. "Direct Personal Supervision" means that the services must be rendered in the physician's presence. It is not the intent of the Program to reimburse a physician for history and/or physical examinations performed by physicians in training such as interns, residents, ***or*** other house staff members.

"Pre-Admission Screening (PAS)" means that process by which all Medicaid eligible recipients and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified nursing facility who are seeking admission to a Medicaid certified nursing facility receive preadmission screening by the Medicaid District Office to determine appropriate placement prior to admission to a nursing facility, pursuant to N.J.S.A. 30:4D-17.10 (P.L. 1988, c.97).

"Prior authorization" means approval granted by the Division of Medical Assistance and Health Services through the appropriate Medicaid District Office (MDO) for payment for NF services rendered to a Medicaid eligible patient for a specific time period.

"Regional Staff Nurse" means a registered professional nurse employed by the Division of Medical Assistance and Health Services who performs health needs assessments as required by this chapter.

"Rehabilitative and/or restorative nursing care" means skilled nursing care provided by a registered professional nurse, or under the direction of a registered professional nurse qualified by experience in rehabilitative or restorative nursing care. This person acts both independently and as a member of a health care team directed toward rehabilitation and restoration of an individual to his or her maximum potential for self-care and independence, including skilled services in treatment, maintenance, prevention, teaching, emotional support, social stimulation and controls necessary to meet the established goals for physical, mental, emotional, behavioral and social levels of function.

"Rehabilitative services" means physical therapy, occupational therapy, speech-language pathology services, and the use of such supplies and equipment as are necessary in the provision of such services. Rehabilitative services are made available to the Medicaid resident as an integral part of a comprehensive medical program. Rehabilitative services and other restorative services are provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the resident to his or her best functional level. Rehabilitative services do not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat *[per se,]* in any form, massage, routine calisthenics or group exercises, assistance in any activity or use of simple mechanical device not requiring the special skill of a qualified physical therapist. Such services include not only intermittent or part-time service to the patient, but also instructions to responsible members of the family in follow-up procedures necessary for the care of the patient.

"Skilled Nursing Facility (SNF)" means a free-standing institution or an identifiable part of an institution which is both licensed and certified by the State Department of Health as a Skilled Nursing Facility and which meets all the State and Federal requirements for participation in the *[New Jersey Medicaid]* ***Medicare*** Program as a Skilled Nursing Facility.

["Skilled nursing patient" means a person with acute or sub-acute medical and/or mental dysfunction requiring skilled nursing, psychosocial and restorative care during a 24 hour period. The skilled nursing patient is a person requiring one or more additional nursing services pursuant to N.J.A.C. 8:39-25.2(b)2. The patient requires continuous 24 hour availability of nursing personnel at the licensed nurse level under the general direction of a registered professional nurse and will require other skilled services on an intensive basis including rehabilitation. The dysfunction may involve one or several physiological systems, may be stabilized or not, with symptoms subsiding or increasing. The patient may be bed fast, chair fast, semi-ambulant or ambulant (with or without assistive devices). Determination of this level of care requires an identification of skills required and evidence that as a practical matter such care can only be provided in a facility setting.]

"Social Services" means the identification of social and emotional needs of the patient(s) and the provision of services to meet those needs.

"Speech-language pathologist" means a person who has a certificate of clinical competence from the American Speech and

Hearing Association; has completed the equivalent educational requirements and work experience necessary for the certificate, or has completed the academic program and is acquiring supervised work experience to qualify for the certificate, and, if practicing in the State of New Jersey, is licensed by the State of New Jersey; or if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable. The practitioner shall also meet all applicable Federal requirements.

"Track of care" means the setting and scope of Medicaid services approved by the RSN following assessment of the Medicaid eligible or potentially eligible Medicaid patient, as follows:

1. "Track I" means long term nursing facility (NF) care.
2. "Track II" means short term nursing facility (NF) care.
3. "Track III" means long term care services in a community setting.

. . .

10:63-1.3 Required services

(a) The services set forth in this section are included in the per diem rate.

Recodify (a) as (b) (No change from proposal.)

(c) Consultant Services:

Recodify (c)-(d) as (d)-(e) (No change in text.)

*[(e)]***(f)*** Nursing services:

1. The nursing facility shall provide 24 hour nursing services in accordance with the minimum standards set forth by the New Jersey Department of Health Long Term Care Facilities Licensing Standards, N.J.A.C. 8:39, which is incorporated herein by reference. The nursing facility shall provide nursing services by *[licensed nursing personnel]* ***registered professional nurses, licensed practical nurses and nurses aides*** on the basis of the total number of patients multiplied by 2.5 hours/day; plus the total number of patients receiving each of the following services:

i. Tracheostomy	1.25 hours/day
ii. Use of Respirator	1.25 hours/day
iii. Head Trauma Stimulation/advanced neuromuscular/orthopedic care	1.50 hours/day
iv. Intravenous Therapy	1.50 hours/day
v. Wound Care	0.75 hour/day
vi. Oxygen Therapy	0.75 hour/day
vii. Nasogastric Tube feedings and/or gastrostomy	1.00 hour/day

2. The nursing facility provision of 2.5 hours/day means services provided to Medicaid patients who are chronically or sub-acutely ill and require care for these entities, disease sequela or related deficits.

i. Patients may have unstable medical, emotional/behavioral and psychosocial conditions which require ongoing nursing assessment, intervention and/or referrals to other disciplines for evaluation and appropriate treatment. Typically, nursing facility patients (requiring NF placement) have severely impaired cognitive and related problems with memory deficits and problemsolving. These deficits severely compromise personal safety and therefore, require a structured therapeutic environment. Nursing facility individuals are dependent in several activities of daily living. Dependency in activities of daily living (ADL) may have a high degree of patient variability. Each separate ADL may be classified as being independent requiring some assistance, or totally unable to do for self. Inclusive in the 2.5 hours is the implementation of services (based upon a comprehensive assessment and plan of care) which addresses the medical, nursing, dietary and psychosocial needs that are essential to obtaining and maintaining the highest physical, mental, emotional and functional status of the individual patient. Care and treatment shall be directed toward restoration, maintenance or the prevention of deterioration. Care is delivered in a therapeutic health care environment with the goal of improving or maintaining overall function and health status. The therapeutic environment ensures that the individual does not decline (within the confines of the individual's right to refuse treatment) unless the individual's clinical condition demonstrates that deterioration was unavoidable.

3. The 2.5 hours of nursing care shall also include *[at least]*:

i. Rehabilitative and restorative measures such as:

(1) Supervision, direction, assistance or retraining in all phases of activities of daily living to promote independence and restore function to whatever extent the individual is able (bathing, dressing, toileting, transfers and ambulation, continence, and feeding);

(2) Proper positioning of the individual in bed, wheelchair or other accommodation to prevent deformities and pressure sores;

(3) Program of bowel and bladder retraining for incontinence, in accordance with the individual's potential for restoration;

(4) Range of motion exercises, active and passive, as necessary;

(5) Follow-up care as required for physical therapy, occupational therapy and/or speech-language pathology services when these therapies are ordered by the physician;

(6) Follow-up care as required for uncomplicated plaster care. Assistance with adjustment to and use of prosthetic and/or orthotic devices;

(7) Routine care and maintenance of ileostomy or colostomy. Care and instruction for self-care of colostomy or ileostomy. Uncomplicated care of ostomy (i.e., cleansing and appliance change);

(8) Instruction relative to special diet;

(9) Instruction in self-administration of medications if ordered by physician;

(10) Instruction in health care as clinically indicated; and

(11) Based on need, individual or group activities and therapies for psychosocial maintenance and restoration.

ii. Procedures, therapies and functions, including:

(1) Ongoing assessment of the individual's health status for the purpose of planning, implementing and evaluating individual care, with particular attention to unstable medical conditions;

(2) Safe and appropriate administration of medications;

(3) Emergency care (for example, oxygen, injections, resuscitation);

(4) Observation, recording, interpretation and reporting of vital signs*, **height and weight***;

(5) Intake and output recording, as clinically indicated;

(6) Catheter care including intermittent or continuous bladder irrigations, intermittent catherizations, and use of other drainage catheters;

(7) Preparations for laboratory procedures and collection of laboratory specimens;

(8) Telephone pacemaker or electrocardiogram checks;

(9) Terminal illness management, when there is need for supportive services and intensive personal care;

(10) Supervision and protection of individuals who are confused and have the propensity for wandering;

(11) Heat or cold treatments as ordered by the physician;

(12) Care of Stage I and II pressure sores, risk determination for pressure sores; using a standardized assessment instrument and implementation of necessary preventive measures as clinically indicated (for example, special mattress or cushions, positioning schedule, range of motion, nutrition support, skin care and skin checks).

(A) A Stage I pressure sore is an area of redness which does not respond to local circulatory stimulation. It involves the epidermis. No break in the skin is evident.

(B) A Stage II pressure sore is a partial thickness, loss of skin layers with dermis and possibly epidermis involvement. A shallow ulcer or blister appears, and the site is free of necrotic tissue.

Note: An individual who enters the nursing facility without pressure sores should not develop them unless the individual's condition demonstrates pressure sores were unavoidable. Treatment of superficial skin tears, wounds, excoriations and lesions shall be included in the 2.5 hours of care;

(13) The long term care of a simple stabilized tracheostomy with minimal care, and supervision by licensed staff;

(14) Uncomplicated self-administered respiratory therapies requiring minimal staff assistance and direction;

(15) Protection of individuals through the appropriate use of universal precautions, in accordance with Centers for Disease Control, guidelines published in the Morbidity and Mortality Weekly Report, volume 38, number 5-6, (Centers for Disease Control, Atlanta, GA 30333);

(16) Appropriate use of restraints, in accordance with the physician's order, and clinically appropriate measures to guarantee the safety of individuals (for example, side rails);

(17) Counseling, *[environmental manipulation,]* and emotional support necessary for the management of impaired physical and mental functioning; and

(18) Careful assessment for changes in affect or mood which may require special precautions, therapies, or appropriate referral.

iii. Diet and nutrition as follows:

(1) Provision of special diets and dietary instructions regarding recently diagnosed medical conditions;

(2) Observation, supervision and recording of special diet intake during adjustment to treatment regimen for stabilization of a medical condition; and

(3) Observation, supervision and recording of basic nutritional states for maintenance of current health status and prevention of deficiencies.

iv. Psychosocial needs as follows:

(1) Mental status impairment requiring nursing treatment, observation and/or direction (for example, marked confusion and/or disorientation in one, two, or three spheres (time, place and/or person), marked memory loss, severe impairments in judgment, necessitating nursing supervision and intervention; and

(2) Emotional support requiring counselling on an ongoing basis and during adjustment to impaired physical and mental states, including observation for changes in affect and mood which may require special precautions and/or therapies.

4. Nursing services requiring additional nursing hours above 2.5 hours/day are as follows:

i. Wound Care (.75 hours): Includes, but is not limited to, ulcers, burns, pressure sores, open surgical sites, fistulas, tube sites and tumor erosion sites. In this category are Stage II pressure sores encompassing multiple sites, Stage III and Stage IV pressure sores. Stage III and Stage IV are defined as follows:

(1) Stage III—The wound extends through the epidermis and dermis into the subcutaneous fat and is a full thickness wound. There may be inflammation, necrotic tissue, infection and drainage and undermining sinus tract formation. The drainage can be serosanguinous or purulent. The area is painful.

(2) Stage IV—The pressure wound extends through the epidermis, dermis and subcutaneous fat into fascia, muscle and/or bone. Eschar, undermining odor and profuse drainage may exist.

(3) Wounds in Stage IV include:

(A) Open wounds which are draining purulent or colored exudate or which have a foul odor present and/or for which the individual is receiving antibiotic therapy;

(B) Wounds with a drain or T-tube;

(C) Wounds which require irrigation or instillation of a sterile cleansing or medicated solution and/or packing with sterile gauze;

(D) Recently debrided ulcers;

(E) Wounds with exposed internal vessels or a mass which may have a proclivity for hemorrhage when dressing is changed (for example, post radical neck surgery, cancer of the vulva);

(F) Open wounds, widespread skin disease or complications following radiation therapy, or which result from immune deficiencies or vascular insufficiencies; and

(G) Complicated post-operative wounds which exhibit signs of infection, allergic reactions or an underlying medical condition that affects healing.

ii. Tube feedings (1.00 hr/day); which include nasogastric tube, and percutaneous feedings may be used if the feedings are required to treat the individual's condition after all non-invasive avenues to improve the nutritional status have been exhausted with no improvement. The clinical record shall document the non-invasive measures provided and the individual's poor response. The record should indicate the medical condition for which the feedings are ordered.

iii. Oxygen therapy (.75 hr/day); which includes complex provision of oxygen therapies due to the nature of the individual's condition, type or multiplexity of procedures required. Positive pressure breathing therapy, aerosol therapy, and ***therapies for which*** the individual is dependent upon administration by licensed staff.

iv. Tracheostomy (1.25 hrs/day); which includes new tracheostomy sites and complicated cases involving infections, infection prevention and unstable respiratory functioning.

v. Intravenous therapy (1.25 hrs/day); which includes clinically indicated therapies ordered by the physician, such as central venous lines, Hickman/Broviac catheters, heparin locks, total parenteral nutrition, clysis, hyperalimentation and peritoneal dialysis. When clinically indicated, intravenous medications should be appropriately and safely administered within prevailing medical protocols. If intravenous therapy is for the purpose of hydration, the clinical record should document any preventive measures and attempts to improve hydration orally, and the individual's inadequate response.

vi. Respirator use (1.25 hrs/day); which includes care for individuals who are stable and no longer require acute or specialized respirator programs and who require mechanical ventilation to oxygenate their blood. Ongoing assessment and intervention by a licensed nurse is needed. The individual's treatment plan should include protocols for weaning the individual from assisted respiration and/or self care when clinically indicated and ordered by the physician.

vii. Head trauma stimulation/advanced neuromuscular/orthopedic care (1.5 hrs/day) as follows:

(1) Care of head trauma shall be directed toward individuals who are stable (have plateaued) and can no longer benefit from a rehabilitative unit or unit for specialized care of the head injured. Individuals shall have access to and periodic reviews by such specialists as a neuropsychologist, psychiatrist and Vocational Rehabilitation Specialist, in accordance with their clinical needs. There shall also be contact with appropriate therapies, such as physical therapy, speech-language pathology services and occupational therapy. The distinguishing characteristic for add-on hours for head trauma is the necessity for ongoing assessment and follow-up by licensed nursing personnel. Additionally, nursing protocols may be initiated which are specifically designed to meet individual needs of head injured individuals. The nurse may also supervise a coma stimulation program, when this need is identified by the multidisciplinary team.

(2) *[Advanced neuromuscular care needs shall be identified by the physician as needing advanced neuromuscular care in a long term care setting. Individuals identified as needing these services require intensive ongoing assessment and intervention by licensed nursing staff.]* ***Advanced neuromuscular care needs shall be identified by the physician for individuals during an unstable episode or where there is advanced and progressive deterioration in which individuals require observation for complications, monitoring and administration of medications or nursing interventions to stabilize the condition and prevent unnecessary regression.***

(3) Advanced orthopedic care shall be the care of plastered body parts with a pre-existing peripheral vascular or circulatory condition requiring observations for complications and monitoring and administration of medication to control pain and/or infection. Such care shall also involve additional measures to maintain mobility, care of post-operative fracture and joint arthroplasty, during the immediate subacute post-operative period involving proper alignment, teaching and counseling and follow-up to therapeutic exercise and activity regimes. Individuals in this group shall be identified by the physician as needing advanced orthopedic care. If the requirement for advanced orthopedic care exceeds 30 days, clinical need shall be demonstrated and clearly documented by the multidisciplinary team.

*[(e)]***(g)*** Restorative nursing services: Restorative nursing is an active program of restorative care, which is an integral part of all nursing service, directed toward assisting each patient to achieve and maintain an optimal level of independence in self-care, and to assist him to achieve his maximum possible physical, mental, and social efficiency. Restorative nursing initiated prior to admission of persons transferred to NFs from other health care delivery providers should be continued in the SNF and/or ICF. If *[no]* restorative care was ***not*** initiated prior to admission***,*** the registered professional nurse should assess the patient or resident for restorative care needs and initiate a restorative plan of care.

1. (No change.)

Recodify (f)-(k) to (h)-(i) (No change.)

*[(h)]***(j)*** Durable medical equipment: Routinely used equipment ordered for Medicaid eligible patients in a participating medical

institution, that is, durable medical equipment ((for example), walkers, wheelchairs, bedrails, crutches, traction apparatus, IPPB machine, electric nebulizers and electric aspirators) and other therapeutic equipment and supplies essential to furnish the services offered by the facility for the care and treatment of its patients is considered part of the institution's cost, and cannot be billed directly to the program by the supplier. In exception situations see N.J.A.C. 10:63-1.4.

*[(i)]**(k)* Equipment necessary for the administration of oxygen: Equipment for administration of oxygen for patients in a NF is a required service. Oxygen itself must conform to United States Pharmacopoeia Standards in order to be used as a medicinal gas.

*[(j)]**(l)* (No change.)

*[(k)]**(m)* Patient activities: An ongoing patient activities program shall be established as an adjunct to the treatment program. The program shall be a planned schedule of social, physical, spiritual, psychological, leisure, cognitive, vocational and educational activities designed to meet the needs and interests of all patients, whether ambulatory, chairbound, or bedfast. It shall enable the patients to maintain a sense of usefulness and self-respect, and when possible, help to prevent regression. It shall encourage restoration to self-care and resumption of normal activities and stimulate and maximize the total functional ability of the patient.

1. Staff:

i. Patient activities staff shall meet the qualifications for the positions of Patient Activities Coordinator and Patient Activities Consultant as defined by N.J.A.C. 8:39-7. The facility shall appoint a patient activities coordinator who shall provide patient activity services in the facility on an average of 45 minutes per week per patient.

ii. Facilities of more than 60 patients shall have a full-time coordinator. Additional patient activity staff time shall be provided to the number of patients over 60 at a ratio of 1:53 patients.

iii. If the coordinator does not meet the qualifications required by N.J.A.C. 8:39-7, or if significant, unresolved or recurring problems are identified, a patient activities consultant shall be appointed who shall provide at least four hours of consultation in the facility per month.

iv. The use of volunteers should be encouraged and utilized to supplement full-time staff. Volunteers should be trained and supervised in this performance of their duties by qualified staff.

2. Program: A monthly written schedule of activities shall be established and conspicuously posted so that patients and staff are aware of daily programs. There shall be a diversity of activities seven days per week, including evenings. Evening activities shall be scheduled after the evening meal. Activities should be varied to include passive and active programs, individual and group sessions, totally reflecting the interests and needs of the population of each facility. There shall be input into the planning and carrying out of the programs by a Patient Council which meets monthly with the coordinator.

3. Space and equipment:

i.-ii. (No change.)

iii. Adequate indoor and outdoor recreational areas shall be provided with sufficient equipment and materials available to support ongoing programs as well as self-directed activities.

4. Patient utilization:

i.-ii. (No change.)

iii. All staff of the facility shall be trained at least yearly in the value of an activities program for overall effective patient care and shall cooperate with, and participate in, activities provided within the facility.

5. (No change.)

*[(l)]**(n)* Social services:

1. Staff employed by the facility shall provide social work services as follows:

i. Social services staff shall meet the qualification for social worker as defined in N.J.A.C. 8:39-39.

ii. Social work services shall be provided by one or more social workers who possess a bachelor's degree or a master's degree in social work, psychology, sociology, or counseling from an accredited university or education program or who on June 20, 1988 served in the facility as a social work designee, with consultation of at least 8 hours per month from an individual who holds a master's degree in social work. If the social worker has a bachelor's degree in psychology, sociology, or counseling, and no master's degree, then one year of social work experience in a geriatric setting shall also be required.

iii. The facility shall provide an average of at least 20 minutes of social work services per week for each patient. (This is an average. It is equal to one full-time equivalent social worker for every 120 patients.)

2. The purpose of a social service program is to maximize the patient's psychosocial adjustment and to resolve and reduce psychological and social problems that interfere with the patient's functioning and relationships.

3. Social services include:

i. Assessment, based on social history, and present psychosocial functioning and situation; monitoring and support; service planning and delivery; reassessment and discharge planning. Services encompass those to patient and family or other support systems.

ii. When social service needs are identified, they shall include the following areas:

(1) Concerns/problems related to illness, disability, physical function and limitations, sensory deficits, physical appearance and characteristics;

(2) Concerns/problems related to cognitive function including self concept, reality orientation, intellectual capacity, and judgment;

(3) Concerns/problems related to emotional, functional, including depression, anxiety, frustration, lack of appropriate affect or motivation;

(4) Concerns/problems related to behavior including problems in interpersonal relationships, social skills, personal habits including personal hygiene, self-expression, aggressive or self-isolating behavior;

(5) Concerns/problems relating to adjustment to placement;

(6) Concerns/problems regarding family and their availability and support;

(7) Family concerns about patient and family problems impacting on patient;

(8) Problems related to concrete needs, such as clothing, transportation, assistive devices and Personal Needs Allowance (PNA);

(9) Problems related to eligibility for services;

(10) Violation of patients' rights;

(11) ***Concerns relating to*** legal *[issues or]* problems; and

(12) Problems related to discharge, including physical capabilities and attitudes, informal supports and community resources;

4. Interventions include, but are not limited to:

i. Counseling of patient and family;

ii. Information and referral to other services and professionals;

iii. Advocacy in relation to facility staff or other service professionals;

iv. Assisting patients in understanding and asserting rights;

v. Support, education, and treatment groups for patient and/or family;

vi. Outreach and support to families, friends, and other informal systems;

vii. Consultation, education and support to staff in understanding patient needs and behavior;

viii. Obtaining needed services for patients; and

ix. Discharge planning, which is the coordination of all services required by the discharge plan, including, but not limited to, locating an alternate placement and preparing the patient for discharge.

5. The social worker should function as a member of the interdisciplinary team, to support the patient's quality of life and participate in the patient's plan of care.

6. Social service does not include:

i. *[Administrative, clerical]* ***Clerical*** or billing activity *[associated with admissions and discharge]*;

ii. Public relations activity that does not relate to social work services; or

iii. Medical records monitoring responsibilities.

10:63-1.4 Additional services

(a) As a condition for qualifying as a NF under the New Jersey Medicaid Program, the facility must maintain effective agreements

in order to provide additional services which might be required by an individual patient. Additional services include chiropractic services; dental services; laboratory and x-ray services, including portable, and other disagnostic services; mental health services; podiatry services; rehabilitative services; special medical equipment; transportation services; and vision care.

1. It is the right of each Medicaid eligible patient in a NF in consultation with the attending physician, to exercise free choice with respect to a provider of additional services. If the patient does not choose to exercise such a right, or is unable by virtue of his or her physical or mental condition to do so, a person authorized to act on the patient's behalf, in consultation with the attending physician, may designate a provider. In the absence of an authorized person, the facility, in consultation with the attending physician, may designate a provider.

2. The services listed in this section must be provided and/or be available to each Medicaid eligible patient in a NF, but are not part of the per diem rate paid to the NF.

3. (No change.)

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

(d) Laboratory: X-ray, including portable, and other diagnostic services:

1. Laboratory services: A NF shall have written agreements with one or more general hospitals or one or more clinical laboratories so that the facility can obtain laboratory services, including emergency services promptly. If the facility has its own laboratory capabilities, the services may not be billed on a separate fee-for-service basis. A laboratory must be:

i.-ii. (No change.)

2. X-ray services: A NF shall have written agreements with one or more general hospitals or one or more Board certified or Board eligible radiologists so that the facility can obtain radiological services, including emergency services promptly.

i.-ii. (No change.)

3. Other diagnostic services (for example, ECG, EEG, etc.): A NF shall have written agreements with one or more general hospitals or one or more qualified providers so that the facility can obtain such specified services including emergency services promptly.

(e) Mental health services: It is required that all facilities assist Medicaid eligible patients to obtain mental health care through a licensed psychiatrist or psychologist who shall provide or make provision for routine and emergency services.

1. An initial consultation for mental health services does not require prior authorization but shall be performed only upon a written order signed by the attending physician (on the order sheet) citing the reason(s) for the consultation.

i. If the attending physician telephones the order for consultation to an appropriate person designated by the NF, the physician within seven days must countersign the order on the order sheet, citing the reason(s) for the consultation, or must personally have signed and forwarded to the NF an identical order on a prescription form, citing the reason(s) for the consultation.

2. If mental health services are recommended following a consultation, the individual who then will provide the mental health service must submit a completed FD-07 form, ("Request for Authorization of Mental Health Services"), to the Medicaid District Office (MDO) serving that particular NF. Items #10, #11, and #12 need not be completed on the initial FD-07 inasmuch as a copy of the consultation must accompany this request.

3. The medical consultant in the MDO will discuss with the attending physician the request for services as identified on the FD-07.

i. If the service is authorized, the medical consultant will forward a copy of the FD-07 to the NF. The FD-07 is to be made part of the "order section" of the patient's chart.

4. (No change.)

(f) (No change.)

(g) Rehabilitative services: Rehabilitative services include physical therapy, occupational therapy, speech-language pathology services and other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level. It does not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat per se, in any form; massage; routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified physical therapist. *[Rehabilitation]* ***Rehabilitative*** services shall be made available to eligible recipients as an integral part of a comprehensive medical program.

1. If the attending physician orders an evaluation for physical therapy, speech-language pathology services or occupational therapy, an appropriate qualified physical therapist, speech-language pathologist, or occupational therapist, as appropriate, may make an initial visit to evaluate the need for physical, speech-language pathology services, or occupational therapy without prior authorization. The reimbursement fee for the initial visit will be the same as the allowance for the subsequent treatment visits. Prior authorization by the Medicaid Medical Consultant of the Medicaid District Office is required for all subsequent therapy visits.

2. When prior authorized, reimbursement to a NF may be made for more than one type of therapy service performed on the same day, for example, physical therapy and speech-language pathology services.

3. Where the same type of therapy is performed more than once on a given day, or the therapy rendered is a different modality within the same type of therapy, reimbursement will be made for one therapy treatment only. All therapy must be provided under the direct supervision and in the presence of a qualified therapist or physiatrist.

4. Providers of service:

i. Rehabilitative services shall be provided by qualified therapists employed by or under contract to:

(1) An approved Home Health Agency;

(2) A licensed or accredited general or special hospital;

(3) An approved independent outpatient health facility; or

(4) A Nursing Facility.

ii. Reimbursement for rehabilitative services is made to the NF, not to the therapist, by this program. Prior authorization is required as outlined in (g)5 below.

(l) Outpatient physical therapy, speech-language pathology services and occupational therapy services furnished by a Medicare Certified facility to its Medicare eligible inpatients may be billed by the facility to Medicare under Part B only when the beneficiary has exhausted his benefits under Part A or is otherwise ineligible for Part A benefits. When physical therapy, speech-language pathology services or occupational services are furnished under arrangements to combination Medicare/Medicaid patients, these services should be billed to the provider's Part A Intermediary using Form HCFA-1483 (Provider Billing for Medical and Other Health Services, Exhibit No. 23).

(2) Outpatient physical therapy, speech-language pathology services and occupational therapy services furnished only by a Medicaid NF to Medicaid eligible inpatients only may be billed by the facility to the Bureau of Claims and Accounts if prior authorization for the treatment visits has been given by the Medicaid District Office (MDO). The facility must state to the Medicaid District Office (MDO) that it is not a Medicare provider and, therefore, no Medicare denial letter is needed.

(3) Medicaid may reimburse Medicare certified facilities through their Part A Intermediary (Blue Cross or Prudential) for the unsatisfied deductible (Medicare Part B) when physical therapy, speech-language pathology services or occupational therapy services are performed for patients eligible for both programs.

5. Billing Medicaid following Medicare decline:

i. If the HCFA-1483 (Exhibit No. 23) claim for physical therapy, speech-language pathology services or occupational therapy is declined by Medicare and you wish to bill Medicaid for these services, a request for authorization must be made to the MDO. When submitting such a request for authorization to the MDO, the facility must attach a copy of the Medicare denial letter. Medicaid will not authorize payment for any claim for rehabilitation services including but not limited to physical therapy, occupational therapy, speech-language pathology services or any other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best func-

tional level, which was denied by Medicare by reason of "not medically necessary." If authorization is granted by the MDO, the facility shall bill the Bureau of Claims and Accounts in accordance with established procedures, for example, therapy charges, Form MCNH-14 (Exhibit No. 5) plus Form FD-06 (Request for Authorization or Reauthorization for Prescribed Rehabilitation Treatment Program, Exhibit No. 1).

ii. When submitting requests for prior authorization of physical therapy, speech-language pathology services or occupational therapy to the MDO on behalf of patients not covered by Medicare benefits, the facility must state that the "patient is not a Medicare beneficiary."

6. (No change.)

7. Procedure regarding the acquisition of prior authorization for prescribed rehabilitation services:

i. All NFs requesting prior authorization for rehabilitation services for Medicaid eligible patients receiving care in their facilities will use the Form FD-06.

ii. The NF will be responsible for the total completion of the "Patient Information" and "Medical Information and Therapy Requested" portions of the form, in triplicate. If the request is for initial authorization of rehabilitation services, it will not be necessary to complete No. 13 on the form. Note also that if the form is completed by the therapist rather than the attending physician, the latter's prescription must be attached to the request when it is submitted to the Medicaid District Office (MDO).

iii. Following the Medical Consultant's review and disposition, the billing and provider copies of the form will be returned to the NF by the MDO. The billing copy is to be submitted to the Bureau of Claims and Accounts along with the MCNH-14 form for payment.

8. Therapy charges-billing procedures: Refer to N.J.A.C. 10:63-1.11(h) for detailed instructions.

(h) Special Medical equipment: When unusual circumstances require special medical equipment not usually found in a NF, such special equipment may be reimburseable with prior authorization from the Medicaid District Office serving the county where the facility is located.

1. (No change.)

i. Transportation services: The nursing facility shall assist a Medicaid resident in obtaining transportation when the resident requires Medicaid-covered service or care not regularly provided by the nursing facility.

1. Transportation provided by the nursing facility: If a transportation service is provided by the nursing facility to an inpatient of the nursing facility, no additional reimbursement is allowed. Reimbursement is included in the per diem rate.

2. Ambulance service does not require authorization from the MDO, but is reimbursable to the transportation provider only when the use of any other method of transportation is medically contraindicated. (See N.J.A.C. 10:50-1.3(c)2 for specific conditions for ambulance service reimbursement.)

3. Invalid coach services do not require prior authorization from the MDO when a resident is transported to or from a nursing facility.

i. Invalid coach services shall be provided by an approved transportation provider (see N.J.A.C. 10:50-1.3(a)).

ii. An invalid coach may be utilized when a Medicaid patient requires transportation from place to place for the purpose of obtaining a Medicaid-covered service and when the use of an alternative mode of transportation, such as a taxi, bus, livery, or private vehicle would create a serious risk to life or health.

4.-5. (No change.)

(j) (No change.)

10:63-1.5 Utilization control

(a) Utilization control is a surveillance program established to ensure the quality and timeliness of services provided to eligible individuals, and to safeguard against unnecessary and/or inappropriate utilization of care and services. The utilization control program has as its components:

1.-6. (No change.)

7. Additional visits to *[long-term care]* ***nursing*** facilities; and

8. Clinical audit.

(b) Utilization review is a continuous program of review of the need for services to eligible individuals which includes:

1. Certification of medical necessity: The Medicaid Regional Staff Nurse (RSN) shall determine necessity for nursing facility services for Medicaid eligible patients and for individuals who will become Medicaid eligible within six months following admission to a Medicaid certified facility. The determination of necessity for nursing facility services shall be performed through Pre-Admission Screening (PAS) as mandated by New Jersey P.L. 1988, c.97.

2. Assessment—reassessment of care requirements:

i. The nursing facility (NF) needs of all Medicaid eligible and potentially Medicaid eligible patients referred for admission and continued stay shall be assessed and authorized by the RSN.

ii. Continuation of nursing facility services will be dependent on assessment and authorization by the RSN at ***periodic*** intervals *[up to six months for patients with one or more additional nursing services as defined in N.J.A.C. 10:63-1.3 and not more than 12 months for patients receiving 2.5 hours per day of nursing services]*.

3. Alternative care; discharge planning considerations:

i. Alternative care planning is the determination, initially and periodically as to whether or not each Medicaid eligible patient requires initial placement or continued placement in an institutional setting and whether or not their nursing, social and other health care needs can be met through alternative institutional or non-institutional services. The Medical*/**Social*** Care Specialist *[I (MSCS I)]* shall case manage nursing facility patients to facilitate discharge planning and promote appropriate placement to alternative care settings.

(1) The RSN will authorize initial nursing facility services after consideration and rejection of possible means of alternate care. Similarly, the possibility of alternate means of care will be a prime consideration in every reassessment of the care required by the patient.

(2) The facility shall maintain continued vigilance and effort to utilize alternative means of care for all nursing facility patients. The MDO staff will examine patients records for proof of continued vigilance and effort by the facility to utilize alternative means of care for all long-term patients.

(3) If alternative care is available, accessible, and appropriate to the needs of the patient, the RSN should deny the request for long-term care facility services.

(4) If an appropriate alternative plan of care becomes available and accessible for a person already approved for nursing facility care who is awaiting placement, the RSN should rescind the authorization for nursing facility services.

ii. "Discharge planning" is a coordinated plan developed by the nursing facility interdisciplinary team at least 14 days after admission and revised thereafter as the patient's condition indicates.

(1) The nursing facility interdisciplinary team consists minimally of the attending physician, the nurse and social worker and should include as well other disciplines such as special therapists and dietitians where individually applicable.

(2) The discharge plan ***shall be an integral component of the Inter-Disciplinary Care Plan and*** will reflect appropriate time frames, will demonstrate patient and family participation and will ensure that the required discharge services are coordinated.

(3) The initial discharge plan shall be recorded in the Medicaid eligible patient's record within 14 days of admission, and shall be reviewed periodically. The initial and periodic reviews shall be entered in the patient's medical record and shall specifically include consideration of possible alternative care.

(4) At the time of discharge or transfer, the facility shall prepare a patient summary which will accompany the patient to the receiving facility or be available to his attending physician if the discharge is to be to the community. This summary shall include at a minimum the diagnosis, current treatment, relevant medical, nursing and social information and disposition of the patient. ***The transfer summary shall also include the most current copy of the PASARR Active Treatment Review for MI or MR individuals, as well as a copy of the neurological evaluation for individuals with Alzheimers Disease or related organic dementias.***

(c) Certification and recertification: Certification is the process by which a physician who has knowledge of the *[case]* ***patient and***

attests to ***the*** *[an]* individual's need for a specific type of care; recertification is the *[processing]* ***process*** by which a physician who has knowledge of the *[case]* ***patient*** attests to *[an individual's]* ***the*** continued need for a specific type of care.

1. Certification: A physician *[must]* ***shall*** certify in the patient's medical record the need for *[SNF or ICF]* services in a nursing facility. *[SNF care is defined as one or more services (see N.J.A.C. 10:63-1.3). ICF care is defined as patients requiring 2.5 hours of nursing care per day.]* This certification must occur on the date of admission or not more than 30 days prior to admission to a nursing facility. If the individual is already a patient in a nursing facility, the certification must be signed not more than 30 days prior to the authorization date for Medicaid payment.

i. Periodicity, or the start of a cycle, begins at the date of admission or readmission. The cycle must be started again should a discharge and subsequent readmission occur, or a change in the care needs within the same facility, or a transfer to a new facility with either the same or different care needs.

2. Recertification: The need for care *[must]* ***shall*** be recertified every 30 days.

i. A recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required. When the patient's care need is scheduled for recertification during a therapeutic leave, the physician *[must]* ***shall*** recertify before the patient leaves the facility.

(1) The nursing facility must document "good cause" why such recertification did not meet the required schedule. Good cause shall include, but not be limited, to those situations beyond the long term care facility's control, for example, employee strike, severe weather conditions, flood, quarantine of the facility, isolation of the patient, illness of the attending physician.

3. Additional conditions for certification/recertification: The following conditions *[must]* ***shall*** be met in order for a certification/recertification to be considered valid:

i. The certification/recertification is in writing and identifies specific care needs;

ii. The certification/recertification is signed or initialed by the Medical Director, staff physician or attending physician, using his or her signature or initials. The signature or initials are not acceptable if they are rubber stamped unless the physician has initialed the stamped signature. The physician *[must]* ***shall*** date the certification/recertification on the same day he or she signs it;

iii. The certification/recertification *[must]* ***shall*** demonstrate the need for the care that the individual will receive or is receiving; and

iv. The facility *[must be approved]* ***shall possess an approval*** to provide the care that the individual is certified/recertified as needing.

4. The certification/recertification for all Medicaid patients *[must]* ***shall*** be maintained in the patient's medical record.

5. Any days billed by the nursing facility that are not in compliance with the specific time frames and conditions for certification/recertification and plan of care will be considered non-certified days. The per diem reimbursement for these non-certified days will not be made to the nursing facility.

(d) (No change.)

(e) Regarding alternative care-discharge planning, see (b)3 above.

(f) (No change.)

(g) Periodic medical review rules are:

1. Procedure:

i. The regional staff nurse shall complete the reassessment of all nursing facility Medicaid patients. Each Medicaid patient's medical, nursing and social care needs shall be evaluated and a decision shall be made regarding the most appropriate setting for the delivery of services required.

ii. The MET evaluates the quality of care which the individual patient has been receiving between an initial assessment and reassessment. At least one PMR evaluation will be done on each Medicaid patient during a 12-month period, according to the standard cited under N.J.A.C. 10:63-1.3 and 1.14.

iii. The MDO Director shall notify the administrator of the nursing facility of the scheduled visit to present the MET's findings for the review period no less than five working days beforehand and shall advise the administrator of those facility personnel whom the MET expect to be present at the visit.

iv. At the time of the visit for the purpose of PMR, the report for the specified period is reviewed with the facility staff in comparison with the current observations.

v. Following the visit, the Periodic Medical Review Report is completed in writing and forwarded to the facility administrator from the office of the Medical Director.

vi. The PMR Report becomes a useful guide so that each facility may constantly examine itself to assure continuity of compliance. The facility (when requested) *[must]* ***shall*** submit a plan of correction of deficiencies to the Medical Director of the Division of Medical Assistance and Health Services within 30 days of receipt.

(h) The New Jersey Medicaid Program reserves the right to make additional on-site visits by the Division staff as required.

10:63-1.6 Authorization process

(a) A Medicaid participating nursing facility shall obtain authorization from the MDO prior to the admission of a Medicaid eligible or potentially Medicaid eligible patient, in accordance with the Pre-Admission Screening (PAS) provisions of P.L. 1988, c.97. A Notification from Long Term Care Facility of Admission or Termination Form, MCNH-33, shall be forwarded to the MDO serving the county where the nursing facility is located, within two working days of admission or termination.

1. Medicaid eligible patients already residing in Medicaid participating nursing facilities who are transferred to an acute care hospital and who are returning to the same nursing facility, do not require PAS authorization. However, if the patient is discharged to a different nursing facility, PAS authorization shall be required.

2. See N.J.A.C. 10:63-1.16(c) for PASARR Level II patient transfer requirements.

(b) PAS authorization shall be required for patients with Alzheimer's Disease and Related Dementia, patients with major mental illnesses and patients with mental retardation. Annual resident reviews (ARR) shall be required for patients who are diagnosed as mentally ill or mentally retarded, in accordance with the Federal P.L. 100-203.

1. Pre-Admission Screening and Annual Resident Review (PASARR) for patients with mental illness or mental retardation shall be subsumed within the State PAS authorization process.

(c) The RSN shall review the medical, nursing and social information obtained at the time of assessment, as well as any other supporting data, shall assess the need for NF care, evaluate the feasibility of alternative care, determine the *[more]* appropriate setting for those services, authorize nursing facility placement, and designate the track of care, pursuant to N.J.A.C. 10:63-1.3.

1. If a nursing facility admits a Medicaid eligible or potentially eligible patient without prior authorization, the effective date of the NF authorization, if the patient is subsequently approved for care in the NF, will be the date of the RSN's assessment.

[2. Individuals with one or more additional nursing services will be reviewed every six months, and individuals meeting the minimum 2.5 hour requirements will be reviewed yearly.]

(d) PAS procedure for NF placement from a hospital setting: The hospital discharge planner/social work staff shall be responsible for identifying a Medicaid eligible inpatient or a Medicaid applicant inpatient who may be at risk of nursing facility placement.

1. The identification process shall also include any inpatient in need of NF care who may become a Medicaid recipient within six months after NF admission. These patients shall be referred by the hospital to the MDO and the CWA on the basis of the "At-Risk Criteria for Nursing Facility Placement and Referral to the Medicaid Office for PAS Evaluation," incorporated herein by reference (see Appendix I).

2. The Medicaid RSN shall conduct a PAS assessment and shall inform the hospital discharge planner/social worker of the services authorized.

3. NF placement approval: The RSN shall verbally advise the hospital discharge planner/social worker and patient/family of the assessment decision. For a Track I or II determination, the RSN shall leave a copy of the HSDP and signed approval letter with the discharge planner/social worker. The original approval letter signed by the RSN, shall be sent by the MDO to the patient/family with copies to the CWA and the patient's attending physician.

i. A copy of the Health Services Delivery Plan (HSDP) shall be left with the hospital discharge planner/social worker by the RSN and shall be attached to the hospital discharge material forwarded with the patient to the admitting nursing facility.

ii. If the patient being transferred will be eligible for Medicare benefits, the transfer shall be made to a Medicare participating nursing facility.

4. NF placement denial: The RSN shall verbally advise the hospital discharge planner/social worker and patient/family of the assessment decision. *[For a Track III determination, the]* ***The*** RSN shall leave a *[copy of the HSDP and a]* signed copy of the nursing facility placement denial letter with the discharge planner/social worker. The assessment decision may also result in a denial of any long term care services covered by the Medicaid Program. The original denial letter, signed by the RSN, shall be sent to the patient/family by the MDO, with copies to the CWA and the patient's attending physician.

(e) PAS procedure for NF placement approval for potentially Medicaid eligible patients: Individuals seeking admission to a Medicaid participating NF who may become eligible for Medicaid within six months of admission should be referred by the NF to the MDO for a PAS evaluation, utilizing Appendix I, the "At Risk Criteria for Nursing Facility Placement ***Referral To The Medicaid Office for PAS Evaluation***."

1. Approval of NF placement for potentially eligible patients: If the RSN approves NF placement, a copy of the HSDP and approval letter shall be given to the hospital discharge planner/social worker to be forwarded to the nursing facility, along with the hospital discharge material.

i. When the MDO receives the MCNH-33 Form (Notification from Long Term Care Facility of Admission or Termination of Medicaid Patient) indicating a change in the resident's status from private pay to Medicaid status, the MDO Director shall refer the case to the RSN for further assessment to determine the patient's continued need for nursing facility services.

2. Denial of NF placement for potentially Medicaid eligible patients: If the patient is denied nursing facility placement, a denial letter shall be issued to the discharge planner/social worker by the MDO.

i. If the MDO receives a subsequent referral for nursing facility placement for a previously denied patient, the RSN shall review the presenting evidence to ensure that a significant change in the patient's condition has occurred.

(f) PAS procedure for NF care placement from the community:

1. Upon receipt of a PA-4 Form (Certification of Need for Patient Care in Facility Other than Public or Private General Hospital), the Medicaid RSN conducts a PAS assessment on the patient. The patient will receive notification from the MDO, in writing, of approval or denial of NF placement. Copies of the letter will be sent by the MDO to the attending physician and the County Welfare Agency.

2. If NF placement is approved, the Medicaid social worker shall assist the patient and/or family in selecting an appropriate nursing facility.

(g) The nursing facility (NF) shall notify the MDO, via the MCNH-33 Form, of all instances involving the termination of nursing facility services, which include but are not limited to, discharge, death, transfer, and ineligibility.

***(h) Procedure for NF continued stay:**

1. Nursing Facilities shall assess all patients following admission and periodically thereafter in order to classify nursing service needs based on N.J.A.C. 10:63-1.3 et seq., and determine continued need for nursing facility services.

2. The RSN shall periodically assess Medicaid recipients, review the nursing facility's assessments, patient classifications, and case mix reporting, and may recommend alternatives to NF stay or deny continued stay.

3. Medical social care specialists will provide case management to Medicaid recipients on an ongoing basis to monitor the provision of NF care in order to assure the delivery of timely and coordinated services.*

10:63-1.7 Reimbursement by case mix patient classification

The facility shall comply with the terms of its Provider Agreement MCNH-38 (Exhibit No. 10) in maintaining a minimum number of Medicaid patients and shall be permitted to mix patients in either the entire facility or in a distinct part of the facility which is approved for the care required for each patient. If a facility wishes to exceed its contractual minimum, it is encouraged to do so. A single reimbursement rate shall be established by the New Jersey State Department of Health and approved by the Division of Medical Assistance and Health Services, pursuant to N.J.A.C. 10:63-3. The facility shall be paid on the basis of a case mix patient classification reimbursement methodology in accordance with *[the State Department of Health licensing standards, N.J.A.C. 8:39-25.2(b)]* ***N.J.A.C. 10:63-3 et seq***.

10:63-1.8 Medical services and clinical records

(a) Medical services rules are:

1. General requirements:

i. There shall be a Medical Director, retained by each nursing facility who will be responsible for the coordination and quality of patient care in that facility.

ii. All Medicaid eligible patients admitted to a nursing facility are admitted only upon the recommendation of a licensed physician in written form.

iii. Each patient's care is continuous under the supervision of a New Jersey licensed attending physician chosen by, or agreed to by, the Medicaid patient, or if the patient is incompetent, by the family or legal guardian.

NOTE: The Medical Director shall ensure that for each patient there is a designated primary and alternate physician who can be contacted when necessary.

iv. The NF shall maintain arrangements which assure that the services of a New Jersey licensed physician, who can act in case of emergency, are continuously available.

2. Standards for physicians in long term care facilities:

i. Medical Director: The NF *[must]* ***shall*** retain, pursuant to a written agreement, a physician licensed under New Jersey State Law to serve as Medical Director on a part-time or full-time basis as is appropriate for the needs of the patients and the size of the facility. The Medical Director is responsible for the overall coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to patients and to monitor the health status of employees.

ii. Duties of Medical Director: The duties of the Medical Director include, among others, the following:

(1) Participation in the development of written policies, rules and regulations which are approved by the governing body;

(2) Delineation of the responsibilities of the attending physician(s) and ensuring that visits by medical consultants occur as needed;

(3) Acting as liaison between administration and medical staff for improving services and ensuring the carrying out of responsibilities of the medical staff;

(4) Surveying the execution of patient care policies which includes a periodic evaluation of the adequacy and appropriateness of the services of health professional and supporting staff. Monitoring the health status of the facility's employees;

(5) Participation in the review of incidents and accidents that occur on the premises to identify hazards to health and safety of employees and patients. The Medical Director is given appropriate information to help ensure a safe and sanitary environment for patients and personnel;

(6) Ensuring that the medical regimen is incorporated in the patient care plan;

(7) Participation in the facility's quality assurance program through meetings, interviews and/or preparation or review of reports

regarding infection control, pharmaceutical services, credentials, patient care, etc.;

(8) Collaboration with administration in the planning of educational programs for facility staff;

(9) Reviewing written reports of surveys and inspection and making recommendations to the administrator;

(10) Participation in special projects such as medical evaluation studies;

(11) Negotiating and resolving problems with the medical community; and

(12) Responding quickly and appropriately to medical emergencies which are not handled by another attending physician.

iii. Initial medical findings and physician's orders: There shall be available to the NF, prior to, or at the time of admission, patient information which includes current medical findings, diagnosis, medical care plan, rehabilitation potential and a transfer summary of the course of treatment including laboratory findings in the transferring health facility, if any. There shall be orders from a physician for the immediate care of the patient, to include at least hygiene, dietary needs, medications, level of activity and special therapies, if applicable.

(1)-(3) (No change.)

(4) Each patient shall be examined by a physician within five days before or 48 hours of admission.

iv. Required documentation in patient's plan of care and treatment: The nursing facility shall require that the health care of every patient is under the supervision of a New Jersey licensed physician who, based on the evaluation of the patient's immediate and long term needs, prescribes on a designated form a planned regimen of medical care.

(1) (No change.)

(2) A physician involved in the care of the patient must establish the Plan of Care. An initial Plan of Care *[must]* ***shall*** be established and signed on the date of or not more than five days prior to an individual's admission or 48 hours after to a *[long-term care]* ***nursing*** facility.

(3) *[The comprehensive assessment and care plan shall be based on oral or written communication and assessments provided by nursing, dietary, patient activities, and social work staff, and, when ordered by the physician, assessments shall also be provided by other health professionals.]* ***Comprehensive assessment is a process which shall be based on oral or written communication and assessments provided by nursing, dietary, patient activities and social work staff and, as required, assessments shall also be provided by other health professionals.*** The care plan shall include specific measurable goals, based on the patient's medical, nursing and psychosocial needs and means of achieving each goal.

(4) The interdisciplinary care plan shall be established and implementation shall begin within 14 days, and shall include, at least, rehabilitative/restorative measures, preventive intervention, *[and]* training and teaching of self-care***, and discharge to a community setting, when indicated. The Interdisciplinary care plan shall be reviewed every three months for Track II patients, every six months for Track I patients and whenever there are significant changes in the patient's condition***.

[(5) The assessment and care plan shall reflect the patient's medical history, the medical diagnosis, results of laboratory tests, a previous discharge summary if the patient has come from another facility, and patient information regarding smoking, substance abuse, allergies, behavioral problems, mental state, and rehabilitation potential.]

*[(6)]**(5)* For an individual who makes application for assistance while in a nursing facility, the Plan of Care *[must]* ***shall*** be established on or not more than 5 days prior to the date of authorization of Medicaid payment.

*[(7)]**(6)* *[The Medical Plan of Care and Treatment shall be reviewed by the attending physician with documentation by date and signature]* ***The Medical Plan of Care and Treatment shall reflect the patient's medical history, the medical diagnosis, results of laboratory tests, a previous discharge summary if the patient has come from another nursing facility, and patient information regarding smoking, substance abuse, allergies, behavioral problems, mental state, and rehabilitation potential and shall be reviewed by the attending physician with documentation by date and signature,*** at least every 30 days for *[SNF]* ***all*** patients *[and every 30 days]* for the first 90 days *[for ICF patients]*. With written justification, the interval for review may be up to 60 days *[for ICF patients]*. The above intervals are expected to be more frequent if there is a significant deterioration in the medical condition of the patient.

*[(8)]**(7)* The charge nurse and other appropriate personnel involved in the care of the patient shall assist in planning the total program of care.

*[(9)]**(8)* Orders concerning medications and treatment are in effect for the specified number of days indicated by the physician, but in no case exceed a period of 30 days. Vague and blanket orders are not acceptable and within the above time frame it shall be incumbent upon the physician to review all orders and re-confirm in writing with signature and date.

*[(10)]**(9)* Telephone orders are accepted only when necessary and only by a licensed nurse (registered professional nurse or licensed practical nurse). Telephone orders are written into the appropriate clinical record by the nurse receiving them and are countersigned by the physician within 48 hours, except that non-prescription drug or treatment orders ***which*** shall be countersigned within seven days.

*[(11)]**(10)* Emergencies: In the event of emergency phone orders where the life of the patient may be endangered or his clinical status may be compromised, such orders *[must]* ***shall*** be countersigned by the physician within 12 hours from time the order was given.

(A) Exception: If the patient has been transferred out of the facility within the 12 hour period the time limit is waived.

*[(12)]**(11)* Stop orders are to conform with regulations promulgated by the Formulary Committee of the facility.

*[(13)]**(12)* Physician visits: *[Skilled nursing patients are to be visited and examined by a physician at least every 30 days.]*

(A) For the first 90 days, the *[intermediate care]* ***Medicaid*** patients shall be visited and examined every 30 days. Thereafter, with written justification, the interval between visits may be extended for up to 60 days.

(B) *[In both skilled and intermediate care patients, additional]* ***Additional*** visits shall be made when significant clinical changes in the patient's condition require medical intervention.

(C) The physician shall record and sign immediately in the medical record the date of the visit to *[and the time spent with]* the patient; and pertinent facts concerning *[the patient's]* current status, relevant findings and significant clinical changes.

(D) Orders for non-prescription drugs or treatments shall be countersigned within seven days.

(E) Certification of the need for continued *[long term]* ***nursing facility*** care.

*[(14)]**(13)* There is evidence that the attending physician has made arrangements for the medical care of the patient in his or her absence.

*[(15)]**(14)* At the time of discharge or transfer, the facility shall prepare a patient summary which will accompany the patient to the receiving facility or be available to his or her attending physician if the discharge is to be to the community. This summary shall include, at a minimum, the diagnosis, current treatment, relevant medical, nursing and social information and disposition of the patient.

v. Availability of physicians for emergency care: The Medical Director shall ensure ***that*** one or more physicians ***are*** available to furnish necessary medical care in case of emergency, if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each is on call is to be posted in each nursing station. There shall be established procedures to be followed in an emergency, which covers immediate care of the patient, persons to be notified, and reports to be prepared.

(b) Clinical records rules are:

1. General requirements:

i. An individual record *[must]* ***shall*** be maintained for each patient covering his or her medical, nursing, social and related care in accordance with accepted professional standards. All entries on the patient's clinical record shall be current, dated and signed by ***an***

appropriate staff member*[s]* ***and*** readily available at the appropriate nurses' station for use by DMAHS staff.

ii. The current part of each Medicaid patient's clinical record/chart which must be readily available at the appropriate nurses' station for use by DMAHS professional staff must contain:

(1) Health Services Delivery Plan (HSDP)

*[(1)]**(2)* Initial social history;

*[(2)]**(3)* Initial nursing history;

*[(3)]**(4)* Initial activity assessment and plan;

*[(4)]**(5)* Professional clinical and progress notes for a period of one year, including the most recent review of the patient's medical history and physical examination; *[and]*

*[(5)]**(6)* Patient's interdisciplinary comprehensive care plan and discharge plan for a period of one year*[.]**; ***and***

(7) The most current PASARR active treatment review for MI/MR individuals, or the neurological examination for individuals with Alzheimer's Disease or related organic dementias.

2. Maintenance of clinical records: (See (a)2iv(2) above for records required within 48 hours.)

i. The nursing facility shall maintain a medical record for each patient admitted with all entries kept current, dated and signed by appropriate personnel. The record includes:

(1)-(3) (No change.)

(4) Signed and dated physician's orders including all medications, treatments, diet and special therapies.

(5)-(6) (No change.)

(7) Progress notes written, signed and dated at the time of each visit.

(8)-(14) (No change.)

(15) Social service records.

(16)-(17) (No change.)

3.-6. (No change.)

7. Staff responsibility for records: If the NF does not have a full- or part-time medical records librarian, an employee of the facility shall be assigned the responsibility for assuring that records are maintained, completed and preserved in accordance with accepted procedures. The designated individual is to be trained by and must receive regular consultation from a medial records librarian who is under written contract with the facility.

10:63-1.14 Records

(a) As a condition for participation in the New Jersey Medicaid Program it is required that nursing facilities maintain medical, nursing, social, patient activities and billing records on all nursing facility Medicaid patients in accordance with accepted professional standards and practices. Financial and other records used to establish per diem rates must be maintained substantiating any and all costs for which Medicaid reimbursement is sought. In addition, all records relating to patient income, including patient's personal needs allowance accounts, must be maintained.

(b) (No change.)

(c) Required nursing records are:

1. Nursing *[evaluation]* ***Assessment***:

i. The initial *[evaluation]* ***assessment*** of the patient is begun on the day of admission to the NF. It is the complete, documented and identifiable appraisal of the patient's current health status and provides a data base for assessment of the existing and potential requirements for care.

ii. The tools utilized shall include a nursing history form, admission form(s), transfer form(s), the health service delivery plan, the medical plan of care, and narrative admission notes by all disciplines involved in therapy.

iii. (No change.)

iv. The nursing care plan (that is, the nursing diagnoses, patient goals, and nursing approaches) shall derive from the assessment.

v. (No change.)

vi. *[Reevaluation]* ***Reassessment*** shall be documented in a consistently identifiable summary distinct from other content in the nurse's notes. Reevaluation shall be completed whenever there is a significant change in the patient's condition indicating a need for change in the nursing services and the nursing care plan. (See Nursing Care Plan (c)2 below).

2. Nursing care plan:

i. This is an easily identifiable and accessible record of individualized nursing care to be provided to the Medicaid patient as part of the interdisciplinary patient care plan. It is cognizant of the medical*,* social and dietary plans of care, includes patient participation and directs the approaches of nursing staff in meeting the patient's needs for restorative and rehabilitative nursing care. The plan shall contain a realistic goal for each nursing diagnosis (problem) and an overall singular goal, when applicable, which endorses and supports the long term goal of the interdisciplinary care plan. The nursing care plan shall contain restorative and/or rehabilitative nursing care including follow-up of special therapies; personal, preventive, and maintenance care requirements. The plan shall recognize the patient's current or potential health problems and shall demonstrate responsive nursing interventions which prevent deterioration, maintain wellness, and promote maximum restoration. The nursing care plan properly instituted by qualified staff and utilized by all nursing staff will provide the best method of ensuring effective nursing care.

ii. The care plan *[will]* ***shall*** indicate comprehensive assessment and planning.

iii. The nursing care plan shall be reviewed regularly and revised as often as necessary according to all significant changes in ***a*** patient's condition and to attainment of and/or revisions in goals as indicated. Revisions shall be based on appropriate documentation of the reevaluation procedures. Minimal review and documentation shall be a minimum of once every 30 days for *[a patient with one or more nursing services and a minimum of once every 60 days for a patient receiving 2.5 hours per day of nursing services. Documentation shall be required whenever there is a significant change in the patient's condition which reflects the problem, the intervention and the patient's response to treatment.]* ***the first 90 days following admission. Subsequently, review and documentation will be required a minimum of every three (3) months and whenever there is a significant change in the patient's condition, and when the clinical status of the patient requires the provision of nursing services in accordance with N.J.A.C. 10:63-1.3.***

3. Nurse's notes:

i.-ii. (No change.)

iii. Nursing entries shall be made as often as necessary based on the Medicaid patient's condition. The additional nursing services required by N.J.A.C. *[8:39-25.2(b) are as follows:]* ***10:63-1.3 through 1.23.***

(1) *[Skilled Nursing Care (one or more nursing services)]* Medicaid patients shall have daily summaries for the first five days after admission written by staff of each shift and ***at the end of five days the records shall be updated once per week for the next four weeks. Then summaries shall be written once every 30 days for the next 60 days following admission. Thereafter, documentation shall be a minimum of every 3 months or when there is a change in the clinical status of the patient requiring the provision of nursing services in accordance with N.J.A.C. 10:63-1.3. All clinical records shall be updated at intervals based on the seriousness of each patient's condition in accordance with the standards of professional practice. A comprehensive assessment shall be completed a minimum of once every 12 months.*** *[thereafter]* ***Thereafter,*** summaries ***shall be*** written*[, at least]* once every 30 days*[, or more frequently as necessary]*.

[(2) Intermediate Care (2.5 hours per day) Medicaid patients shall have daily summaries for the first five days after admission written by staff of each shift and thereafter summaries written at least once every 60 days, or more frequently as necessary.]

*[(4)]**(2)* Problem-Oriented medical records: When problem-oriented medical records, or a modification of this format, are attempted in lieu of certain other medical, nursing, social and special therapy records, each system will be evaluated by the Medicaid MET as to whether it effectively and consistently includes all aspects of the minimal record requirements as to content, location and identity.

Recodify 5.-6. as ***4. and 5.*** (No change in text.)

(d) Social service record rules are as follows:

1. (No change.)

2. Confidentiality and accessibility:

i.-iii. (No change.)

iv. The social history and one year of progress notes (if appropriate) shall be on the medical chart.

3. Content and quality:

i. Social record is a documentation by the social worker on the patient chart of social history, progress notes, clinical notes and referrals. All notes shall be signed and dated.

ii.-iii. (No change.)

iv. Frequency of recording:

(1) Social record shall be completed within 14 days following admission and updated as required, at least every six months thereafter. Readmission notes which summarize any changes in ***a*** patient's psychosocial functioning must be completed within 14 days of readmission. Significant changes in ***a*** patient's situation shall be recorded. The record should be kept current to reflect the provision of services and plan for services. A progress note shall be written every six months.

(e) Patient activities record rules are as follows:

1. (No change.)

2. Accessibility: An individual record must be kept on the medical chart. It should include the initial evaluation and one year of progress notes. The activity coordinator may keep a separate calendar of activities and record of general participation.

3. Content:

i. The activity record shall include the initial evaluation, progress notes and readmission notes. The initial evaluation and all notes shall be signed and dated in ink. The initial evaluation shall identify patient background information, including patient interests, skills, past employment, hobbies, organizational memberships, and religious preferences. In addition, the patient's emotional, mental, social, physical and environmental functioning shall be assessed. This information shall be based on personal contact with the patient. Supplemental material may be obtained from the family and/or social history. Initial goals shall be stated, and a plan formulated to engage ***the*** patient in an activity program in keeping with his ***or her*** interests and medical condition.

ii. Progress notes shall summarize patient participation in individual and *[grow]* ***group*** activities. Patient attitudes toward participation shall be noted together with changes in interest, medical condition, goals and plans.

iii. Readmission notes shall summarize any changes in the patient's physical and mental condition that will affect his or her ability to participate in activities. Goals and plans shall be re-evaluated by:

4. Frequency:

i. An initial evaluation of ***a*** patient's needs and interests must be conducted and recorded in the patient's individual record within 14 days of the date of admission.

ii. There shall be a six month review of ***a*** patient's activity plan, in cooperation with the patient, and a written evaluation of the patient's progress, identification of needs, and establishment of activity goals for the next *[quarter]* ***six months***.

iii. Readmission notes shall be recorded in the patient's medical record within 14 days of the date of readmission.

(f) Billing and financial records rules are as follows:

1. N.J.A.C. 10:63-2 identifies the procedures required for the general use of the billing transaction forms and computer generated forms. All appropriate reports should be retained until audited by the Division.

2.-4. (No change.)

5. Six month time limitation on claims submitted by long term care facilities:

i. Claims for NF services and/or authorized therapies that are older than six billing months will be rejected.

ii. (No change.)

iii. For purposes of this time limitation, a claim is the submission of a properly completed transaction form(s) provided by the Division indicating a request for reimbursement for authorized NF services and/or authorized therapy services provided to an eligible recipient and which has been submitted to the Bureau of Claims and Accounts within the time limit specified.

iv. (No change.)

v. In exceptional cases where it was beyond the control of the NF to claim reimbursement within the six month period, a written request for payment may be submitted with documentation to the Bureau of Claims and Accounts, Division of Medical Assistance and Health Services, CN-172, Trenton, New Jersey 08625. Retroactive claims will not be approved for payment in those instances where it is judged that the claim could have been submitted or resubmitted within the time limitation as defined above.

10:63-1.16 Admission policies

(a) A Medicaid participating nursing facility shall not admit any individual who is Medicaid eligible or who may become Medicaid eligible within 180 days of admission to the facility, unless that individual shall have been prescreened by the Medicaid District Office (MDO) and determined appropriate for nursing facility placement.

(b) Medicaid eligible patients already residing in Medicaid participating nursing facilities who are transferred to an acute care hospital and who are returning to the same nursing facility do not require preadmission screening. However, if the patient is discharged to a different nursing facility, preadmission screening shall be required.

(c) Patients transferred from a nursing facility to an acute care hospital or to a psychiatric hospital with a primary admitting diagnosis of a major mental illness will require a PASARR Level II Active Treatment screen and a NF assessment prior to initial admission to a different nursing facility or readmission to the same facility. The PASARR Level II screens shall be performed by a psychiatrist and forwarded to the DMH&H for final determination.

*[(c)]**(d)* The agreement for participation in the New Jersey Medicaid Program stipulates that a facility will provide all services as required by N.J.A.C. 10:63-1.3.

*[(d)]**(e)* Participation in the Medicaid Program will be limited to providers of service who accept, as payment in full, for covered services the amounts paid in accordance with the reimbursement policy. Providers who have an agreement with the Medicaid State agency and who solicit contributions, donations, or gifts directly from Medicaid patients or family members shall be deemed to be in noncompliance with this Federal requirement. Medicaid patients and their families should be fully informed that their right to nursing facility (NF) services is not contingent upon contributions.

*[(e)]**(f)* A Medicaid eligible recipient may be admitted to a NF only upon the recommendation of a physician which includes a written plan of care, and where applicable, a plan of rehabilitation. In order for payment to be made, each recipient admitted to a NF shall have been prior authorized by the MDO.

*[(f)]**(g)* If NF placement is approved, a copy of the Authorization Form MCNH-7 is sent to the County Welfare Agency, NF, and the Division's Bureau of Claims and Accounts.

*[(g)]**(h)* Payment will not be made by the New Jersey Medicaid Program for NF services provided to private paying patients who have applied for, and subsequently have been declared eligible for Medicaid benefits by a county welfare agency or by the Social Security Administration while in a nursing facility, unless they have been found in need of, and authorized for, NF services by the MDO. (See N.J.A.C. 10:63-1.6).

*[(h)]**(i)* The county welfare agency shall furnish the MDO a statement of the recipient's budgetary information, PA-31*,* using the appropriate format.

*[(i)]**(j)* Notification of the approval or denial of nursing facility placement by the MDO shall be provided to the applicant and other individuals and agencies, as required in N.J.A.C. 10:49-1.16.

*[(j)]**(k)* In the event that a nursing facility admits a Medicaid eligible recipient without preadmission screening by the MDO, the effective date of the initial authorization period will be the date of assessment. Facilities admitting such recipients without preadmission screening will not be reimbursed by the New Jersey Medicaid Program for any care rendered before the assessment.

*[(k)]**(l)* When an inpatient is to be discharged from the hospital to a nursing facility, the transfer *[must]* ***shall*** be to a Medicare participating SNF if Medicare (Title XVIII) benefits are available.

*[(l)]**(m)* When an inpatient is to be discharged from the hospital to a Medicaid certified nursing facility (NF), a legible abstract or summary *[must]* ***shall*** be prepared by either the attending physician or the hospital and signed by the attending physician,

covering the Medicaid recipient's care in the hospital and forwarded to the nursing facility along with the HSDP and MDO authorization ***and where applicable, PASARR-related material***.

[(m)]*(n)* The NF *[must]* ***shall*** submit a Notification of the Admission of the Medicaid Eligible recipient, MCNH-33 Form, along with a copy of the hospital transfer form or its equivalent PA-4 Form to the MDO serving the county where the NF is located, within two working days of admission.

[(n)]*(o)* Involuntary transfer initiated by the facility:

1. Purpose:

i. The Division recognizes that there may be problems in relocating infirm aged persons from a NF. The purpose of these regulations is to specify the circumstances in which the involuntary transfer of a Medicaid patient in a NF is authorized and to establish conditions and procedures designed to minimize the risks, trauma and discomfort which may accompany the involuntary transfer of a Medicaid patient from a nursing facility.

ii. These regulations shall be interpreted consistent with the Federal requirement that care and service under the Medicaid program be provided in a manner consistent with the best interests of the patient.

(1) Applicability:

(A) These regulations shall apply to the involuntary transfer of a Medicaid patient at the request of a NF but not to the Division's utilization review process, except as indicated in (n)1ii(2) below.

(B) An involuntary transfer of a Medicaid patient which was not consented to or requested by the patient or by the patient's family or authorized representative.

(C) ***A*** Medicaid patient *[includes]* ***is*** a Medicaid *[patient]* ***eligible individual*** residing in a nursing facility which has a Medicaid provider agreement *[in effect,]* *.* *[including]* ***This includes*** patients over the minimum number stipulated in the agreement, and a patient who had entered the facility as a non-Medicaid patient and *[becomes]* ***became*** a Medicaid patient or is awaiting resolution of Medicaid eligibility*.* *[, except for]* ***This does not include*** a patient who enters the facility under a signed admission agreement for private payment and then converts to Medicaid within six months from the date of admission.

(D) These regulations shall not apply to the internal relocation of a Medicaid patient within a facility.

(2) (No change in text.)

(3) (No change in text.)

(4) Procedure for involuntary transfer:

(A) The NF shall submit to the Division a written notice with documentation of its intention to and reason for the involuntary transfer of a Medicaid patient from the facility.

(B) If the MDO determines that an involuntary transfer is arranged, the patient and/or the patient's authorized representative, shall be given 30 days prior written notice by the Division that a transfer is proposed by the NF and will take effect upon completion of the relocation program specified in (n)1ii(5) below, unless the patient requests a hearing within 30 days of the date of the written notice, in which case the transfer is stayed pending the decision following the hearing, except in instances where the Division determines that an acute situation or emergency exists.

(C)-(F) (No change.)

(5) Relocation procedure:

(A) (No change.)

(B) The staff of the transferring and receiving NFs shall assist in the transfer process, although responsibility and authority for the coordination and transfer rests with the Division and shall include:

I. Evaluation and review by appropriate MDO staff;

II. Initial patient, family or authorized representative counseling;

III. Involvement of the patient, family or authorized representative in the placement process with recognition of a patient's right to freedom of choice;

IV. Patient preparation and site visit for all able to do so within the capability of the transferring agent;

V. Unless the patient otherwise requests, the patient shall be accompanied on the transfer day by a family member, authorized representative or attendant;

VI. Follow-up counseling at the new location; and

VII. There shall be no administrative hearing on a claim of failure to implement the requirements of this section for relocation counseling.

(6) No owner, administrator or employee of a nursing facility shall attempt to have patients seek relocation by harassment or threats. Such action on behalf of the NF may be cause for the curtailment of future admission of Medicaid patients to the nursing facility or for termination of the Medicaid Provider Agreement with the NF.

(7) Any complaints regarding the handling of patients relative to their transfer shall be referred to the Division for investigation and corrective action.

[(o)]*(p)* Change from private status to Medicaid eligible status of a nursing facility patient:

1. The NF *[must]* ***shall*** submit an MCNH-33 notification form directly to the MDO in all known instances of private patients making application for Medicaid eligibility for purposes of initiating the preadmission screening process.

2. Payment will not be made by the New Jersey Medicaid Program for NF services provided to private paying patients who have applied for, and subsequently been declared eligible for Medicaid benefits by a county welfare agency or ***the*** Social Security Administration while in the nursing facility, unless said patient has been found in need of, and authorized for, nursing facility services by the MDO.

10:63-3.3 Compensation equalization and equalized costs

(a) In order to equitably develop and apply screens in those functions with employee compensation components, the following computation will be made:

1.-6. (No change.)

7. For NFs which provide residential, sheltered or domiciliary care, equalized nursing facility costs will be determined by apportioning equalizing cost in the same ratio as the apportionment of unequalized net expenses.

8. (No change.)

10:63-3.8 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

1. The minimum nursing requirements in terms of hours worked will be calculated for each nursing facility based upon the case mix patient classification ***(see N.J.A.C. 10:63-3.19(a)5.ii)*** and standards in effect during the base period, except that, beginning *[April]* ***October*** 1, 1990, minimum nursing requirements in terms of hours shall be calculated for each nursing facility based upon:

i. The number of patient days during the base period;

ii. The patient mix related to additional nursing services requiring additional minimum nursing time *[during a sample period which will be February 1, 1990; and]* *;*

(1) On the day of February 1, 1990 for the rate effective October 1, 1990 and for any routine annual prospective rate changes which become effective From October 1, 1990 to March 31, 1991, and

(2) From the data used in the most recent adjustment for patient mix (N.J.A.C. 10:63-3.19(a)5.iii) for each nursing facility's routine annual prospective rate change which occurs from April 1, 1991 until the effective date of the nursing facility rate which includes a full year of patient and cost data under N.J.A.C. 8:39-25.1 et seq.

iii. The State Department of Health ***minimum*** nurse staffing standards *[which will be]* operative ***beginning October*** *[April]* 1, 1990, according to *[N.J.A.C. 8:39-25.2(b)]* ***N.J.A.C. 8:39-25.1 et seq.***.

iv. If the calculation of the minimum nurse staffing requirement results in an amount of hours for each type of nurse (RNs, LPNs, and Aides) which includes some part of a full-time equivalent staff position (FTE at seven days per week), the minimum hours required for each type of nurse will be increased to include time sufficient to staff a full-time equivalent staff position (FTE at seven days per week).

2. (No change.)

3. The hours developed in *[(b)3]* ***(b)1.i.-iv.*** above will be incremented by this percentage.

4.-6. (No change.)

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

10:63-3.19 Working capital provision and total rates

(a) Following the additions of the provision for inflation (N.J.A.C. 10:63-3.18), and approved legal and management changes, a working capital provision will be added to rates as follows:

1.-2. (No change.)

3. This result will be multiplied by the rates to develop the working capital provision.

4. Unless the Division of Medical Assistance and Health Services prescribed different limits for patient care services, the rate components for each class of patient will be the same and the related working capital provision as it is affected by this component will be the same.

5. The nursing care component of the rates shall be adjusted six months after the effective date of each facility's prospective rate (see N.J.A.C. 10:63-3.1) in order to allow for changes (if any) in the patient mix of each facility related to additional services requiring additional minimum nursing time. This adjustment shall be based upon the patient mix**, as reported monthly by*** *[at]* each facility **,** during a six month period ending three months prior to the effective date of the adjustment. ***Each facility shall maintain an individual patient classification form for each patient to record additional minimum nursing services required under N.J.A.C. 8:39-25.2(b).***

i. ***The adjustment for patient mix will be made by multiplying the current nursing component per diem times a factor (percentage) which represents the change to the total minimum hours of nurse staffing related to the increase or decrease of conditions requiring additional nursing time from a) the base period, to b) the appropriate sample period (annualized).*** *[During the transition period for the revised minimum nurse staffing requirements of N.J.A.C. 8:39-25, which become operative April 1, 1990, facilities will receive an adjustment to the nursing component no less than once every six months. No provision of this chapter shall be interpreted to require an adjustment to the nursing component, as described in this section, more than once every six months.]*

ii. For the purpose of the prospective rate calculation and the periodic adjustment for patient mix, facilities will not report exact patient day counts for conditions requiring additional hours, but will report if a patient; a) resided in the facility and had the condition(s) for the entire month, b) resided in the facility for the entire month and developed the condition(s) during that month, c) entered the facility and had the condition(s) for some portion of the month. This count will include patients who develop condition(s) during a month or enter the facility with condition(s) and cease to have this condition, are discharged, or die during the same month. No count shall be made for a patient who ceased to have the condition, died, or left the facility during a month (other than the month of admission or onset of the condition), except for a patient who was on a bed hold leave to an acute care hospital and returned to the facility. For the purpose of this calculation adjustment to the nursing per diem, this count will be known as patient condition months.

iii. The provisions in 5. above will not be effective until a prospective rate is set which includes a full year of cost and patient data under N.J.A.C. 8:39-25.1 et seq. Between the operative date of the DOH minimum nurse staffing standards and the effective date of the facility rate reflecting a full year of patient and cost data, the adjustment of the nursing component of the rate for patient mix will be made as follows:

(1) The nursing care component of the rates for all facilities shall be adjusted every six months from the operative date of the DOH minimum nurse staffing standards. These adjustments shall be made per (i) above, based upon the patient mix as reported monthly by each facility during the six months immediately preceding the rate adjustment. However, the last adjustment for this period will be based upon the patient mix at the facility during the six month period ending three months prior to the effective date of the adjustment.*

APPENDIX I
AT-RISK CRITERIA FOR NURSING FACILITY PLACEMENT REFERRAL TO THE MEDICAID OFFICE FOR PAS EVALUATION

The following is a list of "at-risk" criteria to assist the hospital in determining if a referral for long term care services, either in a nursing facility or in the community, is indicated.

I. Medical—Has the patient experienced any of the following:

1. Catastrophic illness requiring major changes in lifestyle and/or living conditions, that is, Multiple Sclerosis, Stroke, Multiple Trauma, AIDS, Amputation, Neurological Disease, Cancer, Birth Defect(s), End Stage Renal Disease.

2. Debilitation and/or chronic illness causing progressive deterioration of self-care skills, that is, Diabetes, Fractures, Progressive Pulmonary Disease, Severe Chronic Diseases, Spina Bifida.

3. Multiple hospital admissions within the past six months. (Do not refer patients admitted directly from nursing facilities.)

4. Previous nursing facility admissions within the past two years.

5. Major health needs, that is, tube feedings, special equipment or treatments, rehabilitative/restorative services.

II. Social—Does patient meet any of the following social situations:

1. Homeless.

2. Lives alone and/or has no immediate support system.

3. Primary caregiver is not able to provide required care services.

4. Lack of adequate support systems.

III. Financial (operative 01/01/90)—Does the patient meet any of the following income/assets tests:

1. Currently eligible for Medicaid.

2. Monthly income at/or below the current Medicaid institutional cap specified at N.J.A.C. 10:71-5.6.

(a) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5.

(b) Has no spouse in the community and resources at/or below $20,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in a nursing facility as private pay), or

(c) Has a spouse in the community with combined countable resources at/or below $40,000. (This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988).

3. Monthly income at/or below the current New Jersey Care Special Medicaid Programs maximum monthly income limit specified at N.J.A.C. 10:72-4.1 and:

(a) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5.

(b) Has no spouse in the community and resources at/or below $22,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in a nursing facility as private pay), or

(c) Has a spouse in the community with combined countable resources at/or below $44,000. (This allows for calculation of the community spouse's resources under the Medicare Catastrophic Coverage Act of 1988).

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only Manual
Medicaid Eligibility
Transfer of Resources

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:71-4.7

Emergency Amendment Adopted: July 23, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): July 25, 1990.
Emergency Amendment Filed: July 30, 1990 as R.1990 d.424.
Authority: N.J.S.A. 30:4D-3, 30:4D-6a(4)(a)b(14), 30:4D-7, 7a, b, and c and 1917(c) of the Social Security Act, codified as 42 U.S.C. 1396p.
Concurrent Proposal Number: PRN 1990-453.
Emergency Amendment Effective Date: July 30, 1990.
Emergency Amendment Expiration Date: September 28, 1990.

Submit comments by September 19, 1990 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

The Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360 as amended by the Family Support Act of 1988, P.L. 100-485) contains provisions that require revision to the effect of resource transfer vis a vis Medicaid eligibility. Under current rules, a resource transfer for less than fair market value is presumed to have been done to establish Medicaid eligibility. Unless the presumption is successfully rebutted, an individual who transfers a resource is ineligible for Medicaid for a period of 24 months.

Under MCCA, the penalty affects only Medicaid payments for institutional level services. Period of ineligibility for institutional level services is directly related to the uncompensated value of the transferred resource. An individual who transfers a resource is ineligible for institutional level services for the lesser of 30 months or the number of months resulting from dividing the uncompensated value of the resource by the state-wide lowest semi-private room rate for Medicaid certified nursing facilities. The current monthly average is $3,376 as compiled from nursing facility reports to the Division of Medical Assistance and Health Services. This figure will be updated annually.

To avoid any undue hardship on any applicant for Medicaid payment for institutional level services, the amended rule contains an implementation transition measure. Any resource transfer which would otherwise be subject to the provisions of this rule which occurred between April 1, 1990 and the publication date of this rule will be subject to a maximum penalty of 24 months with a lesser penalty applied depending on the uncompensated value of the resource. It is necessary and equitable to apply the penalty as leniently as possible for a period during which there may have been some confusion as to the effect of resource transfer on Medicaid eligibility.

Social Impact

The proposed resource transfer provision provides greater equity in policy application by relating the penalty period to the uncompensated value of the transferred resource. An individual transferring a relatively modest asset will no longer be subject to a long absolute penalty period since the period will be related to the costs of long term care.

The increased maximum penalty period will serve to further discourage the practice of establishment of Medicaid eligibility by the divestiture of substantial resources when the need for long term care becomes evident.

Economic Impact

The Department is unable to accurately estimate the costs of this modification of the resource transfer penalty because little data is available on the value of resources that might be transferred. The increased maximum penalty period would be expected to discourage resource transfers, thereby saving program expenditures. While correlating the penalty period to the uncompensated value could be expected to increase program costs, the Department's experience indicates that few individuals transfer modest assets prior to entry into long term care.

Regulatory Flexibility Analysis

While some of the providers indirectly affected by this amendment, specifically long term care facilities, may be categorized as small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., this amendment imposes no additional recordkeeping, paperwork or other administrative requirements on such facilities. These resource transfer provisions are required by provisions of the Medicare Catastrophic Coverage Act of 1988; therefore, no differentiation in requirements based upon business size can be provided.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in bolface **thus**; deletions indicated in brackets [thus]).

10:71-4.7 Transfer of resources

(a) The provisions of this section apply only to persons who are receiving an institutional level of services or who are seeking that level of services. An individual shall be ineligible for institutional level services through the Medicaid program if he or she (or his or her spouse) has disposed of resources at less than fair market value at any time during or after the 30 month period immediately before:

1. In the case of an individual who is already eligible for Medicaid benefits, the date the individual becomes an institutionalized individual; or

2. In the case of an individual not already eligible for Medicaid benefits, the date that the individual applies for Medicaid as an institutionalized individual.

[(a)](b) The following definitions apply in situations involving the transfer of resources:

1.-2. (No change.)

3. Institutionalized individual: An institutionalized individual for the purposes of this section is a person who is receiving care in a Medicaid certified skilled nursing facility, intermediate care facility (level A or B and ICFMR) and licensed special hospital (Class B or C) or Title XIX psychiatric hospital (if under the age of 21 or age 65 and over). Effective October 1, 1990, an institutionalized individual shall include an individual receiving care in a Medicaid certified nursing facility (NF). For the purposes of this section, an institutionalized individual shall include a person seeking benefits under a home or community care waiver program, not including the Home Care Expansion Program. An institutionalized individual shall not include a person who is receiving care in an acute care general hospital.

4. Penalty period: The penalty period is the period of ineligibility for Medicaid coverage for institutional level care established for an individual as a result of the transfer of a resource for less than fair market value. The penalty period begins with the month of the resource transfer and is the lesser of:

i. 30 months; or

ii. The number of months resulting from dividing the uncompensated value of the transferred resource by statewide monthly average lowest semi-private room rate for Medicaid certified nursing facilities as calcu-

lated annually. The current average through December 31, 1990 is $3,376.

[(b)](c) General procedures: If an individual **or his or her spouse** [applying for Medicaid] **described in (a) above (including any person acting with power of attorney or as a guardian for such individual)** has sold, given away, or otherwise transferred any [nonexcluded] resources **(including any interest in a resource or future rights to a resource)** within the [24] **30** months preceding the date of application **or entry into institutional care**, the following steps shall be taken and fully documented in the case record[.]:

1.-5. (No change.)

6. Advise the applicant that he or she may rebut the presumption that a resource was transferred at less than FMV in order to qualify for Medicaid **coverage for institutional care** (see [(g)] **(i)** below).

[(c)](**d**) [Excluded resources: Resources which are excluded in accordance with N.J.A.C. 10:71-4.4 are not subject to the transfer provisions. A transferred resource shall be excluded if, at the time of transfer, the resource would have been excluded if the individual were an applicant. For example, if an individual transfers a home serving as his or her place of residence and subsequently applies for Medicaid, the CWA would not consider the UV of the home as a resource.] **The provisions of this section apply whether or not the resource would have been considered an excluded resource at the time of its disposal or transfer. However, an individual shall not be ineligible for an institutional level of care because of the transfer of his or her equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence and the title to the home was transferred to:**

1. The institutionalized individual's spouse;

2. A child of the institutionalized individual who is under the age of 21 or a child of any age who is blind or totally and permanently disabled;

i. In the event that the child does not have a determination from the Social Security Administration of blindness or disability, the blindness or disability shall be evaluated by the Disability Review Section of the Division of Medical Assistance and Health Services in accordance with the provisions of N.J.A.C. 10:71-3.13;

3. A brother or sister of the institutionalized individual who already had an equity interst in the home prior to the transfer and who was residing in the home for a period of at least one year immediately before the individual becomes an institutionalized individual; or

4. A son or daughter of the institutionalized individual (other than described in (d)2 above) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual and who has provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.

i. The care provided by the individual's son or daughter must have exceeded normal personal support activities (for example, routine transportation and shopping). The individual's physical or mental condition must have been such as to require special attention and care. The care provided by the son or daughter must have been essential to the health and safety of the individual and consisted of activities such as, but not limited to, supervision of medication, monitoring of nutritional status, and insuring the safety of the individual.

(e) The provisions of this section do not apply to the following resource transfer situations:

1. The resources were transferred to the community spouse (or to another individual for the sole benefit of the community spouse) prior to the entry into institutional care so long as the resources were not subsequently transferred by the community spouse;

i. If funds were transferred to another individual for the sole benefit of the community spouse prior to entry into institutional care, in order that the transfer not be considered to have been for the purposes of qualifying for Medicaid, the funds must have been transferred in the form of a legally binding trust document specifying that the trustee(s) may use the funds solely for the benefit of the community spouse. Should the transferred funds not be so designated, the transfer shall be presumed to be for the purpose of qualifying for Medicaid in accordance with the provisions of this section;

2. The resources were transferred to the community spouse subsequent to the application for Medicaid in accordance with N.J.A.C. 10:71-4.8(a)3; or

3. The resources were transferred from the institutionalized individual or the community spouse to the institutionalized individual's child who is blind or permanently and totally disabled.

i. In the event that the child does not have a determination from the Social Security Administration of blindness or disability, the blindness or disability will be evaluated by the Disability Review Section of the Division of Medical Assistance and Health Services in accordance with the provisions of N.J.A.C. 10:71-3.13.

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

[(e)](**g**) Resource transferred, resource limit not exceeded[.]: When the UV of a transferred resource, combined with all other countable resources, does not exceed the applicable resource limit, the application shall be processed as usual. [In addition, the following procedures shall be adhered to.

1. It shall be explained to the applicant that he or she has transferred a resource at less than FMV, the amount of the UV, and that this amount will be counted toward the resource maximum for 24 months from the date of disposal. This shall be accomplished via completion and mailing of Form PA-13.

2. The client shall be informed that although eligible at time of application, if his or her resources, including the amount of the UV, should exceed the resource maximum within the 24 month period, he or she will lose Medicaid eligibility.

i. Example: At the time of application the UV equals $1,000, other resources equal $200.00 for a total of $1,200, the client is resource eligible. At the time of redetermination, the UV equals $1,000, other resources equal $1,100 for total of $2,100, the client is ineligible because of excess resources and the case must be terminated.

3. A list shall be maintained of all such cases for control purposes. This should include the case number, client's name, Social Security number, date of the resource disposal, FMV of the resource, amount of UV, and the date of termination if applicable.]

[(f)](**h**) Resource transferred, resource limit exceeded: When the UV of a transferred resource, combined with other countable resources, exceeds the resource limit, [the application for Medicaid] **eligibility for institutional level services** shall be denied and the procedures below followed[.]:

1. Notify the applicant via Form PA-13 that he or she has transferred a resource at less than FMV, the amount of the UV[, and that this amount will be counted toward the resource maximum for 24 months from the date of disposal] **and the length of the penalty period**. Explain that the law states that transfer of a resource at less than FMV is presumed to be for the purpose of establishing Medicaid eligibility **for institutional services**.

2. Advise the applicant that he or she may rebut the presumption (see [(g)] **(i)** below).

3. Prepare a list of such cases for control purposes [in accordance with (e)3 above]. **The control list shall include the case number, client's name, Social Security number, date of resource disposal, FMV of the resource, amount of UV, and the start and end dates of the period of ineligibility for institutional level services.**

[(g)](**i**) (No change in text.)

[(h)](**j**) Factors which may indicate that the transfer was for some other purpose: The presence of one or more of the following factors, while not conclusive, may indicate that the resources were transferred exclusively for some purpose other than establishing Medicaid eligibility.

1. (No change.)

2. Resources that would have been below the resource limit during each of the preceding [24] **30** months if the resource has been retained.

3.-4. (No change.)

[(i)](**k**) (No change in text.)

(l) In the case of any resource transfer which occurred between April 1, 1990 and August 20, 1990 and which would otherwise be subject to the provisions of this section, the period of ineligibility for institutional services shall be the lesser of:

1. 24 months; or

2. The number of months resulting from the application of the calculation at N.J.A.C. 10:71-4.7(b)4ii.

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session September 18, 1990

Take notice that the following agenda items are scheduled for Notice of Proposal in the September 4, 1990 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 Tuesday, September 18, 1990 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 Celeste Carpiano at (609)292-0739 by 12:00 noon Friday, September 14, 1990.

Rule Proposal:

N.J.A.C. 6:24—Controversies and Disputes—Dr. Seymour Weiss.

N.J.A.C. 6:3-7—Provisions for the Education of Homeless Children and Youth—Dr. Richard DiPatri.

N.J.A.C. 6:39-1.6—Test Administration and Security—Dr. Joel Bloom.

N.J.A.C. 6:20-1.1 and 4—Business Services Code Amendments, Tuition for Private Schools for the Handicapped—Mr. Robert Swissler.

Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the August 1, 1990 monthly public meeting.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Action on Petition for Rulemaking on A-901 Background Investigations of Hazardous Waste Transporters at N.J.A.C. 7:26-16.3

Petitioner: National Solid Wastes Management Association
Authority: N.J.S.A. 13:1E-6(a)2; 52:14B-4(f).

Take notice that on June 21, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the background investigation all prospective solid or hazardous waste licensees must undergo pursuant to N.J.S.A. 13:1E-126 et seq. and its implementing rules at N.J.A.C. 7:26-16 to determine the reliability, expertise, and competence of an applicant to comply with the solid and hazardous waste laws of New Jersey. A notice acknowledging receipt of the petition was filed with the Office of Administrative Law on July 5, 1990 and appeared in the August 6, 1990 New Jersey Register.

The Petitioner requests the Department to exempt drivers which are part of an exclusive lease arrangement with a licensed waste transporter from a background investigation. Where the exclusive lease arrangement provides drivers as well as vehicles, the current rules require that the subcontractor to the licensed transporter undergo the background investigation and obtain a transporter license. The Petitioner requests the Department to amend its background investigation rules at N.J.A.C. 7:26-16.3 to exempt these subcontractors from the background investigation. By implication, this petition would also exempt the subcontractor from the requirement to obtain a transporter license.

In accordance with N.J.A.C. 7:1-1.2, the Department gives notice that this matter has been deferred for further deliberation. Since such an action would be a significant change of policy, the Department believes further deliberation is required before taking action on the petition.

The Department will deliberate on this matter until no later than September 21, 1990, at which time the results of the Department's deliberations will be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

A copy of this notice has been mailed to the Petitioner as required by N.J.A.C. 7:1-1.2.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Mercer County Water Quality Management Plan
Public Notice

Take notice that on July 3, 1990, 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 Mercer County Water Quality Management Plan was adopted by the Department. This amendment adopts the expansion of the sewer service area of the Hamilton Township Water Pollution Control Board Wastewater Treatment Plant to include Block 5, Lot 24 of Washington Township on which the Board of Education will construct a Middle School.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County Water Quality Management Plan
Public Notice

Take notice that on June 28, 1990, 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 Ocean County Water Quality Management Plan was adopted by the Department. This amendment adopts a method of handling wastewater generated by two public facilities proposed in Jackson Township. The first is the Jackson Township Board of Education Middle School. The site of the Middle School is being added to the Jackson Township Municipal Utilities Authority (MUA) system in Ocean County Utilities Authority's (OCUA) northern service area. The projected volume flow is 16,000 gallons per day (GPD). No additional connections to the force main will be permitted. In exchange, approximately 20 acres in Jackson Township is deleted from the designated sewer service area of the OCUA's northern service area. Additionally, Ocean County is to design and operate an on-site wastewater treatment facility with groundwater discharge to treat the wastewater generated from the proposed Minimum Security Work Annex located in Jackson Township. The Wastewater Management Plan map is revised to designate this site as a groundwater discharge service area, less than 40,000 GPD. Ocean County is required to abandon the on-site treatment facility and connect to the Jackson Township MUA system when such a connection is available. At that time, treatment of the wastewater will be provided at the OCUA Northern Water Pollution Control Facility.

(e)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan
Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Moorestown Township Wastewater Management Plan (WMP). The Moorestown Township WMP proposes to expand and upgrade the existing Moorestown Sewage Treatment Plant. In addition, the WMP proposes the construction of a new 1.1 million gallons per day wastewater treatment facility to specifically serve the Planned Urban Developments and existing facilities in the eastern portion of the township. These properties will provide funding for implementation of Moorestown's Housing Element and Fair Share Plan to provide affordable housing pursuant to a *Mount Laurel II* Supreme Court decision.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is

located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HEALTH

(a)

HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Petition for Rulemaking and Notice of Agency Action

Health Maintenance Organizations

N.J.A.C. 8:38-1.4

Take notice that, on June 28, 1990, the Department of Health received a petition from the New Jersey Podiatric Medical Society which alleges that Health Maintenance Organization (HMO) contracts which exclude podiatrists are contrary to N.J.S.A. 45:5-20 and which requests that the Department amend N.J.A.C. 8:38-1.4 to require that all HMOs have sufficient licensed podiatrists associated with or available to the HMO to provide basic and supplemental health services, with the number of providers contingent upon enrollment size and prevailing standards, and that, barring medical requirements, the enrollee be able to choose to have podiatry services rendered by a licensed podiatrist.

Take further notice that, pursuant to N.J.A.C. 1:30-3.6(c)3, after consideration by the State Commissioner of Health, the petition has been referred for further deliberation to the Division of Health Facilities Evaluation and Licensure in the Department for a period of six months. Division staff will consult with the Department of Insurance regarding rules on the coverage of podiatric services by HMOs, as well as other insurance carriers. Additionally, staff will review coverage of podiatric services by the Medicare and Medicaid programs and will survey New Jersey HMOs to determine the extent to which they currently provide such services. Finally, staff will consult with appropriate agencies in other states to determine their requirements for coverage of podiatric services by HMOs. When the consultation and review is completed, the Department will be able to respond to the petition in a reasoned and responsible manner. Within the six-month period, a decision will be made by the Department, and a Notice of Proposed Action will be filed with the Office of Administrative Law, for publication in the New Jersey Register.

(b)

DIVISION OF EPIDEMIOLOGY AND DISEASE CONTROL

Availability of Grants

The New Jersey Commission on Cancer Research

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, ch. 7), the Department of Health hereby publishes notice of the availability of the following grant:

Name of grant program: The New Jersey Commission on Cancer Research, Grant Program No. 91-81-CCR.

Purpose for which the grant program funds will be used: To bring the advantages of clinical cancer research to patients at the community level by providing a Statewide cooperative oncology group that will be open to all practicing cancer physicians in New Jersey.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

Groups or entities which may apply for the grant program: Any nonprofit, research institution or agency located in New Jersey which has appropriate experience in clinical trials.

Qualifications needed by an applicant to be considered for the grant: Demonstrated experience in the development, organization, and support of community-based clinical cancer trials involving approximately 150-200 practicing physicians. Working knowledge of protocol development, data collection, quality assurance, and statistical analysis is essential. Understanding of the research infrastructure in New Jersey and the needs of its community physicians is important.

Procedures for eligible entities to apply for grant funds: Applications for grants are available from the Commission Offices. Awards are for a maximum of $170,000.

For information contact:

Ann Marie Hill, Executive Director
New Jersey Commission on Cancer Research
28 W. State Street, Room 715
Trenton, New Jersey 08625
(609) 633-6552

Deadline by which applications must be submitted: September 30, 1990.

Date by which applicant shall be notified whether they will receive funds: December 1, 1990.

LAW AND PUBLIC SAFETY

(c)

BOARD OF MEDICAL EXAMINERS

Notice of Action on Two Petitions for Rulemaking

N.J.A.C. 13:35

Petitioner: New Jersey Academy of Ophthalmology and Otolaryngology.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:9-1 et seq.

Take notice that petitioner, a not-for-profit corporation composed of New Jersey licensed physicians, through its counsel, John D. Fanburg, Esq., filed with the State Board of Medical Examiners two petitions which, by agreement of counsel for petitioner, were considered to have been received on March 13, 1990. The first petition concerned the use and prescription of pharmaceutical agents and the second concerned the management of post-surgical ophthalmological care. Upon notice to petitioner, the Board considered these petitions at its April 11, 1990 meeting and determined that further study by a Board committee would be necessary (see 22 N.J.R. 1786(a)).

The committee reported its findings at the Board's June 13, 1990 meeting. Upon consideration, the Board voted to deny both petitions. The substance of each petition and the reasons for the Board's denial follows:

1. Petitioner requested the Board to adopt regulations to provide that "the use and prescription of pharmaceutical agents for any purpose, to include, but not be limited to, treating deficiencies, deformities, diseases, or anomalies of the human eye including the removal of superficial foreign bodies from the eye and adnexae is solely within the practice of medicine and surgery."

The scope of appropriate practice for a medical board licensee is clearly defined in N.J.S.A. 45:9-18 to include the ability to prescribe for any human disease, pain, injury, deformity or physical condition, and N.J.S.A. 45:9-22 prohibits the unlicensed practice of medicine. Furthermore, there is no legal authority for optometrists to so prescribe. Accordingly, the Board finds no need to address this issue through the rulemaking process, as the statutes defining the scope of practice already clearly preclude anyone other than a plenary licensed physician from engaging in the activity in question.

2. Providing specific language, petitioner requested the Board to adopt regulations to provide that the management of post-surgical care is the responsibility of the operating ophthalmologist and should not be delegated to a non-ophthalmologist.

As the Board has already drafted a substantially similar rule proposal which it intends to publish in the New Jersey Register in the near future, it is not necessary for the Board to grant the instant petition.

(a)

THE ATTORNEY GENERAL

List of Legitimate Target Shooting Assault Firearms

Take notice that, pursuant to P.L. 1990, c.32, §11, the Attorney General has determined that the following assault firearms are used for legitimate target shooting purposes in competitive shooting matches, including those sanctioned by the Director of Civilian Marksmanship ("DCM") of the United States Department of the Army:

1. M-1A type
2. M-1 Carbine type
3. M-14 types
4. AR15 type

The M-1 (Garand) is not an "assault firearm" as defined in N.J.S.A. 2C:39-1(w). Therefore, that rifle need not be registered as a legitimate target shooting assault firearm.

To be considered a "type," the firearm must meet the DCM standards for use in DCM sanctioned competitions.

To obtain information regarding legitimate target shooting assault firearms, call the State Police Firearms Investigation Unit at 609-882-2000.

STATE

(b)

NEW JERSEY STATE COUNCIL ON THE ARTS

Cultural Centers Bond Issue Grants
Notice of Postponement of Round-II Grant Recommendations

Take notice that the New Jersey State Council on the Arts has postponed its date of announcement regarding Round-II applications for Cultural Centers Bond Issue Grant funds to **September 18, 1990.** Such announcements will be made as part of the Council's annual meeting, which will be held on that date in Trenton, at the State Museum Auditorium at 10:30 A.M.

Upon such public announcement, the Council will immediately forward to the State Legislature a list of projects so recommended for funding, so that the Legislature may create and entertain an appropriation bill to authorize the funds.

All inquiries should be directed to David A. Miller, Executive Assistant, New Jersey State Council on the Arts, 4 North Broad Street, CN 306, Trenton, New Jersey 08625. Telephone: (609) 292-6130.

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 July 2, 1990 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.1990 d.1 means the first rule adopted in 1990.

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 JUNE 18, 1990

NEXT UPDATE: SUPPLEMENT JULY 16, 1990

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
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to the OAL	22 N.J.R. 2066(a)		
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)	R.1990 d.368	22 N.J.R. 2262(a)
1:1-18.4	Filing of exceptions to initial decisions	22 N.J.R. 2065(a)		
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:6A-4.2, 9.1	Scheduling of special education hearing	22 N.J.R. 1295(a)	R.1990 d.405	22 N.J.R. 2262(b)
1:10-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2065(a)		
1:10B-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2065(a)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
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2:19-2	Rose mosaic disease control	22 N.J.R. 2069(a)		
2:20-2	White pine blister rust control	22 N.J.R. 2070(a)		
2:52-6, 7	Milk supply and sale	22 N.J.R. 1629(a)	R.1990 d.355	22 N.J.R. 2138(a)
2:53-3, 4, 6, 7	Milk supply and sale	22 N.J.R. 1629(a)	R.1990 d.355	22 N.J.R. 2138(a)
2:69-1.11	Commercial values of primary plant nutrients	22 N.J.R. 1295(b)	R.1990 d.353	22 N.J.R. 2140(a)
2:70-1	Classification of liming materials	22 N.J.R. 1411(a)	R.1990 d.414	22 N.J.R. 2503(a)
2:71-2.2–2.6	Jersey Fresh Quality Grading Program	22 N.J.R. 1296(a)	R.1990 d.354	22 N.J.R. 2140(b)
2:76-6.2, 6.5, 6.6, 6.9–6.12, 6.15–6.17	Farmland preservation program	22 N.J.R. 1244(a)		
2:90	State Soil Conservation Committee rules	22 N.J.R. 1299(a)	R.1990 d.356	22 N.J.R. 2142(a)
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3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:7	Safe and sound methods of banking	22 N.J.R. 2205(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:27	Mortgage loans by savings and loan associations	22 N.J.R. 2206(a)		
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:41-7.4	Temporary storage of human remains by cemetery company	22 N.J.R. 1185(a)	R.1990 d.357	22 N.J.R. 2142(b)
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4A:4-6.5	Psychological disqualification proceeding	22 N.J.R. 1300(a)	R.1990 d.346	22 N.J.R. 2143(a)
4A:6-1.1, 1.3, 1.8, 1.10, 1.21	Family leave	22 N.J.R. 1300(b)	R.1990 d.387	22 N.J.R. 2263(a)
4A:7-1.1	Equal employment opportunity: administrative correction	————	————	22 N.J.R. 2266(a)
4A:8-2.4	Family leave	22 N.J.R. 1300(b)	R.1990 d.387	22 N.J.R. 2263(a)
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5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:15-2.1	Emergency shelters for homeless: hospitality rooms	22 N.J.R. 1969(a)		
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)	R.1990 d.325	22 N.J.R. 2001(a)
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12–4.15, 4.21, 4.22, 4.24–4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-2.2, 2.10, 2.14, 2.15, 2.37, 3.9, 3.11, 3.11A, 4.3, 4.9, 4.10, 5.2, 5.4, 5.5, 5.6, 5.7, 5.20, 5.21, 5.22, 5.23, 5.24	Uniform Construction Code: administrative corrections	————	————	22 N.J.R. 2503(b)
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)		
5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14–3.18, 3.20, 4A.8	Uniform Construction Code: subcodes	22 N.J.R. 2208(a)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)	R.1990 d.325	22 N.J.R. 2001(a)
5:23-3.16	Electrical subcode: administrative correction	————	————	22 N.J.R. 2366(b)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(a)		
5:23-7.2–7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55–7.57, 7.61, 7.67, 7.68, 7.71–7.73, 7.75, 7.76, 7.80–7.82, 7.87, 7.94–7.97	Barrier Free Subcode	21 N.J.R. 2774(a)	R.1990 d.345	22 N.J.R. 2267(a)
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:23-9.5	Uniform Construction Code: records retention by code office	22 N.J.R. 1455(a)	R.1990 d.364	22 N.J.R. 2275(a)
5:24	Condominium and cooperative conversion	22 N.J.R. 1455(b)	R.1990 d.379	22 N.J.R. 2276(a)
5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10, 1.11	Mobile home park conversion or retirement from rental market	22 N.J.R. 2214(a)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:26-2.2	Planned real estate development full disclosure: registration exemptions	22 N.J.R. 1872(a)	R.1990 d.408	22 N.J.R. 2505(a)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)	R.1990 d.383	22 N.J.R. 2276(b)
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)	R.1990 d.383	22 N.J.R. 2276(b)
5:34	Local public contracts	22 N.J.R. 724(a)		

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5:80-5.1, 5.2, 5.3, 5.8, 5.9, 5.10	Housing and Mortgage Finance Agency: transfer of ownership interests	22 N.J.R. 1971(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		
5:92-8.2	Council on Affordable Housing: administrative correction to adoption notice	———	———	22 N.J.R. 2143(b)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

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6:3-2.1, 2.2, 2.5–2.8	Pupil records	22 N.J.R. 1302(a)	R.1990 d.380	22 N.J.R. 2344(a)
6:11	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:20	School business services	22 N.J.R. 1246(a)	R.1990 d.393	22 N.J.R. 2345(a)
6:22	School facility planning service	22 N.J.R. 1253(a)	R.1990 d.394	22 N.J.R. 2350(a)
6:22-1.1, 1.7	School facility planning: administrative corrections	———	———	22 N.J.R. 2359(a)
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5–2.9, 3.3–3.7, 3.9, 4.1, 4.2, 4.4–4.8, 5.1, 5.2, 6.1–6.5, 7.1, 7.4, 8.1, 8.4–8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)		
6:29-2.4, 5.2	Health services: administrative corrections	———	———	22 N.J.R. 2359(a)
6:42	Repeal (see 6:43)	22 N.J.R. 1705(a)		
6:43	Vocational and technical programs and standards	22 N.J.R. 1705(a)		
6:68-2.4, 5.1, 5.8, 10.2	Library assistance: administrative corrections	———	———	22 N.J.R. 2359(a)

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7:1C	Ninety-day construction permits	22 N.J.R. 731(a)	R.1990 d.343	22 N.J.R. 2143(c)
7:1E	Discharges of petroleum and other hazardous substances	22 N.J.R. 1651(a)	R.1990 d.398	22 N.J.R. 2284(a)
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)	R.1990 d.385	22 N.J.R. 2284(b)
7:6-3.13, 4.9	Boating and water skiing on Budd Lake	22 N.J.R. 1631(a)	R.1990 d.366	22 N.J.R. 2182(b)
7:7-2.3	Waterfront development	Emergency (expires 9-15-90)	R.1990 d.403	22 N.J.R. 2361(a)
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:7E	Coastal zone management	22 N.J.R. 1188(a)	R.1990 d.413	22 N.J.R. 2542(b)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2	Shellfish growing water classification	22 N.J.R. 1304(a)	R.1990 d.399	22 N.J.R. 2285(a)
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:14A-2.1	Application for NJPDES permit: administrative corrections	———	———	22 N.J.R. 2001(b)
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
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7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-5	1990-91 Game Code	22 N.J.R. 1459(a)	R.1990 d.404	22 N.J.R. 2288(a)
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)		
7:25-7.13	Crab dredging in Atlantic Coast section: administrative correction	————	————	22 N.J.R. 2005(a)
7:25-18.5	Gill netting: administrative correction	————	————	22 N.J.R. 2301(a)
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26-1.4, 7.4, 7.5, 7.6, 8.2, 8.3	Hazardous waste exports, imports; small quantity generators; farm pesticide waste	22 N.J.R. 1472(a)		
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-3A.8	Medical waste generator fees	22 N.J.R. 1478(a)	R.1990 d.358	22 N.J.R. 2145(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(a)	R.1990 d.324	22 N.J.R. 2005(b)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23.2–23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)	R.1990 d.342	22 N.J.R. 2145(b)
7:28	Radiation protection	22 N.J.R. 890(a)	R.1990 d.427	22 N.J.R. 2570(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-3.12	Ionizing radiation-producing machines: registration fees	22 N.J.R. 1653(a)	R.1990 d.400	22 N.J.R. 2302(a)
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, 9.3	Pesticide Control Program: certification, registration and permit fees	22 N.J.R. 1314(a)	R.1990 d.426	22 N.J.R. 2571(a)
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
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8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:31B	Hospital rate setting	22 N.J.R. 1480(a)		
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:33	Certificate of need application and review process	22 N.J.R. 1494(a)	R.1990 d.417	22 N.J.R. 2506(a)
8:33B-1	Extracorporeal shock wave lithotripsy services	22 N.J.R. 1495(a)	R.1990 d.418	22 N.J.R. 2506(b)

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8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)		
8:39-25.2	Nurse staffing requirements for long-term care facilities: suspension of enforcement	————	————	22 N.J.R. 2162(a)
8:41-8.1, 8.3	Mobile intensive care units: administration of medications	22 N.J.R. 1980(a)		
8:43A	Ambulatory care facilities: licensure standards	22 N.J.R. 1496(a)	R.1990 d.416	22 N.J.R. 2507(a)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-4.2	Patient rights (advisory)	21 N.J.R. 2160(b)	Expired	
8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)		
8:43G-7.4, 7.6, 7.11, 7.13, 7.27, 7.36	Cardiac services (advisory)	21 N.J.R. 2162(a)	Expired	
8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17, 9.22	Critical and intermediate care (advisory)	21 N.J.R. 2167(a)	Expired	
8:43G-15.6	Medical records (advisory)	21 N.J.R. 2171(a)	Expired	
8:43G-19.4, 19.6, 19.9, 19.11, 19.28	Obstetrics (advisory)	21 N.J.R. 2926(a)		
8:43G-19.35–19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20.3, 20.5	Employee health (advisory)	21 N.J.R. 2173(a)	Expired	
8:43G-21.3, 21.6, 21.8, 21.10, 21.12, 21.14, 21.16	Oncology (advisory)	21 N.J.R. 2926(a)		
8:43G-22.4, 22.7, 22.11, 22.18, 22.21	Pediatrics (advisory)	21 N.J.R. 2926(a)		
8:43G-24.5, 24.7, 24.14	Plant maintenance and fire and emergency preparedness (advisory)	21 N.J.R. 2926(a)		
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.15, 28.17, 28.21	Radiology (advisory)	21 N.J.R. 2174(a)	Expired	
8:43G-29.2, 29.4, 29.7, 29.11, 29.14, 29.16, 29.18, 29.22	Physical and occupational therapy (advisory)	21 N.J.R. 2926(a)		
8:43G-30.4, 30.7, 30.10, 30.12	Renal dialysis (advisory)	21 N.J.R. 2926(a)		
8:43G-30.13–30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)		
8:43G-32.6, 32.8, 32.15, 32.17, 32.19	Same-day stay (advisory)	21 N.J.R. 2177(a)	Expired	
8:43G-34.2, 34.10, 34.12	Surgery (advisory)	21 N.J.R. 2177(a)	Expired	
8:43G-35.5, 35.8	Postanesthesia care (advisory)	21 N.J.R. 2926(a)		
8:43I-1.3, 1.11	Hospital Policy Manual: inpatient obstetric units	22 N.J.R. 1891(a)		
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)		
8:51	Childhood lead poisoning	22 N.J.R. 1502(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)		
8:66-1.1	Intoxicated Driving Program: reopening of comment period	22 N.J.R. 1655(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b), 1597(a))	21 N.J.R. 3292(a)	R.1990 d.349	22 N.J.R. 2164(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b))	22 N.J.R. 596(a)	R.1990 d.348	22 N.J.R. 2163(a)
8:71	Interchangeable drug products	22 N.J.R. 1214(b)	R.1990 d.347	22 N.J.R. 2162(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		

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9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		

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9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)		
9:6-3.7, 3.9, 7	State college promotional and tenure policies; institutional plan	22 N.J.R. 1216(a)	R.1990 d.375	22 N.J.R. 2303(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)		
9:7-3.2	Tuition Aid Grant Program: 1990-91 award table	22 N.J.R. 1318(a)	R.1990 d.386	22 N.J.R. 2305(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)		
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)		
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10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)	R.1990 d.370	22 N.J.R. 2306(a)
10:44B	Community care residences for developmentally disabled	22 N.J.R. 756(a)	R.1990 d.359	22 N.J.R. 2164(b)
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:49	Medicaid program administration manual	22 N.J.R. 1512(a)	R.1990 d.390	22 N.J.R. 2313(a)
10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)	R.1990 d.326	22 N.J.R. 2009(a)
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51	Pharmacy Manual	22 N.J.R. 2217(a)		
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: non-legend drugs and products	22 N.J.R. 1217(a)	R.1990 d.391	22 N.J.R. 2314(a)
10:56-3.1, 3.3, 3.4, 3.10, 3.12	Dental services HCPCS codes	22 N.J.R. 1660(a)		
10:60	Home Care Services Manual	22 N.J.R. 1663(a)		
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)		
10:63-1.2–1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)	R.1990 d.428	22 N.J.R. 2588(a)
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)	R.1990 d.327	22 N.J.R. 2009(b)
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)		
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	Emergency (expires 9-28-90)	R.1990 d.424	22 N.J.R. 2604(a)
10:81-10.7	Refugee Resettlement Program: eligibility for assistance	22 N.J.R. 1225(a)	R.1990 d.365	22 N.J.R. 2317(a)
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11–11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)		
10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)	R.1990 d.401	22 N.J.R. 2318(a)
10:81-14.18, 14.18A, 14.18B	REACH post-AFDC sliding fee scales	22 N.J.R. 1054(a)	R.1990 d.340	22 N.J.R. 2010(a)
10:85-4.6	Emergency shelter grants: administrative correction	_____	_____	22 N.J.R. 2171(a)
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)		
10:87-5.10, 6.15, 12.1–12.7	Food Stamp Program: annual adjustments	22 N.J.R. 1670(a)		
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		

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10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121	Adoption of children	21 N.J.R. 3047(b)	R.1990 d.344	22 N.J.R. 2172(a)
10:121	Adoption of children: extension of comment period	22 N.J.R. 310(a)		
10:123	Social services program for individuals and families	22 N.J.R. 1520(a)	R.1990 d.388	22 N.J.R. 2318(b)
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendance Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:129	Child abuse and neglect cases	22 N.J.R. 1535(a)	R.1990 d.389	22 N.J.R. 2320(a)
10:130	Shelters for victims of domestic violence	22 N.J.R. 767(a)	R.1990 d.328	22 N.J.R. 2019(a)

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10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)		
10A:16-5.2, 5.5, 5.6, 5.7	Medical and health services: guardianship of an adult inmate	22 N.J.R. 1322(a)	R.1990 d.369	22 N.J.R. 2322(a)
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(a)		
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
10A:32-4.2	Transfer of juvenile under State sentence: public hearing	22 N.J.R. 2224(a)		

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11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)	
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)	
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)	
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)	
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)	Expired
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)	
11:2	Insurance group rules	22 N.J.R. 1673(a)	
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)	
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)	
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)	
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)	
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)	
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11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)	
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11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)	
11:3	Automobile insurance	22 N.J.R. 1678(a)	
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11:3-8.2–8.7, App. A & B	Nonrenewal of automobile policies	22 N.J.R. 2224(b)	
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11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)	
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)	Expired
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 2086(a)	
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)	
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	22 N.J.R. 2108(a)	
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11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)	Expired	
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.25	Repeal (see 11:5-6)	22 N.J.R. 1421(a)		
11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)	R.1990 d.378	22 N.J.R. 2323(a)
11:5-6	Real estate sales full disclosure	22 N.J.R. 1421(a)		
11:10	Hospital/medical-dental services	22 N.J.R. 1691(a)	R.1990 d.384	22 N.J.R. 2326(a)
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commerical lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
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12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)	R.1990 d.420	22 N.J.R. 2508(b)
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)	R.1990 d.337	22 N.J.R. 2020(a)
12:35	Workfare: General Assistance Employability Program	22 N.J.R. 1430(a)	R.1990 d.396	22 N.J.R. 2326(b)
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:56	Wage and hour	22 N.J.R. 2235(a)		
12:57	Wage orders for minors	22 N.J.R. 2240(a)		
12:58	Child labor	22 N.J.R. 2241(a)		
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12:196	Safe dispensing of retail gasoline	22 N.J.R. 1433(a)	R.1990 d.397	22 N.J.R. 2329(a)
12:200	Liquefied petroleum gas installations: standards of design and operations	22 N.J.R. 1984(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)	R.1990 d.338	22 N.J.R. 2023(a)

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12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)	R.1990 d.351	22 N.J.R. 2176(a)
12A:31-2.3, 3.3	Loan guarantee and direct loan programs: administrative corrections	———	———	22 N.J.R. 2330(a)
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)	R.1990 d.352	22 N.J.R. 2178(a)
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)

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13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)		
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13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)		
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13:20-10	Automatic vehicle identification system for toll collection	22 N.J.R. 2133(a)		
13:21-1.3, 1.4, 1.5	Commercial driver licenses: disclosure and use of social security numbers	22 N.J.R. 2134(a)		
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
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13:27-5.5, 5.6	Architecture pre-examination requirements	22 N.J.R. 1326(a)	R.1990 d.341	22 N.J.R. 2181(b)
13:29-1.4	Board of Accountancy: licensee change of address	22 N.J.R. 1438(a)	R.1990 d.373	22 N.J.R. 2331(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)		
13:35-6.13	Board of medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)	R.1990 d.372	22 N.J.R. 2331(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
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13:40	Professional engineers and land surveyors	22 N.J.R. 1867(a)		
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:41	Board of Professional Planners rules	22 N.J.R. 1438(b)	R.1990 d.402	22 N.J.R. 2530(a)
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)	R.1990 d.371	22 N.J.R. 2331(c)
13:45A-21.4	Kosher poultry identification	22 N.J.R. 1439(a)		
13:45B-6.1	Private employment agencies and personnel services forms: administrative correction regarding license fees	———	———	22 N.J.R. 2182(a)
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13:47K	Weights and measures: packaged commodities	22 N.J.R. 1440(a)		
13:59-1	Criminal history checks for non-criminal matters	22 N.J.R. 1869(a)	R.1990 d.425	22 N.J.R. 2530(b)
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)		
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	22 N.J.R. 1716(b)		
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	22 N.J.R. 1718(a)		
13:75-1.12	Violent Crimes Compensation Board: attorney fees	22 N.J.R. 2260(a)		
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13:81	Statewide 9-1-1 emergency telecommunication system	22 N.J.R. 1234(a)	R.1990 d.392	22 N.J.R. 2332(a)
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14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
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14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television	22 N.J.R. 1330(b)	R.1990 d.415	22 N.J.R. 2575(a)
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15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)	R.1990 d.367	22 N.J.R. 2339(a)
15A:2-1.2	Petitions for rulemaking: extension of comment period	22 N.J.R. 1694(a)		
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16:28-1.8, 1.27	Speed limit zones along Route 159 in Morris and Essex counties, Route 183 in Morris and Sussex counties	22 N.J.R. 2244(a)		
16:28-1.20, 1.37, 1.81, 1.105	Speed limit zones along U.S. 322, Routes 182, 49, and 284	22 N.J.R. 1340(a)	R.1990 d.330	22 N.J.R. 2028(a)
16:28-1.41, 1.55, 1.69, 1.132	Speed limit zones along U.S. 9 in Cape May County, Route 54 in Atlantic County, U.S. 130 in Camden County, and Route 47 in Cumberland, Gloucester and Camden counties	22 N.J.R. 1694(b)	R.1990 d.382	22 N.J.R. 2339(b)
16:28-1.57	Speed limit zones along U.S. 30 in Camden County	22 N.J.R. 1343(a)	R.1990 d.331	22 N.J.R. 2030(a)
16:28-1.94	Speed limit zones along Route 10 in Morris and Essex counties	22 N.J.R. 1697(a)		
16:28-1.106, 1.132	Speed limit zones along Route 31 in Hunterdon County and Route 47 in Cape May County	22 N.J.R. 2245(a)		
16:28A-1.7, 1.11, 1.65	Restricted parking and stopping along U.S. 9 in Marlboro and Middle Township, Route 21 in Passaic, and Route 15 in Dover	22 N.J.R. 1897(a)		
16:28A-1.13, 1.62	No stopping or standing zones along U.S. 22 in Warren, Hunterdon, Somerset and Union counties, and Route 12 in Hunterdon County	22 N.J.R. 2118(a)		
16:28A-1.33	Restricted stopping along Route 47 in Dennis Township	22 N.J.R. 1536(a)		
16:28A-1.33, 1.41, 1.55	Restricted parking and stopping along Routes 47 in Vineland, 77 in Bridgeton, and U.S. 202 in Morris Plains	22 N.J.R. 1990(a)		
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	22 N.J.R. 1536(b)	R.1990 d.361	22 N.J.R. 2341(a)
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16:30-3.6	Shoulder lane usage along U.S. 1: administrative correction to adoption notice	_____	_____	22 N.J.R. 2183(a)
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16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
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16:44-8.1, 8.2, 8.3	Construction services: vendor ethical standards	22 N.J.R. 1898(a)		
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16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1699(a)		
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17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)		
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18:23A-1	Tax maps	22 N.J.R. 1997(a)		
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19:45-1.39	Progressive slot machines: resetting of meters	22 N.J.R. 2253(b)		
19:46-1.10	Double-spot blackjack layout: 90-day experiment	Expires 11-11-90	_____	22 N.J.R. 2343(a)
19:47-1.6	Five times odds at craps: 90-day experiment	Expires 10-21-90	_____	22 N.J.R. 2187(b)
19:47-1.6	Five times odds at craps	22 N.J.R. 2254(a)		
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