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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 20, 1992
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 17, 1992

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Tax Collection Administration

Tenant Property Tax Rebate Program Administration

Proposed Amendments: N.J.A.C. 5:33-3.2, 3.3 and 3.6

Proposed New Rules: N.J.A.C. 5:33-3.8 through 3.11

Authorized By: Barry Skokowski, Sr., Director, Division of Local Government Services, Department of Community Affairs.

Authority: N.J.S.A. 54:4-6.10.

Proposal Number: PRN 1992-420.

Submit comments by October 21, 1992 to:

Marc H. Pfeiffer, Manager
Office of Administration and Local Government Research
Division of Local Government Services
CN 803
Trenton, NJ 08625-0803

The agency proposal follows:

Summary

This proposal amends and supplements existing rules implementing the Tenant Property Tax Rebate Program at N.J.A.C. 5:33-3. The changes update and clarify the prior rules and address issues that arose during the implementation of the 1991 emergency adoption. They also take into account the holdings of *Cold Indian Springs Corp. v. Township of Ocean,* 81 *N.J.* 502 (1980), a New Jersey Supreme Court case interpreting the original 1976 legislation. The revisions are intended to guide administration of the program in 1992 and beyond.

Several definitions at N.J.A.C. 5:33-3.2 are revised and expanded. "Base year" and "qualified property" are amended to provide simplified meanings. "Property tax reduction" is amended to reflect the Supreme Court's definition as found in *Cold Indian Springs.* "Group residencies," a type of tenancy that includes provision of social services that was not common when the law was enacted, is defined for reason of administrative necessity, as a type of property that is exempt from providing a tenant rebate. A definition of "transient" is also added. A citation is corrected and a clarification of owner occupied exceptions is also made.

N.J.A.C. 5:33-3.3, Tax collector responsibilities, is restructured, making technical amendments to clarify the obligations and procedures of collectors in issuing the Notice of Tax Reduction to owners of qualified property.

The rebate calculation and payment requirements at N.J.A.C. 5:33-3.6 are modified:

1) To provide that any landlord who receives a Notice of Tax Reduction after November 1 of the year, has until July 1 of the following year to provide the full rebate;

2) To clarify that the minimum rebate amount for a year is $6.00, due to rounding, and that no rebate is required if the annual amount for a unit is less than $6.00; and

3) To ensure that shareholders of a residential cooperative receive a Notice of Tax Reduction, by requiring their board of directors to allocate the gross rebate among all shareholders and provide a notice to each of his or her pro rata share.

Special circumstances concerning property tax reductions are newly covered in N.J.A.C. 5:33-3.8:

1. Implementing the *Cold Indian Springs* decision, N.J.A.C. 5:33-3.8(a) provides that to affect current rebates, tax appeal judgments must take effect on or before the date on which the extended tax duplicate is closed for the year, whichever is later; judgments received after that date are to be included in the calculation for the following year.

2. The statute does not provide a mechanism to guide landlords if a Notice of Tax Reduction is received late in the year; such an event allows a landlord one month or less to make the entire rebate. This administrative necessity is resolved at N.J.A.C. 5:33-3.8(b), which allows landlords to have until July 1 of the following year to complete the tax rebate process.

3. The MOD IV computerized tax assessment system cannot now meet the statutory requirement to exclude from the tax reduction calculation the value of improvements added since the base year. N.J.A.C. 5:33-3.8(c) provides an administrative necessity that until the MOD IV system is changed to allow for this, affected property owners may request the tax collector to manually recalculate the reduction to account for these values.

4. A final provision of *Cold Indian Springs* provided that changes in taxes resulting from revaluation or reassessments do not change a tax reduction calculation. Language to this effect is included at N.J.A.C. 5:33-3.8(d).

Many questions were raised concerning rebates to tenants who participate in Federal "Section 8" or other subsidized housing programs. After review with the administrative agencies that oversee these programs, it has been determined that the agencies administering these programs must notify their contractors of the procedures to be followed, and that if no direction is provided to the landlord, the entire rebate is provided to the tenant. This is included as an administrative necessity at N.J.A.C. 5:33-3.9.

The enabling legislation is unclear concerning enforcement responsibilities. New text at N.J.A.C. 5:33-3.10 allows a municipal governing body to grant authority to a local rent control agency to bring legal action against a landlord for failure to carry out his rebate obligations.

The final new section, N.J.A.C. 5:33-3.11, stipulates that the statute and rules supersede municipal ordinances when any provisions conflict. This provides clarification in those cases where a local rent control ordinance has its own procedures for property tax rebates.

Social Impact

The rules amplify the basic premise of the legislation that the tenants in the State are entitled to receive a share of the tax reform initiatives made by the Governor and Legislature in 1991 and continuing today. The revisions clarify the existing legislation and prior court interpretations and improve the ability of the local government to guide taxpayers and tenants in their requirements and rights.

Economic Impact

The economic impact of the proposed amendments and new rules includes the cost to local governments to comply with the preparation and mailing of notices, and the costs to owners of processing rebates/credits. These costs are not increased by these amendments and new rules. As in the past, the economic and social benefits of returning property tax reductions to the renters that paid them is expected to outweigh the costs to process notices and rebates.

Regulatory Flexibility Analysis

The Director has continued his previous determination that a common rule for all sizes of rental businesses is appropriate, as the smaller the business, the lower the cost of compliance. Additional flexibility is provided to landlords who receive a Notice of Tax Reduction after November 1 or a rebate year, by allowing them until July 1 of the following year to complete the rebate, instead of finishing it by the end of the calendar year.

A slightly additional burden may be placed on landlords involved in state or Federally sponsored subsidized housing programs. In this case, instead of providing the entire rebate to the tenant, the program sponsor may require a proportion of the rebate to be returned to them. This will require additional recordkeeping by the participating landlords and the agency. The determination to require the proportional rebate rests with the sponsor. This change is not so burdensome as to merit separate or differing compliance requirements based on business size.

This proposal makes no other changes in the costs of compliance to small businesses, nor is there is any change in the provisions that deny exemption for small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

5:33-3.2 Definitions

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

. . .

"Base year" means, as appropriate:

1. Calendar 1990, for real rental property qualified on March 15, 1991, the effective date of the Act;

[2. Any year after 1990 which produces a larger tax reduction in comparison with the current year than the current year compared to 1990.]

2. Any year after 1990 in which property taxes exceed the amount paid in 1990.

...

"Property tax reduction" means the difference between property taxes paid in the base year, and the lower taxes paid or payable in the current year, excluding taxes on improvements added since the base year[, and reductions ordered by a county tax board, the State tax court, or any civil court]. A negative number or zero does not produce a property tax reduction. **See N.J.A.C. 5:33-3.8 for special circumstances concerning property tax reductions.**

"Qualified property" or "qualified real rental property" means any building or structure, or complex of buildings and structures, in which [dewlling] **dwelling** units are rented or offered for rent, except:

1. [hotels] **Hotels,** motels, and other guesthouses serving transient or seasonal guests;

2. [units] **Units** in cooperative or mutual housing corporations whose occupants are eligible for homestead rebates[,] **pursuant to P.L.1990, c.62 (N.J.S.A. 54:4-8.57 et seq.);** [and]

3. [owner-occupied structures of three units or less.] **A complex of three units or less on a single parcel when one is owner occupied; and**

4. Group residencies, when the rent, paid by an individual or agency on behalf of a tenant, includes various social or personal services and requires tenant participation in rehabilitative, medical, or related programs.

"Transient" or "transient guests" means individuals whose residence at a rooming or boarding house is on a temporary basis for a period lasting no more than 90 days and who has a principal residence elsewhere.

5:33-3.3 Tax collector responsibilities

(a) Each collector shall, within 30 days after tax bills are mailed, send a Notice of Tax Reduction to each owner of qualified property on which property taxes are reduced, with a copy to the local agency to retain for at least one year.

(b) Each tax collector shall make a notation in the MOD IV or other local system to identify, as qualified properties, all MOD IV Qualification Code 2 (Residential), 3A (Farm Regular), and 4A (Commercial) properties for which a Notice of Tax Reduction is returned. In addition, throughout the year, each tax collector shall use all locally available information and records to identify non-qualified or new properties that become qualified during the year.

[(a)]**(c)** When **third and fourth quarter** property tax bills are prepared [for the June 14 mailing in accordance with N.J.S.A. 54:4-64, each] **in any year in which a revaluation takes effect, the** collector shall [identify those] **mail a Notice of Tax Reduction to all owners of** properties **identified** in MOD IV Qualification Codes 2 (Residential), 3A (Farm Regular), 4A (Commercial), and 4C, (Apartments, five-family or more) on which property taxes are reduced with respect to the base year.

[(b) The collector shall, within 30 days after tax bills are mailed, send a Notice of Tax Reduction to each owner of qualified property on which property taxes are reduced, with a copy to the local agency to retain for at least one year.]

[(c)]**(d)** Beginning in 1992, **or the year following a revaluation,** collectors shall send Notices to all owners [who returned Rent Rebate Certifications the year before and whose] **of** qualified property [again shows a tax reduction] **on which property taxes are reduced** with respect to the base year[;], **which shall include** [to] all owners of newly qualified properties, and [to] all others identified as [possibly liable for tenant rebates] **qualified under the program.**

5:33-3.6 Rebate calculation and payments

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

(c) The first rebate of any year shall include payment or credit retroactive to January 1 for each current tenant resident for any part of that time, and for former tenants similarly resident and paid up. Thereafter, **pro-rata** rebate payments or credits shall be given whenever rents are due and paid.

1. Rebate amounts shall be completely paid or credited by the end of the calendar year for all tenants whose rent payments are current[,]; provided that, rebates for delinquent tenants or cases in dispute **about rent payments** shall be held in escrow pending resolution.

2. A landlord who receives a Notice of Tax Reduction after November 1 of any year shall complete the rebate payment process no later than July 1 of the following calendar year.

(d) (No change.)

(e) All rebate payments and credits shall be rounded to the nearest dollar. **No rebate shall be required if the total rebate for a unit is less than $6.00.** If credited rather than paid, rebates shall be treated as immediate rent reductions.

(f) (No change.)

(g) Boards of directors of residential cooperatives and mutual housing corporations shall allocate the rebate liability to each shareholder in accordance with existing corporation practices and shall provide the owner of each share a separate Notice of Tax Reduction indicating the rebate liability for that share. If the share represents qualified rental property, the shareholder shall notify and provide the rebate to any tenants.

5:33-3.8 Special circumstances—property tax reductions

(a) The property tax reduction shall take into account judgments ordered by a county tax board, the State tax court, or any other court of competent jurisdiction that take effect on or before the date on which the extended tax duplicate is closed for the tax year. (See *Cold Indian Springs Corp. v. Township of Ocean,* 81 *N.J.* 502 (1980).)

(b) Tax appeals from any prior year pending on or before the date on which the extended tax duplicate is closed for the tax year, shall be excluded from the calculation for the tax year. *(See Cold Indian Springs, supra.)*

(c) When the MOD IV system cannot exclude the value of improvements added since the base year, each collector shall, upon written request of the property owner and with the assistance of the tax assessor, recalculate the Notice of Tax Reduction to exclude the value of the improvements. Issuance of the revised Notice of Tax Reduction shall restart the time requirement for notice to the tenant.

(d) Changes in property value resulting from a revaluation or reassessment shall not receive special consideration. There is no change in base year taxes, and current year taxes are calculated on the basis of the new assessment. *(Cold Indian Springs, supra.)*

5:33-3.9 Rebates for tenants who receive rent subsidies

If directed to do so by the sponsoring agency, landlords participating in the Federal "Section 8" housing voucher or other subsidized rental housing program who receive a Notice of Tax Reduction shall divide the property tax rebate between the tenant and the sponsoring agency, based on the percentage of the total rent each party pays, and rebate to the parties as appropriate. The sponsoring agency shall notify the landlord of the responsibilities and procedures to be followed under this section. If no direction is provided to the landlord, the entire rebate shall be provided to the tenant.

5:33-3.10 Enforcement by local agency

A municipal governing body may, by ordinance, grant a local rent control agency, serving as the local agency, authority to represent the municipality or tenants in legal action against a landlord under the statute and rules.

5:33-3.11 Consistency with municipal ordinances

The provisions of the act and this chapter herein shall supersede any conflicting municipal ordinance or provision thereof.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Rules for Proprietary Institutions of Higher Education in New Jersey
Regional Accreditation
Proposed New Rule: N.J.A.C. 9:1-5.11

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.
Authority: N.J.S.A. 18A:3-14m.
Proposal Number: PRN 1992-404.

Submit comments by October 21, 1992 to:
Brett E. Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The new rules proposed at N.J.A.C. 9:1-5.11 clarify the requirements for accreditation for degree-granting proprietary institutions. Accreditation can be defined as a process by which an institution periodically evaluates its educational activities and seeks an independent judgment by peers that it achieves substantially its own educational objectives and meets the established standards of the body by which it seeks accreditation. Generally the accreditation process involves: (1) a clear statement of the institution's educational objectives; (2) a self-study by the institution which examines its activities in relation to those objectives; (3) an on-site evaluation by a selected group of peers which reports to the accrediting body; and (4) a decision by this independent body that the institution does or does not meet its standards for accreditation.

There are six regional accrediting bodies recognized by the U.S. Department of Education which accredit degree-granting institutions located in specific geographic regions. The Middle States Association of Colleges and Schools covers the mid-Atlantic states, including New Jersey. (Other regional bodies cover the southern states, New England, midwest, northwest, and the west.)

The proposed new rule concerns degree-granting proprietary institutions. It identifies the Commission on Higher Education of the Middle States Association of Colleges and Schools (MSA) as the only appropriate regional accrediting body for New Jersey degree-granting proprietary institutions. The proposed new rule also requires proprietaries regionally accredited by a regional body other than MSA to pursue MSA accreditation, and it directs unaccredited degree-granting proprietaries that wish to obtain regional accreditation to pursue MSA accreditation. The purpose of the proposed new rule is to maintain standards of excellence and provide clear and accurate information to the public.

While there are approximately 200 postsecondary proprietary (for profit) institutions operating in New Jersey, this rule applies only to degree-granting proprietary institutions. Currently there are only two proprietary institutions licensed by the New Jersey Board of Higher Education (NJBHE) to award degrees; a third institution has received authority from the NJBHE to award certain associate degrees beginning March 1993. This rule, therefore, will apply to a small group of educational institutions.

Social Impact

The proposed new rule should eliminate some of the confusion on the part of the public regarding accreditation, especially the regional accreditation of degree-granting proprietary institutions. Accreditation provides advantages to both the institution and the student. With respect to the institution, it attests to its meeting standards and permits it to participate in certain Federal programs; with respect to the student, it enables the student to participate in Federal student assistance programs and eases the transferability of credits from one higher education institution to another.

Economic Impact

Once an institution is regionally accredited by Middle States, the Board of Higher Education "will ordinarily accept such accreditation as sufficient for the continuance of licensure and approval ... (N.J.A.C. 9:1-2.1)." The BHE would not conduct an on-site relicensure evaluation but rely on the Middle States evaluation and the Department staff report. This means the State would not need to employ a team of external consultants to conduct a relicensure evaluation thereby reducing costs to the State. Costs to the institution would also be reduced; they would prepare for one evaluation instead of two. There would, however, be a cost to the institution regarding the preparation of a self-study.

Accreditation by an accrediting body recognized by the U.S. Department of Education permits institutions to participate in student financial aid programs and other programs. Regional accreditation eases the transferability of credits to another institution, thus eliminating the cost to the student of repeating courses.

Regulatory Flexibility Statement

The proposed new rule clarifies the requirements for accreditation for degree-granting proprietary institutions. As indicated in the Summary, of the approximately 200 postsecondary proprietary institutions operating in New Jersey, only two are licensed by NJBHE to award degrees. Neither of these two institutions is a small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as they are part of larger corporations located in New Jersey as well as in other states. In order to maintain and ensure standards, NJBHE will consistently apply the provisions set forth in N.J.A.C. 9:1-5.11, regardless of business size.

Full text of the proposed new rule follows:

9:1-5.11 Regional accreditation

(a) Accreditation by the Commission on Higher Education of the Middle States Association of Colleges and Schools is the only appropriate regional accrediting body for proprietary institutions licensed by the New Jersey Board of Higher Education.

(b) In the interest of preventing confusion on the part of the public, proprietary institutions which are regionally accredited by a regional accrediting body other than the Middle States Association of Colleges and Schools shall not refer to that regional accreditation in any official publications and promotional materials used in New Jersey; and, in the interest of maintaining standards of excellence, these institutions shall immediately pursue accreditation with the Commission on Higher Education of the Middle States Association of Colleges and Schools. Such institutions shall make good progress toward accreditation; that is, they should achieve "candidacy" status four years after receiving initial licensure and full accreditation six years after receiving candidacy status.

(c) Unaccredited degree-granting proprietary institutions that wish to pursue regional accreditation shall pursue it with the Commission on Higher Education of the Middle States Association of Colleges and Schools.

HUMAN SERVICES

(b)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program
Miscellaneous Program Requirements
Proposed New Rules: N.J.A.C. 10:87-2.39 and 6.20
Proposed Amendments: N.J.A.C. 10:87-2.4, 2.6, 2.31, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5.10, 6.9, 10.3, 10.6, 10.18, 11.26, 11.29 and 12.1

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4B-2; 7 CFR Parts 273 and 274; P.L. 101-624, P.L. 100-649, P.L. 100-485, P.L. 100-426, P.L. 101-508, P.L. 100-435, P.L. 101-392, *West v. USDA,* U.S. Court of Appeals, Third District, (June 30, 1989), and P.L. 102-237.
Proposal Number: PRN 1992-405.

Submit comments by October 21, 1992, to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments and new rules set forth general technical amendments to incorporate changes in Federal requirements into the Food Stamp Program rules, in response to passage of Federal legislation, the issuance of clarifying Federal food stamp regulations, and the issuance of Federal instructions relating guidance of the Food Stamp Program.

The proposed amendment at N.J.A.C. 10:87-2.4(a)3 revises the definition of an individual who qualifies to be eligible for food stamp benefits when the individual resides in an institution. The proposed amendment reflects the provisions of Section 901 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237).

The proposed amendment at N.J.A.C. 10:87-2.6(b)1ii reflects the provisions of Section 1725 of the Mickey Leland Memorial Domestic Hunger Relief Act (P.L. 101-624). The proposed amendment permits certain food stamp households to select the member who will act as the household's head.

The proposed amendment at N.J.A.C. 10:87-2.31(c)3 addresses the specific form to be provided to applicants for food stamp benefits when information is necessary to complete the eligibility certification process. The Notice of Required Verification is currently cited at N.J.A.C. 10:87-2.23.

The proposed new rule at N.J.A.C. 10:87-2.39 establishes the criteria under which households comprised entirely of General Assistance recipients would be categorically eligible for the Food Stamp Program. The proposed new rule is consistent with the provisions of Section 902 of the Mickey Leland Memorial Domestic Hunger Relief Act (P.L. 101-624), as well as Federal regulations at 7 CFR 273.2 which were published in the December 4, 1991 edition of the Federal Register.

The proposed amendment at N.J.A.C. 10:87-3.8(a)8 clarifies that an individual who is aged, blind, or disabled, and who has been admitted into the United States for temporary (as opposed to permanent) residence under Section 245A(b)1 of the Immigration and Nationality Act, shall be considered an eligible alien for food stamp purposes. The proposed amendment reflects Federal regulations at 7 CFR 273.4(a)(8). The proposed amendment at N.J.A.C. 10:87-3.8(a)12 also allows family members of certain eligible aliens to be included in the food stamp household of the eligible aliens and is consistent with Section 301(d) (the Family Unity provisions) of P.L. 100-649, which is an amendment to the Immigration Reform and Control Act.

The proposed amendment at N.J.A.C. 10:87-3.14(a) further clarifies the definition of a student in an institution of higher education. The proposed amendment reduces the maximum age criteria from 60 years of age to 50, and is in conformity with Section 1727 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237).

The proposed amendment at N.J.A.C. 10:87-3.14(d), which defines participation in work study programs, is consistent with the policy issued in the United States Department of Agriculture Administrative Notice No. A-22-92, dated January 29, 1992. The proposed amendments at N.J.A.C. 10:87-3.14(d)4 and 3.14(d)7 through 11 further define care of a dependent, as well as additional criteria under which a student may be eligible for food stamp benefits. The proposed amendments conform with Section 1727 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237).

The proposed amendments at N.J.A.C. 10:87-4.1(b) and 5.1(b) are in conformity with Federal regulations at 7 CFR 273.8(a) and 273.9(a), which refer to the exclusion of resources and income from the eligibility determination process for categorically eligible households.

The proposed amendments at N.J.A.C. 10:87-4.8 establish additional resource exclusions, and are in conformity with several sections of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237), as well as the policy issued by the United States Department of Agriculture on January 31, 1992 pertaining to inaccessible resources, the Mickey Leland Memorial Domestic Hunger Relief Act (P.L. 101-624) pertaining to the resources of AFDC and SSI recipients, and payments issued under the Radiation Exposure Compensation Act (P.L. 100-426). The proposed amendment at N.J.A.C. 10:87-4.8(a)13iii provides for the inclusion of a resource if its sale would not produce a significant amount of money for the household.

The proposed amendment at N.J.A.C. 10:87-4.8(a)17 excludes earned income tax credits from countable resources in the month of receipt as well as the month following the month of receipt. The proposed amendment is consistent with P.L. 101-508.

The proposed amendment at N.J.A.C. 10:87-5.9(a)3 clarifies that utility allowance payments, rebates, and reimbursements need not be issued by a public housing authority in order for those moneys to be excluded from income. This clarification is consistent with the *West v. USDA* Court of Appeals Decision for the Third District.

The proposed amendments at N.J.A.C. 10:87-5.9(a)15, which address categories of income excluded by Federal statute, comply with the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (P.L. 101-392) by excluding funds issued under that legislation, comply with the Family Support Act of 1988 (P.L. 100-485) by excluding transitional child care payments, and dependent care adjustments made when calculating AFDC benefits, and comply with the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237) by exempting SSI payments deferred into Plan for Achieving Self-Support accounts. The proposed amendments also comply with the Radiation Exposure Compensation Act (P.L. 100-426) by exempting payments issued under that law.

The proposed amendment at N.J.A.C. 10:87-5.10(a)4 clarifies that child care vendor payments do not qualify the household for a dependent care deduction, and that child care payments taken into account when calculating AFDC benefits do qualify the household for the dependent care deduction, provided that an out-of-pocket payment is made.

The proposed amendment at N.J.A.C. 10:87-5.10(a)5iv(1)(E) describes how Home Energy Assistance payments permit eligibility for the food stamp utility allowances. N.J.A.C. 10:87-5.10(a)5iv(4) is also being revised and recodified, as the present language is confusing in its presentation.

The proposed amendment at N.J.A.C. 10:87-5.10(a)5v establishes the Food Stamp Homeless Shelter Allowance, which is a shelter deduction which a homeless household may receive, when calculating household shelter expenses, provided that the household incurs an out-of-pocket shelter expense. A concurrent amendment is also proposed for N.J.A.C. 10:87-12.1(f) which prescribes the amount of the Homeless Shelter Allowance, which is subject to annual updates as specified by the United States Department of Agriculture.

The proposed amendments at N.J.A.C. 10:87-6.9(c) and (g) describe how to treat energy assistance payments and student income for the purpose of determining food stamp eligibility and level of benefit. The proposed amendment at N.J.A.C. 10:87-6.9(c) reflects the policy which was issued to New Jersey by the United States Department of Agriculture in January 1990. The proposed amendment at N.J.A.C. 10:87-6.9(g) is consistent with the policy issued to New Jersey by the United States Department of Agriculture in August 1989.

The proposed new rule at N.J.A.C. 10:87-6.20 establishes procedures to be followed when a household of three or more individuals that is found to be categorically eligible for the Food Stamp Program is entitled to no actual benefit because the houshold's income exceeds the level at which benefits are issued. The proposed new rule is consistent with Federal regulations at 7 CFR 273.10(e)(2)(iii).

The proposed amendments at N.J.A.C. 10:87-10.3(e), 10.6(h), and 10.18(c) reflect minor administrative and reporting changes to the Food Stamp Employment and Training Program. The proposed amendments do not have an impact upon recipients.

The proposed amendment at N.J.A.C. 10:87-11.26(c)1 affects households that received overissuances due to administrative or inadvertent household error. Under the proposed amendments, those households have 10 days, rather than 30 days, to respond to a demand letter to recover the overissued benefits. The proposed amendment is in response to Section 911 of P.L. 102-237.

The proposed amendment at N.J.A.C. 10:87-11.29(c)1 affects households that received overissuances due to intentional program violation. Under the proposed amendment, those households must respond immediately to a demand letter to recover those benefits. The proposed amendment is consistent with Section 1746 of P.L. 101-624.

Social Impact

The social impact on the population served is anticipated to be generally beneficial as the proposed amendments and new rules are primarily designed to formally establish new income and resource exclusions and income deductions. The proposed new rule at N.J.A.C. 10:87-2.39 will simplify the means in which General Assistance recipients are de-

termined eligible for food stamp benefits. The proposed amendment to N.J.A.C. 10:87-3.14 will expand the eligibility criteria for students of institutions of higher education. The proposed amendment at N.J.A.C. 10:87-3.8 permits new categories of aliens to be eligible for food stamp benefits. The proposed amendments at N.J.A.C. 10:87-11.26 and 11.29 shall require overissued individuals to respond to demand letters on a more timely basis than they are required to at present.

Economic Impact

Food stamp recipients will not experience a significant loss or reduction of benefits as a result of the enactment of the proposed amendments and new rules, as they primarily provide technical clarification of rules currently in N.J.A.C. 10:87. The proposed amendments and new rules will ensure that New Jersey's Food Stamp Program is consistent with Federal statutes and regulations, thus avoiding possible imposition of Federal fiscal sanctions due either to noncompliance or errors identified through the Federal Performance Reporting System.

Regulatory Flexibility Statement

The proposed amendments and new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules 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 Food Stamps 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]):

10:87-2.4 Residents of institutions and homeless individuals defined

(a) Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the Food Stamp Program, with the following exceptions:

1.-2. (No change.)

3. Group living arrangements: Blind and/or disabled individuals who [receive benefits under Title II (Retirement, Survivors, Disability Insurance benefits) or Title XVI (SSI) of the Social Security Act] **meet the definition of N.J.A.C. 10:87-2.38** and who reside in a public or private nonprofit group living arrangement that serves no more than 16 residents (see N.J.A.C. 10:87-2.7(f)); [and]

4.-5. (No change.)

(b) (No change.)

10:87-2.6 Head of household

(a) (No change.)

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. Principal wage earner: The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c)) who has the greatest source of earned income in the two months prior to the month of the work registration, work or training requirement or voluntary quit violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i. (No change.)

ii. If there is no principal source of earned income in the household, the CWA shall determine who is the designated head of household as specified in (a) above. **Additionally, a household may select an adult member with children as its head provided that all adult members agree to the selection. If the household either does not qualify to select its head, or does not opt to select its head, then all other rules in this subsection will be applied. The household may designate its head each time the household is certified, but may not change the designation during the certification period unless there is a change in household composition.**

iii.-iv. (No change.)

10:87-2.31 Delays in processing

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

(c) Determining cause: The CWA shall determine the cause of the delay. A delay shall be considered the fault of the household if the household has failed to complete the application process even though the CWA has taken all the action required to assist the household. The CWA must have taken the following actions before a delay can be considered the fault of the household:

1.-2. (No change.)

3. Incomplete verification: In cases where verification is incomplete, the CWA must have provided the household with a [statement of required verification] **Notice of Required Verification (Form FSP-33)** offered to assist the household in obtaining required verification, and allowed the household sufficient time to provide the missing verification.

4.-5. (No change.)

(d)-(g) (No change.)

10:87-2.39 Categorically eligible GA households

(a) Any household, except those listed in (c) below, in which all members are authorized to receive GA benefits shall be considered categorically eligible for the Food Stamp Program. In addition, households comprised entirely of AFDC, SSI and/or GA recipients shall be categorically eligible for food stamp benefits.

(b) No individual shall be included as a member of an otherwise categorically eligible GA household if that individual is:

1. An ineligible alien, as defined at N.J.A.C. 10:87-3.9;

2. A student that does not meet the criteria at N.J.A.C. 10:87-3.14;

3. Disqualified for failure to provide or apply for a Social Security Number, as required by N.J.A.C. 10:87-3.15;

4. A household member not the household head, disqualified for failure to comply with a work registration requirement;

5. Disqualified for Intentional Program Violation; or

6. A resident of a non-exempt institution.

(c) A household shall not be considered as GA categorically eligible if:

1. It refuses to cooperate in providing information to the CWA which is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility;

2. The household is disqualified because the head of household failed to comply with a work registration requirement;

3. The household is ineligible under the striker provisions; or

4. The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Food Stamp Program.

(d) In determining whether a household is categorically eligible, the CWA shall verify that each member receives AFDC, SSI, or GA benefits, and that it includes no individuals who have been disqualified as described at (b) above. The CWA shall also verify household composition if it is questionable in order to determine that the household meets the definition of a household at N.J.A.C. 10:87-2.2.

(e) When determining the eligibility of a GA categorically eligible household, all Food Stamp Program requirements shall apply except the following:

1. None of the provisions of N.J.A.C. 10:87-4 (Financial Eligibility Resources) apply to categorically eligible households, with the exception of N.J.A.C. 10:87-4.1(b) (categorical eligibility provision) and 4.14 through 4.20 (transfer of resources). The provision at N.J.A.C. 10:87-6.8 shall not be applied to categorically eligible households;

2. With the exception of N.J.A.C. 10:87-5.1(b), none of the provisions of N.J.A.C. 10:87-5.1 (gross and net income limits) apply to categorically eligible households;

3. The provision at N.J.A.C. 10:87-6.5(c) which allows the CWA to deny the application of a household which is program eligible, but is entitled to no benefit because its net income exceeds the level at which benefits are issued, shall not be applied to categorically eligible households. The provisions at N.J.A.C. 10:87-6.20 shall be applied to categorically eligible households that are entitled to no benefit; and

4. Sponsored alien information, which otherwise is required under N.J.A.C. 10:87-2.20(b) and 7.18(f).

10:87-3.8 Eligible aliens; listing

(a) With the provision that all other eligibility requirements are met, the following aliens shall be eligible for participation in the Food Stamp Program:

1.-7. (No change.)

8. An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for [permanent] **temporary** residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. (Such aliens may obtain lawful permanent resident status under section 245A(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988). **A maximum of 12 months in restored benefits shall be provided, upon request, to any aged, blind, or disabled person who was denied benefits because he or she was admitted for temporary residence under Section 245A(b)1 of the INA;**

9.-11. (No change.)

(b) When an alien described at (a)9 above acquires permanent resident status, the family members of that alien acquire permanent resident status and can be included in the alien's household for food stamp purposes. This provision conforms with Section 301(d) of P.L. 100-649.

10:87-3.14 Procedures for students in an institution of higher education

(a) A student in an institution of higher education defined is any person who is between the ages of 18 and [60] **50** who is physically and mentally fit and is enrolled at least half time in an institution of higher education. Excluded from this definition are persons who are attending high school, participating in on-the-job training programs and training programs which are not institutions of higher education.

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

(d) Student eligibility requirements: In order to be eligible to participate in the Food Stamp Program, any student (as defined in (a) above) must meet at least one of the following criteria:

1. (No change.)

2. Participate in a federally financed work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965 as amended) during the regular school year, **or a state financed work study program. To be considered as participating in a work study program, the student must receive earnings or tuition credit for work performed. A student who anticipates starting a work study job in the near future is not to be considered participating in a work study program. A student who has stopped working because the work study program funding has been exhausted is no longer considered a work study program participant, even though the institution of higher education may be satisfied that the student has fulfilled the terms of the work study agreement;**

3. (No change.)

4. Be responsible for the care of a dependent household member between the ages of six and 12 for whom adequate child care is not available **to enable the student to either attend class and satisfy the 20 hour work requirement at (d)1 above, or to participate in a state or Federally-financed work study program during the regular school year;**

i. (No change.)

ii. Only one person per dependent may qualify under this provision;

5. Be receiving benefits from the Aid to Families with Dependent Children (AFDC) program[.];

6. Be assigned to or placed in an institution of higher [learning] **education** through a program under the Job Training Partnership Act (JTPA)[.];

7. Participate in the JOBS program under Title IV of the Social Security Act;

8. Participate in a component of the Food Stamp Employment and Training Program;

9. Participate in a program under Section 236 of the Trade Act of 1974;

10. Participate in a program for the purpose of employment and training operated by a state or local government; or

11. Be a full-time student who is a single parent with the responsibility for a dependent child under the age of 12, regardless of the availability of child care.

(e) (No change.)

10:87-4.1 Applicability

(a) (No change.)

(b) Households that are categorically eligible as defined at N.J.A.C. 10:87-2.36 [et seq.] **and 2.39** do not have to meet the resource limits or definitions of this subchapter. **Categorically eligible households cited at N.J.A.C. 10:87-2.39 are subject to the transfer of resource provisions at N.J.A.C. 10:87-4.14.**

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1.-12. (No change.)

13. Inaccessible resources: Resources having a cash value which is not accessible to the household, such as, but not limited to, irrevocable trust funds (see (a)14 below for treatment of irrevocable trusts), security deposits on rental property or utilities, property in probate and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold.

i.-ii. (No change.)

iii. If the sale or other disposition of a resource is unlikely to produce any significant amount of funds for the support of the household, the resource shall be considered inaccessible. The CWA is not required to verify that a resource is inaccessible unless the information provided by the household is questionable. This resource exclusion does not apply to vehicles owned by the household.

14.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of resources excluded by Federal statute:

i.-vi. (No change.)

vii. Energy assistance payments: Payments or allowances made under any Federal, State, or local law for the purpose of energy assistance. In order to qualify for this exclusion, the payments or allowances must be clearly identified as energy assistance by the legislative body authorizing the program or the funds. The State programs of Lifeline, **the energy disregard portion of AFDC payments,** and Home Energy Assistance qualify for this exclusion;

viii.-xi. (No change.)

xii. Earned income tax credits received before January 1, 1980, as a result of the Revenue Act of 1978 (Public Law 95-600). **Earned income tax credits are always excluded in the month of receipt and the month following the month of receipt**; [and]

xiii. Payments received under the Civil Liberties Act of 1988 (P.L. 100-383)[.];

xiv. Resources of a household member receiving AFDC and/or SSI benefits;

xv. Resources of a household member which are placed in a Plan for Achieving Self-Support (PASS) account; and

xvi. Payment received under the Radiation Exposure Compensation Act (P.L. 100-426).

18.-19. (No change.)

10:87-5.1 Applicability

(a) (No change.)

(b) Households that are categorically eligible as defined in N.J.A.C. 10:87-2.36 **and 2.39** do not have to meet either the gross or net income eligibility standards.

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1.-2. (No change.)

3. Utility allowance payments, rebates, and reimbursements [which may be made by a public housing authority directly] to the individual, the utility or the landlord are excluded from countable income.

4.-14. (No change.)

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i.-xii. (No change.)

xiii. Any educational assistance funded in whole or in part under Title IV of the Higher Education Act Amendments of 1986 **(including education or dependent care benefits made under the Carl D. Perkins Vocational Act)** or funded by the Bureau of Indian Affairs (BIA) Higher Education Grant Program to the extent it is used for tuition, mandatory school fee, and other specified costs of education (see N.J.A.C. 10:87-5.11).

xiv. (No change.)

xv. Amounts deemed necessary for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act.

xvi. Transitional child care payments made under the Family Support Act of 1988 (JOBS).

xvii. Payments made under the Radiation Exposure Compensation Act (P.L. 100-426).

xviii. The child care payments which are deducted from earned income when calculating the household's AFDC grant. This disregard shall not be greater than the remaining earned income after the application of the work expense and "30⅓" disregard (see N.J.A.C. 10:82-2.8(a)2 and 3).

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-3. (No change.)

4. Dependent care deduction: Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job-search criteria (or an equivalent effort by those not subject to job-search), or to attend training or pursue education which is preparatory to employment, shall be deducted. The amount of this deduction shall be the actual cost of such care, but shall not exceed $160.00 per each dependent for whom the household pays dependent care.

i. Child care payments which the CWA issues directly to the household's child care provider shall not qualify the household for the dependent care deduction.

ii. Households which pay child care expenses are entitled to the dependent care deduction, even when child care is disregarded from the AFDC grant when determining the countable AFDC grant for food stamp purposes (see N.J.A.C. 10:87-5.9(a)15xviii).

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1(b) unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i.-iii. (No change.)

iv. Utility allowances: Households which incur certain utility costs separate and apart from their rent or mortgage payments are entitled to claim the appropriate utility allowance (see N.J.A.C. 10:87-12.1(d) or (e)) in accordance with the following provisions:

(1) Households that pay directly for their primary source of heat separate and apart from rent or mortgage payments may claim the heating utility allowance (HUA). The CWA shall verify that the household is responsible for primary heating costs.

(A)-(D) (No change.)

(E) Households that receive a Home Energy Assistance payment are **always** eligible for the HUA. **Eligibility for the HUA based on receipt of HEA shall coincide with the 12-month October 1-September 30 HEA eligibility period. The household shall retain HUA eligibility provided that it either received, or anticipates receiving, HEA benefits during the 12-month period.**

(2)-(3) (No change.)

[(4) Recipient of energy payments under the HEA program.

(A) Once a household has made an election between the utility allowance and actual utility expenses, the CWA shall permit the household to switch between actual utility costs and the utility allowance at the time of recertification and one additional time during each 12 month period.

(B) Change in household circumstances: If a household's circumstances change such that their responsibility for utilities changes (such as a change in residence) the household may switch between actual costs and the standard allowance at that time.]

(4) Once a household has made an election between the utility allowance and actual utility expenses, the CWA shall permit the household to switch between actual utility costs and the utility allowance at the time of recertification and one additional time during each 12 month period. If a household's circumstances change such that their responsibility for utilities changes (such as a change in residence), the household may switch between actual costs and the standard allowance at that time.

(5)-(7) (No change.)

(8) A household which has excluded energy assistance (for example, the AFDC or GA energy disregard, Lifeline or TLAP benefits, or utility allowances rebates, or reimbursements [provided by a public housing authority]) is entitled to the appropriate utility allowance only if during one month of the certification period the household will incur utility expenses in excess of the excluded energy assistance. **HEA benefits shall not be considered when making the comparison between energy assistance and utility expenses. Lifeline and TLAP assistance shall be prorated over a 12-month period if it is provided as a one-time annual payment.**

v. A household comprised entirely of homeless individuals, as defined at N.J.A.C. 10:87-2.4(b) may be entitled to the Homeless Shelter Allowance (HSA) at N.J.A.C. 10:87-12.1(f).

(1) To qualify for the HSA, the household must anticipate that it will incur an out-of-pocket housing expense each month. A household which receives some type of temporary rental assistance may qualify for the HSA, provided that it incurs out-of-pocket housing expense during the month. A household which elects to utilize the HSA may not claim any other shelter expense for the purpose of determining total household shelter expenses. A household claiming the HSA is not entitled to a food stamp utility allowance; a household receiving HEA benefits is entitled to the HUA.

(2) A household which claims actual housing expenses because those costs exceed the HSA may claim a food stamp utility allowance, if otherwise entitled. In that case, the CWA shall verify the household's housing expenses, if questionable, but shall not postpone certification if the household is unable to provide proof that its shelter expenses exceed the HSA. The CWA shall determine whether the expenses claimed are reasonable when compared to the shelter expenses of other homeless households in the area. The CWA shall then either accept or reject the household's statement.

10:87-6.9 Income determination

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

(c) Anticipated income: Income received during the most recent 30-day period shall be used as an indicator of anticipated income. However, the CWA shall not use past income as an indicator of income anticipated for the certification if changes in income have occurred or can be anticipated.

1.-3. (No change.)

4. For the purpose of determining countable energy assistance payments, the CWA shall consider similar assistance received by the household in the previous certification period, and project those monthly amounts over the next certification period. If the CWA cannot be reasonably certain that the household will receive those moneys, then those funds shall not be counted. The CWA shall also ascertain that the household's anticipated utility expenses, during

any one month of the forthcoming certification period, will exceed the amount of excluded energy assistance.

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

(g) Averaging scholarships, educational grants and loans: Households receiving scholarships, deferred education loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it was provided. **The CWA shall apply countable grants, loans, and scholarships beginning with the first month in which the student expects to receive those funds. In the event that the student cannot anticipate, with reasonable certainty, when he or she will receive the student income, then receipt of that income shall be treated and processed as a client reportable change, as per N.J.A.C. 10:87-9.5(b) and (c).**

10:87-6.20 [(Reserved)] **Suspension of categorically eligible households**

(a) If a categorically eligible household of three or more individuals is found eligible, but for no actual benefit, in a month other than the initial month of eligibility, the CWA shall certify the household and shall suspend its participation, subject to the following conditions:

1. The CWA shall inform the household in writing of its suspended status and of its rights and responsibilities while it is in suspended status;

2. The CWA shall set the household's change reporting requirements and the manner in which those changes will be reported and processed;

3. The CWA shall specify which changes shall entitle the household to have its suspended status converted to active status, and which changes shall require the household to reapply for participation;

4. The household shall retain its right to submit a new application while it is suspended;

5. The CWA shall convert a household from suspended to active status, without requiring an additional certification interview, and issue its initial allotment within 10 days of the date the household reports the change;

6. The CWA shall prorate the household's benefits for the first month of issuance after suspension period, in accordance with N.J.A.C. 10:87-6.2; and

7. The CWA may delay the work registration of the household's members until the household is determined to be entitled to benefits.

10:87-10.3 Employment and training program performance standards

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

(e) Counting the "base of eligibles": The base of persons eligible to participate in an E&T program (the denominator) consists of all non-exempt work registrants in the month of October plus newly work-registered food stamp recipients who have not been exempted by the State Plan from participation in an E&T program. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. The State (DEA) need not count any individual in the base of eligibles (mandatory work registrants and volunteers) more than once in a fiscal year. **Individuals who are exempt from the work registration requirement shall not be included in the base of eligibles.**

(f)-(i) (No change.)

10:87-10.6 Registration procedure

(a)-(g) (No change.)

(h) Determination of work registration in case of FSETP/CWA disagreement: In the event that FSETP disagrees with the CWA determination that the individual is required to register for work, FSETP may request a reconsideration of the individual's nonexempt status. The CWA must respond to the reconsideration request within 30 days and FSETP must accept the response as final. [If, however, the CWA fails to respond within 30 days, FSETP shall deregister the household member.]

10:87-10.18 Job search training component

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

(c) [Following] **During** the job search training **component**, participants will be required to undertake a supervised job search similar to independent job search, or participate in a supervised job club.

1.-2. (No change.)

10:87-11.26 Collecting inadvertent household errors and administrative error claims

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

(c) The following procedures are to be followed when a household fails to respond to a demand letter:

1. When a household fails to respond to a written demand letter for repayment of an inadvertent household error claim within [30] **10** days, the CWA shall reduce the household's monthly coupon allotment (see N.J.A.C. 10:87-11.31(d)).

2. (No change.)

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

10:87-11.29 Collecting intentional program violation claims

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

(c) Household fails to respond to first demand letter: If the household fails to respond to the first demand letter, the following shall apply:

1. If the household is currently participating in the program and does not respond to the first demand letter [within 30 days of the date it was mailed,] **immediately upon receipt of the letter,** the CWA shall reduce the household's food stamp allotment.

2. (No change.)

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

10:87-12.1 Income deductions

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

(f) The Homeless Shelter Allowance shall be that amount prescribed by the United States Department of Agriculture, as defined at 7 CFR 273.9(d)(5)(i).

INSURANCE

(a)

DIVISION OF FINANCIAL SOLVENCY

Relief from Insurer Obligations under the Fair Automobile Insurance Reform Act of 1990

Proposed New Rules: N.J.A.C. 11:2-35.5 and 35.6

Proposed Amendments: N.J.A.C. 11:2-35.1, 35.2, 35.3 and 35.4

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:33B-1 et seq.

Proposal Number: PRN 1992-407.

Submit comments by October 21, 1992 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

The Fair Automobile Insurance Reform Act of 1990 (N.J.S.A. 17:33B-1 et seq.) (FAIR Act) was enacted to address the myriad of problems associated with the private passenger automobile insurance market in this State. In order to accomplish this goal, the FAIR Act imposes certain obligations on insurers licensed to transact property and casualty insurance in this State (property/casualty insurers) and additional obligations on insurers transacting private passenger automobile insurance in this State (automobile insurers). For example, the FAIR Act requires automobile insurers to provide automobile insurance coverage for eligible persons (N.J.S.A. 17:33B-15) and to issue or renew private passenger automobile insurance policies if the residual market is not accepting applications (N.J.S.A. 17:33B-25). It also requires auto-

mobile insurers to pay surtaxes, and property/casualty insurers to pay assessments to help retire the debt of the New Jersey Automobile Full Insurance Underwriting Association (Association) (N.J.S.A. 17:30A-8a(9) and 17:33B-49). The FAIR Act, however, also authorizes the Commissioner of Insurance (Commissioner) to provide relief through the suspension of obligations in appropriate circumstances (see N.J.S.A. 17:33B-19, 17:33B-20, 17:33B-23, 17:33B-24, 17:33B-27, 17:33B-28, 17:33B-52, 17:33B-53, 17:33B-55 and 17:33B-56). In the case of assessments or surtaxes, the Commissioner is authorized to exempt, abate or defer such obligations. These statutes generally provide that the Commissioner shall or may approve the suspension of an insurer's obligation to fulfill various FAIR Act obligations if he or she determines that the insurer is in an unsafe or unsound financial condition or that the fulfillment of the obligation will result in the financial condition of the insurer being or becoming unsafe or unsound, as that term is defined in the relevant statutes.

The Department of Insurance (Department) proposed and adopted N.J.A.C. 11:2-35, effective October 21, 1991, which sets forth information and procedural requirements for insurers that seek relief from the obligations imposed by the FAIR Act. These rules generally address the data to be submitted by an insurer requesting relief. The rules do not specify criteria for determining the type of relief to be granted if the Commissioner determines that relief is warranted (that is, exemption, abatement, deferral or suspension). As a result of recent litigation, the Appellate Division of the Superior Court of New Jersey, while upholding the relevant statutes granting the Commissioner discretion to exempt, abate or defer insurer obligations, has directed the Department to adopt administrative rules setting forth the standards to be utilized by the Commissioner in determining which statutory remedy will be utilized when relief is granted. See *In the Matter of Farmers' Mutual Fire Assurance Association of New Jersey,* Docket No. A3648-90T2 (decided May 22, 1992) (hereinafter cited as *"Farmers' Mutual"*).

The Department therefore proposes N.J.A.C. 11:2-35.5 to provide the factors and bases upon which the Commissioner shall determine whether relief shall take the form of an exemption, abatement, deferral or suspension. Proposed N.J.A.C. 11:2-35.5 provides that the Commissioner, upon determining that relief is warranted, shall suspend or excuse the insurer from its obligations when such relief is the relief specified by statute. (See for example, N.J.S.A. 17:33B-19 and 20 (suspension of insurer's obligation to provide coverage to eligible persons)). Where the Commissioner is authorized to exempt, abate or defer an insurer's obligation to pay assessments or surtaxes, the specific relief provided shall be reasonably related to the insurer's condition at the time application for relief is made. The Commissioner shall defer an insurer's obligation to pay an assessment or surtax for a particular year pending a quarterly review to determine whether payment of the amount deferred will result in the insurer being or becoming in an unsafe and unsound financial condition. The amount deferred shall be deemed exempt two years after the date the obligation was originally due unless the Commissioner determines prior to that time that payment of the amount deferred would not result in the insurer being or becoming in an unsafe and unsound financial condition. If the Commissioner determines that a portion of the obligation can be paid, the insurer shall be required to pay that portion and the remainder shall be exempt at the expiration of the two year period.

Proposed N.J.A.C. 11:2-35.5 further provides that the Commissioner shall exempt in the first instance an insurer's obligation to pay assessments or surtaxes only if the insurer is in liquidation pursuant to N.J.S.A. 17:30C-8, or similar statute of the insurer's state of domicile, at the time the exemption request is made; or if the insurer is in rehabilitation or conservation pursuant to N.J.S.A. 17:30C-6 and 17:30C-11, or similar statutes of the insurer's state of domicile. The Commissioner shall also grant an exemption if payment of the obligation would result in the insurer being in a hazardous financial condition as determined in accordance with N.J.A.C. 11:2-27.

Finally, proposed N.J.A.C. 11:2-35.5 provides that the Commissioner shall abate payment of a portion of an assessment or surtax to the extent that payment of such amount would result in the insurer being or becoming in an unsafe or unsound financial condition. The amount by which the assessment or surtax was not abated shall be deferred and shall then be deemed exempt in the same manner described above regarding deferred obligations.

The Department believes that these standards are reasonable and appropriate in that while they provide that an insurer should not be granted a general exemption from payment of assessments and surtaxes, except in those instances where the insurer is in an unsafe or unsound financial condition *before* payment of the assessment or surtax, they recognize that an insurer whose financial condition has not improved over three years sufficiently that payment would not result in the insurer being or becoming unsafe or unsound, is unlikely to improve in the future (and the more so if these obligations accumulated indefinitely), and should be granted an exemption for that year's obligations. This period is also consistent with the examination cycle for property/casualty insurers conducted pursuant to N.J.S.A. 17:23-4 (the Department currently conducts an examination of property/casualty insurers authorized to transact business in this State at least once every three years). Further, the proposed procedure equitably balances the goals expressed by the Legislature of requiring that all insurers pay applicable surtaxes and assessments while ensuring that payment of such obligations will not result in an insurer's financial condition being or becoming unsafe or unsound. These procedures shall apply to all relief granted by the Commissioner from the time FAIR Act obligations were initially imposed.

The Appellate Division in *Farmers' Mutual* has also directed the Commissioner to provide an opportunity for a hearing to insurers that request, but are denied, relief from FAIR Act obligations. The rules do not currently provide an opportunity for a hearing as the Department interpreted the relevant statutes to specifically require a hearing only where the Commissioner on his or her own initiative exempts an insurer from FAIR Act obligations. The Court in *Farmers' Mutual* has interpreted the relevant statutes to require that an insurer also be provided an opportunity for a hearing when the insurer initiates the request for relief.

The Department therefore proposes N.J.A.C. 11:2-35.6 to provide that an insurer may, after the Commissioner has rendered a decision on the insurer's request for relief, request a hearing on such determination. As the Appellate Division noted, "we have no occasion to determine whether a full trial-type proceeding is necessary since an evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts." *Farmers' Mutual, supra* (Slip Opinion at p. 14). The Appellate Division remanded this matter back to the Commissioner for a determination. Accordingly, the proposed new rule provides that an insurer that is denied relief may request a hearing and set forth specific information that must be submitted to enable the Commissioner to determine whether there are material issues of fact in dispute. If material facts are in dispute, the Commissioner shall transmit the matter to the Office of Administrative Law (OAL) as a contested case under N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1.1.

In addition, upon further review and evaluation of the current filing requirements for requests for relief, the Department has determined that all of the information required is not necessary for the Department's review of all requests in all cases. The Department therefore proposes to amend N.J.A.C. 11:2-35.4 to reduce the amount of data generally required. The Department, however, will retain the authority to request specified additional information from an applicant deemed relevant to the consideration of the request for relief.

Finally, the Department proposes amendments to make other non-substantive clarifying changes (for example, N.J.A.C. 11:2-35.2 (definition of "unsafe or unsound financial condition") to incorporate reference to N.J.S.A. 17:33B-52 and 17:33B-55 as a matter of form; N.J.A.C. 11:2-35.3(a) to incorporate reference to N.J.S.A. 17:33B-52 and delete reference to N.J.S.A. 17:33B-53 (which concerns discretionary relief); and N.J.A.C. 11:2-35.3(c) to clarify that applicants should specify the type of relief sought (discretionary or immediate)).

Social Impact

The proposed new rules implement the decision of the Court in *Farmers' Mutual* by providing the standards and bases by which the Commissioner will determine appropriate relief when the Commissioner determines that relief from FAIR Act obligations is warranted pursuant to the relevant statutes. The rules also implement the decision of the Court in *Farmers' Mutual* by providing insurers the opportunity for a hearing when a request for relief is denied. This will benefit insurers requesting relief by ensuring that all applicants are fully apprised of the basis under which a specific remedy will be granted, and are apprised of the procedures by which an insurer may request a hearing if its request is initially denied.

The reduction in the amount of data required and the other clarifying changes should streamline the application process, thereby benefitting both insurers and the Department.

Economic Impact

The proposed new rules should not result in additional adverse economic impact on insurers in that they require that no new information be submitted, except for minimal information submitted by insurers requesting a hearing. The rules merely provide the standards by which the Commissioner will determine the appropriate remedy when relief is to be granted and set forth procedures by which an insurer may request a hearing if its request is initially denied. This promulgation of Department policy will aid insurers' administrative, financial and legal staff in initiating and executing an application for exemption, abatement, deferral, suspension of, or excuse from applicable obligations, as the case may be, under the FAIR Act.

Further, as noted in the Social Impact statement above, the reduction in the amount of data generally required and the other clarifying changes should streamline the application process. This, in turn, should benefit insurers requesting relief as well as the Department.

Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the proposed new rules apply to small businesses, they will be insurers seeking relief from FAIR Act obligations.

As noted previously, the proposed new rules merely specify Department policy regarding the basis by which the Commissioner will determine the type of remedy to be granted where relief is appropriate; provide insurers the opportunity to request a hearing where relief was initially denied; reduce the amount of data generally required to accompany a request; and set forth other non-substantive clarifying changes. The Department therefore does not believe that any additional adverse economic impact should be imposed on any insurers requesting relief from obligations under the FAIR Act, let alone small businesses. In order to further uniformity and consistency in the application of these rules, no differentiation is provided based on insurer size.

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

11:2-35.1 Purpose and scope

(a) The purpose of this subchapter is to establish the informational and procedural requirements for insurer requests for exemption, abatement, deferral [or], suspension of **or excuse from** an insurer's obligation, as the case may be, under the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

(b) (No change.)

11:2-35.2 Definitions

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

"Applicant" means the insurer seeking an exemption, abatement, deferral [or], suspension of or **excuse** from its obligations pursuant to the FAIR Act.

. . .

"Relief" means an exemption, abatement, deferral [or], suspension of **or excuse from** the obligations imposed pursuant to the FAIR Act.

"Unsafe or unsound financial condition" is as defined in N.J.S.A. 17:33B-19, 17:33B-20, 17:33B-23, 17:33B-24, 17:33B-27, 17:33B-28, **17:33B-52,** 17:33B-53, **17:33B-55** and 17:33B-56, as applicable. **For purposes of relief from obligations imposed pursuant to N.J.S.A. 17:30E-14g, 17:33B-9c, and 17:33B-11c(5), "unsafe or unsound financial condition" shall have the same meaning as in N.J.S.A. 17:33B-19 and 17:33B-20, and the same procedures therein shall be followed depending on whether the relief sought is immediate or discretionary.**

11:2-35.3 Application procedures and filing format

(a) Any insurer seeking immediate relief from any FAIR Act obligation pursuant to N.J.S.A. **17:30E-14g, 17:33B-9c, 17:33B-11c(5),** 17:33B-19, 17:33B-23, 17:33B-27, [17:33B-53] **17:33B-52** or 17:33B-55 shall submit a request for such relief no more than 45 days and not less than 15 days prior to the due date for payment or fulfillment of such obligation.

(b) Any insurer seeking discretionary relief from any FAIR Act obligation pursuant to N.J.S.A. **17:30E-14g, 17:33B-9c, 17:33B-11c(5),** 17:33B-20, 17:33B-24, 17:33B-28, 17:33B-53 or 17:33B-56 shall submit a request for such relief no later than the due date of such obligation.

(c) All requests outlined in this subchapter shall be accompanied by a statement averring a need for immediate or discretionary relief from such obligation, as the case may be, including supporting documentation, as set forth in N.J.A.C. 11:2-35.4 **and shall specify the statutory basis for such relief.** A single filing may request relief from any number of FAIR Act obligations.

(d) (No change.)

(e) All insurers requesting relief pursuant to this subchapter shall submit [10] **five** copies of each request in the format set forth in (d) above.

(f) A request which is untimely, which is not submitted in the proper format, or which does not contain all of the information required by N.J.A.C. 11:2-35.4 **or this section,** may be rejected on such grounds by the Commissioner.

(g) If a request fails to contain all of the information required by N.J.A.C. 11:2-35.4 **or this section,** the Department shall notify the insurer that its request for relief is deficient and is denied for inadequate documentation. The notice shall also set forth the information required to cure the deficiency. The insurer shall submit the additional information within 30 days of receipt of the Department's notice of deficiency. Failure to submit within 30 days the information necessary to cure the deficiency may result in the insurer's request being rejected as untimely.

11:2-35.4 Informational filing requirements

(a) When requesting immediate or discretionary relief pursuant to the FAIR Act, an insurer shall provide with its request the following information in a clear, concise and complete manner.

1. (No change.)

2. Exhibits for the latest preceding calendar quarter ending at least 45 days prior to the date of the request, and, unless otherwise indicated, on a statutory accounting basis that show:

i. Balance sheet;

ii. Profit and loss statement, containing information as set forth in the statutory annual statement page 4, Underwriting and Investment Income Exhibit, Statement of Income; **and**

iii. Cash flow page;

[iv. All investment changes since the last annual statement was prepared as reported in Schedules I through VI of the NAIC quarterly statement blank;

v. Statutory annual statement Schedule F, all Parts and Sections; and

vi. Loss and loss adjustment expense reserve development schedule on a summary basis as required in the annual statement Schedule P;]

3. Exhibits by each line of business written in New Jersey that show:

i. (No change.)

ii. Profit and loss statements containing information as set forth in (a)2ii above by line of business from the period beginning January 1 in the year of filing to date of **the** filing **as reported in the NAIC quarterly statement filed immediately preceding the date of the filing**; and

iii. **A** [Detailed] **detailed** description of the method of allocation of expenses by line of business;

[4. Five-year projections beginning with the calendar year of the date of filing (including a detailed description of all underlying assumptions) assuming the relief is denied and assuming the relief is granted. The projections shall assume the same rate of assessment as in the first year for the subsequent years, and shall include:

i. Worldwide business by line of business:

(1) Profit and loss projection containing information as set forth in (a)2ii above; and

(2) Gross and net premium written projection containing information as set forth in (a)2ii above; and

ii. New Jersey business by line of business:

(1) Profit and loss projection; and

(2) Gross and net premium written projection;]

[5.]**4.** A detailed explanation, **with supporting documentation,** of the projected effect that fulfillment of the obligation would have on the immediate and long term financial condition of the company unless relief is granted as requested;

[6.]**5.** The most recent financial examination report conducted by the state of domicile;

[7. The most recent market conduct report by any jurisdiction other than the State of New Jersey;

8. If a publicly-held company, a copy of the annual report and all 10K and 10Q and other SEC filings for the past three years; if a nonpublicly-held company, a copy of the annual report and all reports of audits conducted by an independent certified public accountant for the past three years;]

Recodify existing 9.-12. as **6.-9.** (No change in text.)

[13.]**10.** A report signed by the certifying actuary referred to in (a)[12] **9** above, which includes in summary form, if necessary, all data utilized by him or her, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

i.-iii. (No change.)

Recodify existing 14. and 15. as **11. and 12.** (No change in text.)

(b) If the applicant is a member of a pooling operation among affiliates, all information requested in items (a)2[,] **and** 3 [and 4] above shall be provided on a pre-pooled and post-pooled basis. [Which] **The applicant shall indicate the names of** other members in the pool **that** are also filing for exemption, abatement [or], deferral **or suspension of, or excuse from an obligation, as the case may be, under the FAIR Act** [shall be indicated].

(c) (No change.)

11:2-35.5 Relief

(a) When the Commissioner determines that fulfillment of a FAIR Act obligation or obligations set forth at N.J.A.C. 11:2-35.3(a) or (b) will result in the insurer being or becoming in an unsafe or unsound financial condition, or that an insurer is currently in an unsafe or unsound financial condition, the Commissioner shall order relief from the obligation(s) as set forth in (b) and (c) below.

(b) Except as provided at (c) below, the Commissioner shall order that insurer's duty to fulfill the applicable FAIR Act obligation be suspended or excused pending quarterly review of the insurer's financial condition.

(c) Where the Commissioner has granted an insurer relief from payment of assessments or surtaxes pursuant to N.J.S.A. 17:30A-8a(9) or 17:33B-49, as applicable, the Commissioner shall order that the insurer's obligation be exempted, abated or deferred, as follows:

1. Except as provided at (c)2 below, the Commissioner shall in all cases order that the insurer's obligation be deferred pending a quarterly review of the insurer's financial condition. The deferral shall be deemed to be an exemption two years from the date the obligation was originally due, unless the Commissioner, prior to that date, determines that the insurer's financial condition has improved such that payment of the obligation, or a portion thereof, will not result in the insurer's financial condition being or becoming unsafe or unsound. If an insurer is required to pay a portion of its obligation prior to the expiration of the two-year period, the remainder shall be deferred, and shall be deemed exempt at the expiration of the two-year period in the same manner as provided in this paragraph for deferred obligations.

2. The Commissioner shall order that the insurer's obligation be exempted, and thus no obligation thereafter shall be deemed to exist for the particular obligation for which the exemption was granted, if the insurer is in liquidation pursuant to N.J.S.A. 17:30C-8, or similar statute of the insurer's state of domicile, at the time the request is made. The Commissioner shall also grant an exemption if the insurer is in rehabilitation or conservation pursuant to N.J.S.A. 17:30C-6 or 17:30C-11, or similar statute of the insurer's state of domicile. The Commissioner shall also grant an exemption if payment of the obligation would result in the insurer being in a hazardous financial condition as determined in accordance with N.J.A.C. 11:2-27. An exemption granted under this paragraph to an insurer shall be for the entire obligation and no obligation thereafter shall exist for the particular obligation for which the exemption was granted; provided that the determination whether to grant an exemption from a future obligation shall be considered at the time such obligation becomes due based on the insurer's financial condition at that time.

3. The Commissioner shall order that the insurer's obligation to pay the full amount of the assessment or surtax be abated if he or she determines that payment of some amount will not result in the insurer's financial condition being or becoming unsafe or unsound. The amount which is not abated shall be deferred in the same manner provided by (c)1 above.

11:2-35.6 Hearings

(a) If the Commissioner denies an insurer's request for relief made pursuant to this subchapter, or if the insurer objects to the form of relief granted, the insurer may request a hearing on the Commissioner's determination within seven days from the date of such receipt of determination as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, and daytime telephone number of a contact person familiar with the matter;

ii. A copy of the order involved;

iii. A statement requesting a hearing; and

iv. A concise statement describing the basis for which the insurer believes that the Commissioner's findings of fact are erroneous.

2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the insurer and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. If the Commissioner finds that there are no good-faith disputed issues of material facts and the matter may be decided on the documents filed, the Commissioner shall notify the applicant in writing as to the final disposition of the matter.

ii. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Unsatisfied Claim and Judgment Fund's Reimbursement of Excess Medical Expense Benefits Paid by Insurers

Proposed New Rule: N.J.A.C. 11:3-28.8

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:23-1 et seq. and 39:6-61 et seq.

Proposal Number: PRN 1992-409.

Submit comments by October 21, 1992 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

N.J.S.A. 39:6-73.1 provides that in the event that medical expense benefits paid by an insurer in accordance with N.J.S.A. 39:6A-4a are in excess of $75,000 on account of personal injury to any one person in any one accident, the Unsatisfied Claim and Judgment Fund (UCJF) shall assume such excess and reimburse the insurer therefor. Effective

March 12, 1990, N.J.S.A. 39:6A-4 was amended to cap the amount of medical expense benefits for personal injury protection required to be paid by an insurer on account of personal injury to any one person in any one accident at $250,000. At this same time, N.J.S.A. 39:6-73.1 was amended to similarly cap the maximum reimbursement from the UCJF for medical expense benefits in excess of $75,000 at $250,000.

Pursuant to N.J.S.A. 17:23-1, every insurer authorized to transact business in this State is required to file an annual report by March 1 of each year showing its financial condition as of December 31 of the immediately preceding year and its business for that year (Annual Statement). Annual Statements are filed in the form adopted by the National Association of Insurance Commissioners (NAIC) and must contain the information that the Commissioner prescribes. As a part of the NAIC Annual Statement, insurers are required to list the amount of direct losses paid, direct losses incurred, direct losses unpaid, and direct allocated loss adjustment expenses paid, incurred, and unpaid for automobile personal injury protection in this State. Currently, there are no specific instructions about how insurers shall report losses for personal injury protection medical expense benefits paid in excess of $75,000. This has resulted in inconsistencies regarding the manner in which losses from medical expense benefits payments in excess of $75,000 have been reported in the Annual Statement both among insurers and for individual insurers among different years. These inconsistencies may result in a distortion of an insurer's direct losses for medical expense benefit payments.

On July 14, 1992, the Commissioner of Insurance (Commissioner) issued Order No. A92-228, which specified guidelines for the reporting of losses for medical expense benefits payments for the previous eight-year period (that is, 1984-1991). This Order was intended to ensure that an insurer's direct losses from payment of medical expense benefits are accurately reflected for the immediate past; to enable the Department of Insurance (Department) to determine any pattern of change of an insurer's direct losses for that period; and to enable the Department to determine the extent of any apparent distortions in the insurer's direct losses from that previously reported. The Department believes it appropriate to codify the requirements of Order No. A92-228 to set forth the guidelines for the reporting of losses from payment of medical expense benefits in future Annual Statements.

Accordingly, proposed N.J.A.C. 11:3-28.8 provides that for purposes of completing page 14 of the Annual Statement—Exhibit of Premiums and Losses, an insurer shall report the total amount of losses for personal injury protection medical expense benefits payments, including those in excess of $75,000, but shall provide a footnote that indicates the amount of losses reported excluding losses from payments for medical expense benefits in excess of $75,000. The proposed new rule further provides that for purposes of completing Schedule F of the Annual Statement, insurers shall consider the assumption and reimbursement by the UCJF of medical expense benefits payments in excess of $75,000 as a reinsurance transaction.

Social Impact

The Department believes that the proposed new rule will benefit insurers by ensuring that all insurers are fully apprised of the manner in which losses for medical expense benefit payments are to be reported. The proposed new rule will further benefit the Department by ensuring consistency and uniformity in the manner in which these losses are reported, and by ensuring that an insurer's direct losses from payments of medical expense benefits are accurately reflected for the preceding calendar year. This, in turn, will enable the Department to evaluate the insurer's actual financial condition.

Economic Impact

The Department believes that the proposed new rule will ensure consistency and uniformity in the reporting of losses for medical expense benefit payments thereby enabling the Department to ensure that losses from such payments are accurately reflected. Insurers should experience no additional costs from this rule in that insurers are currently required to file NAIC Annual Statements pursuant to N.J.S.A. 17:23-1. This proposed rule merely sets forth the manner in which certain data currently reported is to be set forth in the Annual Statement to be submitted.

Regulatory Flexibility Analysis

The proposed new rule may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules apply to small businesses, they will be insurers authorized to transact automobile insurance in this State.

Insurers will be required to report losses for medical expense benefits payments in the manner set forth in the proposed rule. The Department believes that this proposed rule will impose no undue financial burden on any insurers, including small businesses. As noted previously, all insurers are currently required to file an Annual Statement pursuant to N.J.S.A. 17:23-1. The proposed new rule merely sets forth the manner in which specified data regarding direct losses from payment of medical expense benefits is to be reported. In the interest of consistency and uniformity in the reporting of such data, no differentiation is provided based on insurer's size.

Full text of the proposed new rule follows:

11:3-28.8 Reporting of losses for personal injury protection medical expense benefits payments in excess of $75,000

(a) For purposes of completing page 14, Exhibit of Premiums and Losses, of the annual statement filed pursuant to N.J.S.A. 17:23-1, the insurer shall include the total amount of losses for personal injury protection medical expense benefits payments, including those in excess of $75,000. Insurers shall also provide a footnote on page 14 that indicates the amount of losses reported, excluding losses from payments of medical expense benefits in excess of $75,000.

(b) For purposes of completing Schedule F of the annual statement, insurers shall consider the assumption and reimbursement by the Fund of medical expense benefit payments in excess of $75,000 as a reinsurance transaction.

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer Licensing Professional Qualifications

Proposed Amendments: N.J.A.C. 11:17-1.2 and 2.3 through 2.15

Proposed New Rule: N.J.A.C. 11:17-2.10

Proposed Repeals: N.J.A.C. 11:17-5.1 through 5.6

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e) and 17:22A-1 et seq.

Proposal Number: PRN 1992-403.

Submit comments by October 21, 1992 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal amends certain provisions of the rules concerning insurance producer licensure, limited insurance representative registration and related professional qualifications, including prelicensing and continuing education. The proposed amendatory action is in response to the Department's experience in implementing and enforcing the various provisions of these rules.

The specific changes proposed and the reasons therefore follow:

1. N.J.A.C. 11:17-1.2: A new definition is proposed for "credit involuntary unemployment insurance" in order to clarify the precise meaning of the term as utilized in proposed amendments to N.J.A.C. 11:17-2.11. Also, a new definition is proposed for "first time applicant." This new definition will assist individuals and organizations in determining their licensing application status under N.J.A.C. 11:17-2.3(a) and 2.12(c). Additionally, a new definition is promulgated for "late renewal" to provide added clarity and consistency with N.J.A.C. 11:17-2.5(d).

The current definition of "credit property/casualty insurance" is amended to include insurance against loss from bad debts. This amendment clarifies the definition of credit property/casualty insurance consistent with the Department's original intent to reflect all types of credit property/casualty insurance sold in New Jersey.

2. N.J.A.C. 11:17-2.3: A new subsection to the rule is proposed as N.J.A.C. 11:17-2.3(b) (and the current subsection N.J.A.C. 11:17-2.3(b) is recodified as N.J.A.C. 11:17-2.3(c)) which sets forth procedures and requirements for late renewal of an insurance producer license. Under this proposed amendment, applicants may apply for late renewal of the license within one year of the date the license expired. Applicants must attach proof of completion of 48 continuing education credits, an affidavit stating the business transacted during the unlicensed period (including the number of policies written) and all information required in N.J.A.C. 11:17-2.3(a) except the criminal history, the school certificate and the passing notice. The Department believes that a regulatory format for late renewals will assist the regulated public by setting forth the precise requirements in the rule consistent with the Department's current practice. A new subsection is proposed as N.J.A.C. 11:17-2.3(d) to set forth the consequences of paying for a license with a void check; any license issued is voided for failure to meet the requirements for issuance.

3. N.J.A.C. 11:17-2.4: A new subsection, (b), of this rule is proposed to clarify the notice requirements for a nonresident licensee seeking a temporary certificate. This change will better accommodate the needs of nonresidents which seek to establish residency in New Jersey and provide precise guidelines. Such nonresidents will have 20 days to notify the Department of their change in address and intent to qualify as a resident insurance producer. For 90 days after such notice, the licensee may continue to act as an insurance producer while satisfying the requirements for a resident producer license. This change also provides for an extension of that time period for good cause shown.

4. N.J.A.C. 11:17-2.5: This rule is amended to provide that the renewal application be signed and dated when a licensee does not want to renew. A new subsection is proposed as N.J.A.C. 11.17-2.5(d) which provides that a licensee does not need to take prelicensing education and the exam if late renewed within one year of the license expiration date. The late renewal application must be accompanied by an affidavit certifying whether any insurance business was transacted while unlicensed and if so, the number of policies written. This provision will codify current Department policy for late renewals and allow the Department to determine whether any unlicensed activity occurred during the license expiration period and the late renewal application.

5. N.J.A.C. 11:17-2.6: This rule is amended to clarify that additional authorities may be obtained by individuals or organizations by submitting to the Department the current original license marked to request the additional authority. The word "original" has been added to better designate which license must be submitted in order to clarify that photocopies of licenses are not acceptable.

6. N.J.A.C. 11:17-2.7: This rule is amended to require that proof of notification be maintained for five years when notifying the Department of any change of address. The rule is further amended to clarify that the address which appears on the license (not business mailing and location address) shall be used when notifying the Department of such change. This amendment reflects current Department policy.

7. N.J.A.C. 11:17-2.9: This rule is proposed for amendment to provide that an insurance company not accept any business produced nor pay any commissions prior to an individual's licensure. This section is further proposed for amendment to require that insurance companies collect all company brochures, solicitation or other related materials from terminated producers and provides that a failure to collect solicitation materials extends the agency relationship. The Department believes that it is proper to place the burden of responsibility upon the insurance companies to remove all indication of authority from terminated producers. The proposed amendment of N.J.A.C 11:17-2.9(b) provides that licensed producers "shall" (instead of "may") enter into employment contracts with their employing producer and that the employment contract "shall" (instead of "may") specify that it does not include all license authorities of the parties, and also amends that provision to clarify that it applies "if such is the case." This amendment is consistent with the original intent of the rules; the word "may" was used previously to avoid the interpretation that producers must either employ others or be employed.

The rule is further amended to clarify that the employer "shall be responsible for the activities and oversight" (not "oversee") of insurance related employee conduct. The requirement that the employer notify the Department upon termination of an employee contract has been deleted. The Department believes that such notification is no longer necessary.

8. N.J.A.C. 11:17-2.10: A new rule is proposed for continuing the business of deceased and disabled producers. The new rule incorporates the provisions for deceased and disabled producers previously found at N.J.A.C. 11:17-2.9(c). By creating a new rule, the Department believes that survivors, administrators or executors of a deceased producer, or legal guardians of mentally or physically disabled producers, will be able to better find and retrieve this information within this chapter. This change is simply a recodification.

9. N.J.A.C. 11:17-2.10: This rule is proposed for recodification as N.J.A.C. 11:17-2.11 and is proposed to be amended to expressly require organizations registered as limited insurance representatives to have a corresponding individual of that organization so licensed or registered. All individuals acting as a limited insurance representative for an organization must be so licensed or so registered. The Department believes that this clarification is consistent with N.J.S.A. 17:22A-16. The Department proposes to amend the list of the kinds of insurance that may be marketed through limited insurance representatives at N.J.A.C. 11:17-2.10(a) to include credit involuntary unemployment insurance. This proposal is in response to a petition for rulemaking published in the January 21, 1992 issue of the New Jersey Register (24 N.J.R. 305(b)) and the notices of action on a petition for rulemaking which were published in the February 18, 1992 issue of the New Jersey Register (24 N.J.R. 659(a), 660(a)). This section is further amended to add "trustworthy" and "of good character" to the requirements an insurance company must satisfy for a proposed limited insurance representative. This amendment is consistent with the producer license qualification provisions of N.J.S.A. 17:22A-4h.

10. N.J.A.C. 11:17-2.11: This rule is proposed for recodification as N.J.A.C. 11:17-2.12. This rule is proposed to be amended to provide that failure to indicate a criminal conviction on the application for an insurance producer license is a material misrepresentation which subjects the licensee to penalties provided at N.J.S.A. 17:22A-17a and b. The Department believes that this change is consistent with N.J.S.A. 17:22A-17(a)10. This section is further proposed to be amended to require notification by licensed organizations to the Department of any additions or deletions of "licensed" or unlicensed officer, director, partner or owner of five percent or more of the licensed organization. The rule previously only applied to unlicensed officers, directors, etc. The proposed amendment also provides that a properly completed criminal history verification form and required fee must accompany notification to the Department of the addition of any unlicensed officer, director, partner or owner of five percent or more of the licensed organization. This rule is also proposed to be amended to provide that departure, termination or deletion of licensee officers, directors or partners, which leaves an insurance company with no licensed officers, directors or partners or with officers, directors or partners which do not have like authorities as the organizational producer, will make the organizational producer license inactive. These changes are consistent with the provisions of N.J.S.A. 17:22A-6, 7, and 8.

11. N.J.A.C. 11:17-2.12: This rule is proposed for recodification as N.J.A.C. 11:17-2.13. This rule on fees is proposed to be amended to require a $50.00 late renewal fee. The Department believes that the $50.00 late renewal fee is necessary and appropriate to recoup the costs it incurs for processing late renewals. This rule is further amended to provide that all fees are nonrefundable after the license effective date and codifies the Department's policy, which reflects present practice. An amendment is also proposed to delete the reference to form DD-214 in this section. The use of such form is no longer necessary or required for a disabled veterans exemption from payment of fees under this section.

12. N.J.A.C. 11:17-2.13: This rule is proposed for recodification as N.J.A.C. 11:17-2.14. The rule is proposed for amendment to provide that "upon" (rather than "within 30 days from") receipt of a request for a hearing on a license denial the Department will reexam the matter and any additional information submitted to determine whether the license may be issued. The Department believes that this change is in the applicant's interest and will allow a more comprehensive review of license denial appeals prior to the hearing requested.

13. N.J.A.C. 11:17-2.14: This rule is proposed for recodification as N.J.A.C. 11:17-12.15. This rule on termination and cancellation of a license, and reinstatement after termination, is proposed to be amended to provide that allowing a license to expire (as well as cancellation) will not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of penalties, ordered restitution or costs. This will codify Department practice that allowing a license to expire will not avoid disciplinary proceedings and penalties. This rule is further

proposed to be amended to provide that once a license has been revoked or suspended, nothing in the rules will authorize the continued transaction of insurance business.

14. N.J.A.C. 11:17-2.15: This rule is proposed for recodification as N.J.A.C. 11:17-2.16.

15. N.J.A.C. 11:17-5: This subchapter is amended by repealing the transition rules which are no longer necessary, specifically N.J.A.C. 11:17-5.1 to 5.6. The transition periods from the adoption of the New Jersey Insurance Producer Licensing Act N.J.S.A. 17:22A-1 et seq. have lapsed.

Social Impact

The proposed amendments and new rule will clarify the Department's current policies where the rules are currently either unclear or do not address current practice. The proposal also conforms the rules more fully to the underlying statutory language. (See, for example, N.J.A.C. 11:17-2.10 (proposed for recodification as N.J.A.C. 11:17-2.11). The proposed repeal of the transition rules (N.J.A.C. 11:17-5.1 through 5.6) will delete references to obsolete and currently irrelevant circumstances and periods of time. Accordingly, the regulated public will be more fully and accurately apprised of its rights and obligations under the law. Concomitantly, the Department will need to devote less resources to responding to inquiries concerning matters which are addressed herein. The proposed rules provide for a new definition of "first-time applicant" and "late renewal" in order to provide precise meanings to those terms as utilized in these rules. The rules provide authority for the Commissioner to extend temporary certificates for nonresident licensees and for continuing a business for deceased and disabled producers for good or just cause shown.

Economic Impact

For the most part, the proposed amendments and new rule will not impose any additional economic impact on insurance producers, limited insurance representatives or the Department. However, under the proposed new rules insurance companies are required to collect all company sales materials subsequent to termination of the licensed insurance producer. Failure to do so will extend the agency relationship. Also, a late renewal fee of $50.00 is added to the rules concerning fees payable by insurance producers or limited insurance representatives. Both of these expenses, however, will be incurred by only a few persons or organizations, and then only for violations of the law or failure to act timely.

Licensees who let their licenses expire and reapply less than one year thereafter will not be required to resatisfy the prelicensing and examination requirements, with the attendant cost savings. Licensed producers must enter into written employment contracts when employed by another producer, which should assist such producers in determining their employment rights, duties and compensation, consistent with the Department's original intent.

Regulatory Flexibility Statement

The proposed amendments and new rule will apply to "small businesses" as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses include insurance producers. The recordkeeping and compliance requirements are minimal, largely clarificatory of current procedures, and are clearly noted in the rules themselves and in the statements above.

There is no "small business" exception since most insurance producers, to whom or which the rules apply, are themselves "small businesses." However, compliance with the new rules will not require the regulated parties to incur significant (or perhaps any) costs (initial or annual) except as noted in the Economic Impact statement above. The rules will also not require these small businesses to hire the services of any professionals.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 11:17-5.1 to 5.6.

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

11:17-1.2 Definitions

(a) (No change.)

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

. . .

"Credit involuntary unemployment insurance" means casualty insurance on a debtor to provide indemnity for payments becoming due on a specific loan or credit transaction while the debtor is involuntarily unemployed.

"Credit life insurance" and "credit health insurance" mean the insurance coverages as defined in N.J.S.A. 17B:29-2.

"Credit property/casualty insurance" means **insurance against loss from bad debts and includes** property insurance coverage solely for the lender's interest against loss of or damage to personal property serving as security on a specific loan or credit transaction.

"First-time applicant" means any person who was not actively licensed during the 12-month period prior to application.

. . .

"Late renewal" means any renewal that is applied for subsequent to the expiration of a license and within 12 months after the expiration date.

. . .

11:17-2.3 Application filing requirements for initial licenses

(a) A first time applicant for an individual license shall submit the following:

1.-5. (No change.)

6. If the application requests surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-[2.11]**2.12**; and

7. A valid check or money order for the fees required in accordance with N.J.A.C. 11:17-[2.12]**2.13**.

(b) If an applicant's license has lapsed for a period of one year or less, the applicant may apply for late renewal of the license within one year of the date the license expired provided the following is attached to the application:

1. Proof of completion of 48 continuing-education credits as required by N.J.A.C. 11:17-3.4;

2. An affidavit stating whether any business as an insurance producer was transacted by the applicant during the unlicensed period, and if so, the number of policies written; and

3. All information required in (a) above, except the criminal history, school certificate and the passing notice.

[(b)](c) A first time applicant for an organization license shall submit the following:

1.-5. (No change.)

6. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-[2.11]**2.12**(d);

7. (No change.)

8. A valid check or money order for the fees required by N.J.A.C. 11:17-[2.12]**2.13**.

(d) Failure to pay a license fee due to "not sufficient funds" or otherwise non-negotiable instrument shall void any license issued in good faith by the Commissioner. Any business written during the period prior to payment shall be deemed in violation of N.J.S.A. 17:22A-2 and shall subject the licensee to penalties in addition to the penalties prescribed at N.J.A.C. 11:17D-2.4(a)3 for checks returned for insufficient funds, and a late renewal fee.

11:17-2.4 Temporary certificate

(a) The Commissioner or his or her designee is authorized to issue a temporary certificate evidencing that an applicant may begin work when the applicant has submitted in proper form the items required by N.J.A.C. 11:17-2.3 if the submission does not disclose any matter that may disqualify the applicant from being licensed. Any certificate issued in accordance with this section shall contain an expiration date and shall expire no more than 60 days after issuance[, except for certificates specified in N.J.A.C. 11:17-5, Transition rules].

(b) A nonresident licensee, upon moving their residence or business into the State of New Jersey, shall within 20 days notify the Department of his or her change of address and intent to qualify as a resident insurance producer. Upon such notification, the licensee may continue to act as an insurance producer for a period of 90 days from the date of such notification. The Commissioner or his or her designee may, for good cause shown, extend this time.

11:17-2.5 License renewal

(a) A current licensee shall renew a license in the following manner:

1. At least 10 days before the license expiration date, each licensee shall submit a properly completed renewal application together with a valid check or money order for fees in accordance with N.J.A.C. 11:17-[2.12]**2.13**. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer or partner of a licensed organization. The licensee shall certify that he, she or it continues to be qualified in accordance with the insurance laws of New Jersey.

(b) (No change.)

(c) Any licensee who does not desire license renewal shall notify the Department by submitting the renewal application **signed, dated and** marked on the face, "Do Not Renew".

(d) An applicant who files a late renewal request within one year of the license expiration date shall be granted a waiver from the prelicensing education and examination requirement set forth in N.J.A.C. 11:17-3.2 and 3.3. The application for renewal shall include the applicant's certification which shall state whether the applicant transacted any business as an insurance producer while unlicensed and, if so, the number of policies written.

11:17-2.6 Additional authorities

(a) A currently licensed individual producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. His or her current **original** license, marked to request the additional authority or authorities, dated, signed and certified to be correct by the applicant[.];

2.-3. (No change.)

4. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-[2.11]**2.12**(d); and

5. A valid check or money order for the processing fee as required by N.J.A.C. 11:17-[2.12]**2.13**.

(b) A currently licensed organizational producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. Its current **original** license, marked to request the additional authority or authorities, dated, signed and certified to be correct by a licensed officer or partner who holds or has applied for that authority;

2. (No change.)

3. If applying for surplus lines authority, a performance bond as required in accordance with N.J.A.C. 11:17-[2.11]**2.12**(d); and

4. A valid check or money order for the processing fee described in N.J.A.C. 11:17-[2.12]**2.13**.

11:17-2.7 Legal and business names; addresses

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

(e) The requirements for business addresses and notification of change of business mailing or location address and residence address are as follows:

1. (No change.)

2. All licensees shall provide the Department with written notification of any change of business mailing or location address and residence address within 20 days of the change **and maintain a proof of notification for five years**.

3. (No change.)

(f) A licensee shall advise the Department of a change of any legal name, business name or a change of [business mailing and location address] **the address which appears on the license** by noting the change on its current **original** license and returning it to the Department for cancellation and reissuance of a new license containing the updated information. No fee shall be required for such changes. If the notice is to change a legal or business name, the request shall be accompanied by a copy of the document filed in the office of the Secretary of State, County Clerk or other authority evidencing that the change has been properly recorded.

11:17-2.8 Branch offices

(a) Licensees shall file with the Department a branch office registration form within 30 days before business is first conducted there. A branch office registration form shall be accompanied by the processing fee specified in N.J.A.C. 11:17-[2.12]**2.13**. The appropriate registration form will be prescribed by the Department.

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

11:17-2.9 Business relationships

(a) The agency relationship between company and producer is subject to the following requirements:

1. (No change.)

2. An insurance company contracting with a licensed insurance producer shall be responsible to advise the Department of that relationship by filing a notice within 15 days after execution of the contract, on a form prescribed by the Department containing the company's name and reference number; the producer's name and reference number; and the effective date of the contract. The form shall contain the name and title of the company official who signed and certified the notice. The notice shall be submitted with the fee set forth in N.J.A.C. 11:17-[2.12]**2.13**.

3. Prior to executing any agency contract, the insurance company shall determine that the producer is properly licensed with authority for the kinds of insurance described in the contract. **The insurance company shall not accept any business produced prior to a person's licensure nor shall an insurance company pay commissions to any person for any business produced prior to licensure.** The company officer executing the notice shall certify that he or she examined the credentials of the producer and is satisfied that the producer is currently licensed with the authorities for one or more of the kinds of insurance for which the company is authorized.

4.-5. (No change.)

6. The notice of termination filed shall specify the true reason for termination. If the reason is conduct by the producer that may constitute cause for disciplinary action against the producer, an additional copy of the notice of cancellation shall be mailed **by the insurance company** to the Department's Enforcement Division together with an outline of available documentation.

i. The insurer shall collect from producers all company brochures, solicitation or other related materials subsequent to termination. A failure to collect solicitation materials shall be deemed to extend the agency relationship.

ii. In the case of title insurance, in addition to the items set forth in (a)6i above, the insurer shall collect all blank commitments, policy forms, endorsement forms and any other material bearing the insurer's name.

7. (No change.)

(b) The employment of another producer by a producer is subject to the following requirements:

1. Licensed producers [may] **shall** enter into employment contracts by which the employed producer (employee) conducts business under the supervision of and in the name of an employing producer (employer). The employment contract [may] **shall** specify that it does not include all license authorities of the parties**, if such is the case**. The contract shall be in writing. Both parties shall retain copies and shall make them available to the Department upon request.

2. [An employer who has entered into such an employment contract shall notify the Department of the agreement by submitting a document signed by the employer, or licensed officer or partner if an organization, containing the employee's name, license reference number and the date of employment.] The employer shall examine the credentials of the employee to determine that he or she is licensed to conduct the kinds of business described in the contract.

3. (No change.)

4. An employer shall [oversee] **be responsible for the activities, oversight, and** the insurance-related conduct of an employee. In any disciplinary proceeding, the existence of the employment contract shall be prima facie evidence that the employer knew of the activities of the employee.

[5. Upon termination of any employment contract, the employer shall notify the Department in writing of the termination of the relationship.]

[6.]**5.** (No change in text.)

11:17-2.10 Deceased and disabled producers

[(c)](a) A licensed producer continuing the business of a deceased or disabled producer is subject to the following requirements:

1.-6. (No change.)

11:17-[2.10]**2.11** Limited insurance representatives

(a) The following kinds of insurance may be marketed through limited insurance representatives.

1.-3. (No change.)

4. Credit involuntary unemployment;

Recodify existing 4.-10. as **5.-11.** (No change in text.)

(b) **An organization shall not be registered as limited insurance representatives unless there is also an individual member of that organization licensed or registered as a limited insurance representative. Each individual acting as a limited insurance representative for an organization must be so licensed or so registered.** An insurance company authorized to write the lines of insurance described in (a) above shall register its limited insurance representatives with the Department in accordance with this section.

(c) (No change.)

(d) The insurance company shall satisfy itself that the proposed limited insurance representative is **trustworthy,** competent, **of good character,** honest, financially responsible and capable of acting as its representative.

(e) The insurance company shall register its limited insurance representatives on a form prescribed by the Commissioner containing its company name and reference number; the representative's name, and date of birth if an individual; business mailing and location address; kind of insurance business to be conducted; and the effective date of the contract. The fee described in N.J.A.C. 11:17-[2.12]**2.13** shall be paid at the time of initial registration.

(f)-(h) (No change.)

11:17-[2.11]**2.12** Licensing information requirements

(a) The following requirements relate to the provision of criminal history information by licensed producers and license applicants.

1.-5. (No change.)

6. Failure to indicate a criminal conviction on the application for an insurance producers license shall constitute a material misrepresentation and subject a licensee to the penalties provided at N.J.S.A. 17:22A-17a and b.

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

(d) Licensed organizations shall notify the Department within 30 days of the addition or deletion of any **licensed or** unlicensed officer, director, partner or owner of five percent or more of the licensed organization. **Notification of the addition of any unlicensed officer, director, partner or owner of five percent or more of the licensed organization shall be accompanied by a properly completed criminal history verification form and required fee.**

(e) Departure, termination or deletion of licensee officers, directors or partners, which leaves an organization insurance producer with no licensed officers, directors or partners or with officers, directors or partners who do not have like authorities as the organization producer, shall make the organization producer license inactive. Under these circumstances, the organization license shall be returned immediately to the Commissioner.

11:17-[2.12]**2.13** Fees

(a) The following fees shall be payable as set forth in this chapter:

1.-5. (No change.)

6. Filing or processing any Notice of Agency Contract: $20.00; [and]

7. Any limited insurance representative registration: $20.00[.]**; and**

8. Late renewal fee: $50.00.

(b) All fees shall be paid by check or money order made payable to: State of New Jersey—General Treasury. **All Department fees are non-refundable after the license effective date.**

(c) Disabled veterans may be exempted from payment of the fees described in (a) above upon submission to the Department of a [completed form DD-214 or] recent certificate of the United States Veterans Administration confirming a current service connected disability.

11:17-[2.13]**2.14** Denial of license

(a) (No change.)

(b) [Within 30 days from] **Upon** receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, its records and any additional information submitted and determine whether the license may be issued. If after this review the Department determines that the applicant is not qualified, the Department shall find that the matter is a contested case and transmit it to the Office of Administrative Law for hearing.

(c) (No change.)

11:17-[2.14]**2.15** Termination and cancellation of license; reinstatement after termination

(a) (No change.)

(b) A producer license may be reinstated after termination during the same license period by completing an application in accordance with the provisions of N.J.A.C. 11:17-2.3. No additional license fee for that period shall be required but the processing fee provided in N.J.A.C. 11:17-[2.12]**2.13** shall be paid.

(c) Submitting a license for cancellation **or allowing a license to expire** shall not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of any penalty, ordered restitution or costs.

(d) (No change.)

(e) Nothing in these rules shall authorize any person whose license has been revoked or suspended to continue to transact insurance business after the date of revocation or suspension.

11:17-[2.15]**2.16** (No change in text.)

SUBCHAPTER 5. TRANSITION RULES

11:17-5.1 to 5.6 (Reserved)

11:17-5.7 (No change.)

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer and Limited Insurance Representative Standards of Conduct Marketing Activities for Which a Person Must be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative

Proposed Amendment: N.J.A.C. 11:17A-1.3

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:22A-1 et seq., 17:22A-3, 17:22-17c, 17:22-23(e), 17:22A-24, 17:C-6(e).

Proposal Number: PRN 1992-411.

Submit comments by October 21, 1992 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625-1325

The agency proposal follows:

Summary

The Commissioner of Insurance, on December 6, 1989, at 22 N.J.R. 30(b), adopted new rules (N.J.A.C. 11:17A, effective January 2, 1990) relating to standards of conduct for insurance producers and limited insurance representatives including activities for which a person must be licensed as an insurance producer or registered as a limited insurance representative.

One of the new rules, N.J.A.C. 11:17A-1.3, Who must be licensed; exceptions, provided that:

"(e) Salaried officers or employees of insurers authorized to do business in this State and who solicit, negotiate or effectuate insurance in the name of and on behalf of the insurer, for compensation of any type,

shall have secured licensure as a producer, or registration as a limited insurance representative, as appropriate, on or before January 1, 1991."

Adoption of this provision generated a significant amount of controversy within the insurance industry since it represented a marked departure from previous regulatory licensing requirements relative to officers and employees of insurers. The Department received numerous written comments from interested persons.

In order to allow time for further deliberation and possible proposal of other amendments to subsection (e), the Department, at 23 N.J.R. 310(a), extended the time allowed for compliance from January 1, 1991 to January 1, 1992.

The Department on January 21, 1992 at 24 N.J.R. 287(c), again extended the time allowed for compliance with subsection (e) from January 1, 1992 to October 1, 1992 in order to allow auto insurers time to adjust during depopulation of the Market Transition Facility (MTF) which was to occur through September 30, 1992. At the same time, the Department further amended subsection (e) by adding language intended to clarify the Department's intent regarding those individuals requiring licensure as either an insurance producer or limited insurance representative.

Legislation is pending (S-562/A-1272) which, if enacted, would affect the requirements currently set forth at subsection (e), and would require the Department to further amend that subsection. This legislation passed the Assembly in June, and is expected to be acted upon by the Senate within the next several weeks. Accordingly, in order to avoid confusion as to those individuals required to comply with subsection (e), this proposed amendment will further extend that provision's compliance deadline from October 1, 1992 to January 1, 1993.

Since adoption of this proposed amendment cannot be published in the New Jersey Register prior to November 10, 1992, the Department is suspending the effectiveness of the current October 1, 1992 deadline for those persons previously exempted from licensure to secure licensure as an insurance producer or registration as a limited insurance representative.

Social Impact

The proposed amendment will extend for another three months the compliance deadline for certain individuals previously exempted from licensure, to secure licensure as an insurance producer or registration as a limited insurance representative, whichever is appropriate. This will allow final action to be taken on the bill currently before the Legislature that may change the requirements currently set forth at N.J.A.C. 11:17A-1.3(e).

Economic Impact

By extending the deadline for compliance with the licensure requirements of N.J.A.C. 11:17A-1.3(e), the Department is delaying for another three months the obvious cost increase to be borne by insurers attendant to the licensing of officers and employees who were previously exempt.

Concurrently, the increase in license processing responsibilities and the collection of additional licensing fees by the Department is also delayed as a result of the proposed amendment.

Regulatory Flexibility Statement

The Department believes that few, if any, insurers subject to the proposed amended rule are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, the amended rule imposes no undue burden or adverse economic impact upon insurers which may qualify as "small businesses." Because the proposed amendment extends a licensure/registration deadline, no additional reporting, recordkeeping or other compliance requirements are imposed on small businesses. Therefore, a regulatory flexibility analysis is not required.

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

11:17A-1.3 Who must be licensed; exceptions

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

(e) Officers or employees of insurers authorized to do business in this State and who solicit, negotiate or effectuate insurance in the name of and on behalf of the insurer, for compensation of any type, shall have secured licensure as an insurance producer, or registration as a limited insurance representative, as appropriate, on or before [October 1, 1992] **January 1, 1993.**

This requirement shall apply to insurer officers or employees whose employment duties include the solicitation, negotiation and effectuation of insurance contracts on behalf of their employer. This requirement shall not apply to insurer officers or employees whose participation in the solicitation, negotiation and effectuation of insurance contracts is incidental to their employment duties.

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF PROFESSIONAL PLANNERS

Professional Misconduct

Proposed New Rule: N.J.A.C. 13:41-2.1

Authorized By: Board of Professional Planners, Shirley Bishop, President.

Authority: N.J.S.A. 45:14A-4.

Proposal Number: PRN 1992-419.

Submit written comments by October 21, 1992 to:

Richard Weisman, Executive Director
Board of Professional Planners
124 Halsey Street, 6th Floor
P.O. Box 45016
Newark, New Jersey 07101

The agency proposal follows:

Summary

This proposed new rule defines acts which will be deemed professional misconduct by Board licensees in the practice of professional planning. In establishing basic professional misconduct standards, the Board defines fundamental ethical precepts for licensees in their dealing with the public in order to assure the profession's integrity and to preserve the public's confidence in dealing with licensed professional planners.

The standards, in general, include a duty to act as a faithful agent and trustee for a client and require a licensee to disassociate himself or herself from a client who insists upon the licensee's disregarding the public's health, safety and welfare in the performance of his or her duties. The rule generally prohibits licensees from engaging in conflicts of interest and specifically defines four situations where such conflict is deemed to exist: (1) where personal, professional or financial interests materially compromise the licensee's ability to faithfully and objectively serve the client; (2) where the licensee or a firm with which the licensee is associated is in a special relationship of trust with a governmental body and the licensee or firm undertakes to perform work for a private client which will have to be approved by the governmental body with which the special relationship has been established; (3) where the licensee or a firm with which the licensee is associated is in a special relationship of trust with a governmental body and the licensee participates in the review or approval of professional work submitted on behalf of any individual with whom the licensee or his or her firm possesses a continuing or anticipated professional or financial relationship; and (4) while acting as a member or employee of a governmental body, soliciting or accepting a professional contract from such body.

The new rule also prohibits the following acts and practices: accepting compensation from more than one interested party for the same service without making full, written disclosure to all parties and obtaining written consent from all parties; accepting compensation from material and equipment suppliers for specifying their product or recommending their employment; accepting commissions from contractors dealing with a licensee's client in connection with work for which the licensee is responsible; affixing the licensee's seal to work or documents which have not been prepared by the licensee; and permitting non-licensees to act on behalf of a licensee in appearing before a public or private body for the purpose of rendering professional planning services.

Social Impact

By establishing and defining basic professional standards, licensees are put on notice of minimum ethical practice precepts. Those standards operate to ensure honest practices by licensees in their dealings with private clients as well as with governmental bodies. In turn, by fostering fundamental concepts of professionalism, the proposed new rule heightens both the public's trust and confidence in the profession as well as ensuring the quality of professional planning services in an open, competitive marketplace.

Economic Impact

The proposed new rule will result in a limited adverse economic impact to certain licensees and no discernible impact to the public. Licensees currently receiving payments for specifying products and recommending employment will no longer be permitted to accept such payments. Additionally licensees or firms in special relationships with governmental bodies will be precluded from continued involvement in matters where the licensee or his or her firm has an ongoing or anticipated professional relationship with individuals whose plans, specifications or other professional work are being reviewed by the governmental body. In such situations, which are also defined to be improper by the recently enacted Local Government Ethics Law (N.J.S.A. 40A:9-22.1), licensees will be required to make choices (that is, to disqualify themselves or to terminate a professional relationship) which may have adverse economic consequences upon the licensee and perhaps upon the governmental entity with which the relationship exists. Such situations are anticipated to be relatively infrequent and the advantages of avoiding situations fraught with either actual impropriety or the appearance thereof will far outweigh any adverse economic consequence.

Regulatory Flexibility Analysis

There are currently 4,010 active professional planners within the State of New Jersey, most of whom practice in firms employing less than 100 employees. As such, if the practice of professional planning were found to be a "small business," a conclusion not entirely clear under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following statement would be applicable.

The proposed new rule imposes no reporting or recordkeeping requirements, but does establish professional conduct standards to be followed by all licensees in their dealing with the public, governmental bodies and individuals and firms involved with professional planners in the practice of the profession. No specialized or particular professional services are required for compliance with the standards, which define situations which will be deemed to constitute conflicts of interest and impermissible practices (as more particularly set forth in the summary and text herein) in the conduct of a professional planning practice.

There are no initial capital or other costs anticipated for compliance other than the possible cost to a limited number of licensees which will be incurred in removing themselves from conflict situations. The amount and extent of such costs are incapable of being determined either at present or on an annual basis.

Since the new rule operates as a basic set of standards for professional conduct and such standards are intended to operate uniformly within the practice, minimizing adverse economic impacts based upon "small businesses" considerations is neither feasible nor possible.

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

SUBCHAPTER 2. [(RESERVED)] **MISCONDUCT**

13:41-2.1 Enumeration of prohibited acts

(a) Misconduct in the practice of professional planning shall include, but not be limited to, the following:

1. Acting for a licensee's client or employer in professional matters otherwise than as a faithful agent or trustee;

2. Disregarding the safety, health and welfare of the public in the performance of the licensee's professional duties, such as preparing or signing and sealing documents which are not in conformity with accepted standards. If the client or employer insists on such conduct, the licensee shall notify the proper authorities and withdraw from further service on the project;

3. Using or approving the use of false, fraudulent, or deceptive advertising;

4. Engaging in any activity which involves the licensee in a conflict of interest, including, but not limited to:

i. Rendering professional services, or contracting to render such services, where the licensee's ability to faithfully and objectively serve the client is materially compromised by other personal, professional or financial interests or responsibilities;

ii. While a licensee, or any firm with which the licensee is associated, is acting as a member, advisor, employee or consultant to a governmental body or agency, undertaking work for private clients where such work will be submitted to the governmental body or agency for review and approval;

iii. While acting as a member, advisor, employee or consultant to a governmental body or agency, participating in the review, approval or recommendation for approval of plans, specifications, reports or other professional work submitted on behalf of any individual or entity with whom the licensee or any firm with which the licensee is associated possesses any continuing or anticipated professional or financial relationship;

iv. While acting as a member or employee of a governmental body or agency, soliciting or accepting a professional contract from the governmental body or agency. However, a licensee who is acting merely as an advisor or consultant to a governmental body or agency, or a firm with which the licensee is associated, shall not be precluded by this subsection from accepting a professional contract from the governmental body or agency and providing advice, recommendations and counsel with regard to such work;

v. Accepting compensation or remuneration, financial or otherwise, from more than one interested party for the same service or for services pertaining to the same work unless there has been full written disclosure and written consent obtained from all interested parties;

vi. Accepting compensation or remuneration, financial or otherwise, from material or equipment suppliers for specifying their product or for recommending their employment by any party; or

vii. Accepting commissions or allowances, directly or indirectly, from contractors or other persons dealing with the licensee's client or employer in connection with work for which the licensee is responsible to a client or employer;

5. Affixing the licensee's seal to any documents which were not prepared by the licensee or by employees or subordinates under the licensee's supervision; or

6. Permitting any person not appropriately licensed pursuant to N.J.S.A. 45:14A-1 to act for or on behalf of the licensee as a representative, surrogate or agent in appearance before any public or private body for the purpose of rendering professional planning services.

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway
Speed Limits

Proposed Amendment: N.J.A.C. 19:8-1.2

Authorized By: New Jersey Highway Authority, David W. Davis, Executive Director (with approval of the Board of Commissioners).

Authority: N.J.S.A. 27:12B-5(j) and 27:12B-18.

Proposal Number: PRN 1992-408.

Submit written comments by October 21, 1992 to:

David W. Davis, Executive Director
New Jersey Highway Authority
P.O. Box 5050
Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:8-1.2 will improve the operational effectiveness of the Garden State Parkway along its 173 miles by providing a consistent speed limit of 55 miles-per-hour while maintaining high safety standards by providing site specific warning signs with advisory speed signs. The only exception is that a 45 miles-per-hour speed limit will continue to be maintained on the Great Egg Harbor Bridge and the Alfred E. Driscoll Bridge.

Currently, there are 11 posted speed limit changes in each direction on the Parkway. There are sections posted at 45 miles-per-hour, 50 miles-per-hour and 55 miles-per-hour. Where speed limits are changed by this amendment, and where appropriate, site specific warning signs will be posted advising motorists of cautionary measures to be taken.

The amendment will help simplify enforcement of the Parkway speed limit by having a consistent limit for virtually the entire length of the roadway. Because of the numerous changes in speed limits under current rules, it is sometimes difficult for New Jersey State Police Troopers to ascertain the proper posted speed limit, especially in the transition areas, making enforcement more difficult and more time consuming.

Finally, the proposed amendment establishes a maximum legal rate of speed at facilities off the main roadway of the Garden State Parkway (such as service stations, rest areas and Telegraph Hill Park) at 25 miles-per-hour, unless otherwise posted.

Social Impact

This amendment clarifies a confusing situation to the motoring public by significantly limiting the number of speed limit changes on the Garden State Parkway. This amendment should positively contribute to the operating efficiency of the roadway by providing a constant speed limit for virtually the entire length, except for site specific locations where motorists will be advised of particular conditions that may affect the safety of their driving.

Economic Impact

This amendment will result in no increased costs for the patrons of the Garden State Parkway. The Garden State Parkway will incur negligible costs for changes in signage, where needed. These costs will be based upon the size of the signs, materials used, and the methods of procurement and installation.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment 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. The proposed amendment to the speed limits on the Garden State Parkway affects individual motorists and the government agencies enforcing the rules.

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

19:8-1.2 Speed limits

(a) Unless otherwise posted or when conditions [made] **make** such maximum legal rate of speed unsafe, the maximum legal rate of speed at which any motor vehicle may be operated on **the main roadway of** the Parkway in both directions of traffic shall be 55 miles per hour for its entire length, except as follows:

1. Forty-five [(45)] miles per hour on the Great Egg Harbor Bridge; **and**

2. Forty-five [(45)] miles per hour on the Alfred E. Driscoll Bridge[;

3. Fifty (50) miles per hour between the Union Toll Plaza and Interchange 143.

4. Forty-five (45) miles per hour between Interchange 143 and Interchange 145.

5. Fifty (50) miles per hour between Interchange 145 and the Essex Toll Plaza].

(b) Unless otherwise posted, or when conditions make such maximum legal rate of speed unsafe, the maximum legal rate of speed at which any motor vehicle may be operated at facilities off the main roadway of the Parkway shall be 25 miles per hour.

(a)

CASINO CONTROL COMMISSION

Rules of the Games

New Games; Requirements and Procedures for Application, Declaratory Ruling, Test or Experiment, and Final Approval of New Authorized Game

Proposed Amendment: N.J.A.C. 19:40-1.2
Proposed New Rule: N.J.A.C. 19:47-8.4

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

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(f), 99(a)16 and 100(e).

Proposal Number: PRN 1992-413.

Submit comments by October 21, 1992 to:

Seth H. Briliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

This proposed new rule and amendment will establish uniform, standardized procedures for the submission and approval of new games used in Atlantic City casinos. Consistent with recent amendments to section 5 of the Casino Control Act, N.J.S.A. 5:12-5, this amendment and rule would permit the Commission to approve any variations or composites of existing authorized games, as well as any other games which are compatible with the public interest, provided that all such games are found to be suitable for casino use after an appropriate test or experimental period.

This proposal would amend the definition of "authorized game" in N.J.A.C. 19:40-1.2 to conform with the foregoing statutory change, by providing that an "authorized game" includes not only variations or composites of existing authorized games, but also any other games determined by the Commission to be compatible with the public interest, provided that all such games are found to be suitable for casino use after an appropriate test or experimental period.

The new rule, N.J.A.C. 19:47-8.4, sets forth a two-step procedure for approval of proposed new authorized games. The process would begin with a petition requesting a declaratory ruling that the proposed game is either a variation or a composite of an existing authorized game, or a new game that is compatible with the public interest. Subsection (d) details the information and materials that would be required at this stage.

If the Commission rules that the proposed game is a variation or composite of an existing authorized game, or is a new game compatible with the public interest, the second phase of the approval process begins. This involves a test or experiment to determine whether the game is "suitable for casino use," as required by section 5 of the Act. Subsection (f) of the proposed new rule lists the materials that must be supplied prior to commencement of such a test, including a test submission and an application for the appropriate type of casino service industry license and any transactional waivers required under the Act and Commission rules.

The test or experiment would be conducted pursuant to section 69(e) of the Act, which provides for a period of up to 180 days to conduct such a test. If the test is successful, final approval of the new game could be obtained after all regulatory review costs and other related expenses involved in the review, testing and approval of the game have been paid in full.

This two-step procedure would provide an expeditious way to determine whether a proposed game would be permitted, without incurring large expenses in creating several prototypes of a table, a layout or other gaming equipment which is used in playing the game. However, to ensure that there would be sufficient interest among casino licensees and their patrons in the proposed game, there would also be a requirement that any petition for a new game proposal must include as a petitioner at least one casino licensee, which would be required to agree in writing to test the game in its casino if it is approved for a test by the Commission. Lastly, to ensure that the regulatory costs of reviewing and testing new games is fully borne by the petitioners, the proposed rule requires that the petitioners be jointly and severally liable for those expenses, regardless of whatever financial arrangements may have been agreed upon among themselves. Of course, as noted in the rule, the Commission may at any time propose new games or variations on its own, without the need for a petition from anyone.

Social Impact

It is anticipated that approval of new authorized games may result in more gaming choices and more flexibility for casino licensees and their patrons, as well as more marketing opportunities for the New Jersey gaming industry.

Economic Impact

The ultimate economic impact of new authorized games cannot be predicted with certainty. However, it is hoped that the addition of new games will have a positive economic impact upon the casino industry, Atlantic City, and the State, which would benefit from increased gaming activity. To the extent that new games do generate increased casino

revenues, senior citizens of New Jersey will benefit from the additional tax revenues which would be collected.

This proposed new rule may have an impact upon new game developers and casino licensees, since it requires that at least one casino licensee must be a party to any petition for approval, must agree to test the game in its casino if it is approved, and must also underwrite the costs involved in developing the game and obtaining all necessary approvals. Although these expenses could be significant, the two-step procedure created by the rule attempts to eliminate some of the financial risk involved in submitting a new game for approval and testing.

Since the petitioners will be jointly and severally liable for the payment of the expenses involved in reviewing and testing proposed new games, the new rule is not expected to have any economic impact upon the Commission, the Division of Gaming Enforcement, or the general public.

Regulatory Flexibility Statement

Although proposed amendment and new rule will affect casino licensees that are involved in the submission and testing of new games, no casino licensee is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq.

The new rule may affect some small businesses that are developing and submitting new games for approval. However, the Commission has determined that no exceptions or accommodations should be made for these situations; the application procedure and CSI licensing scheme must apply uniformly to all participants in gaming operations in order to insure the integrity of any new games, the persons submitting, manufacturing and operating them, and ultimately, the integrity of casino operations.

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

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules and regulations as defined in that Act. The following words and terms, when used in these rules and regulations, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Authorized game" or "authorized gambling game" means roulette, baccarat, blackjack, craps, big six wheel, slot machines, [minibaccarat] **minibaccarat, red dog, pai gow,** and any variations or composites of such games, **as well as any other games compatible with the public interest, authorized by the Commission pursuant to N.J.S.A. 5:12-5,** provided that such **games and** variations or composites are found by the Commission **to be** suitable for casino use after an appropriate test or experimental period under such terms and conditions as the Commission may deem appropriate.

. . .

19:47-8.4 New games; requirements and procedures for application, declaratory ruling, test or experiment, and final approval of new authorized game

(a) Interested persons such as casino licensees, casino service industries, and owners, licensees, lessees or franchisees of the rights to a proposed new game, may petition the Commission for approval of the game.

(b) A petition for approval of a proposed new game must include as a petitioner at least one casino licensee who has agreed in writing to participate in a test or experiment of the game in its casino. All petitioners shall be jointly and severally liable for payment of all regulatory review costs and other related expenses incurred by the Commission and the Division of Gaming Enforcement in the review, testing and approval of the game.

(c) A proposed new game may be a variation of an authorized game, a composite of authorized games, or any other game compatible with the public interest and suitable for casino use, pursuant to N.J.S.A. 5:12-5.

(d) A petition for a proposed new game shall be in writing, signed by the petitioners, and shall include the following information:

1. The names and addresses of petitioners;

2. Whether the game is a variation of an authorized game, a composite or authorized games, or another game which is compatible with the public interest and is suitable for casino use;

3. A complete and detailed description of the game for which approval is sought, including:

i. A summary of the game, including the objectives of the game, the method of play and the wagers offered;

ii. The draft of proposed rules describing the equipment used to play the game, and the proposed rules of the game, drafted in a format similar to that found in N.J.A.C. 19:47 and in accordance with the Rules for Rulemaking at N.J.A.C. 1:30, if approved;

iii. The true odds, the payout odds, and the house advantage for each wager;

iv. A sketch or picture of the game layout, if any; and

v. Sketches or pictures of the equipment used to play the game;

4. Whether the game, its name, or any of the equipment used to play it is covered by any copyrights, trademarks or patents, either issued or pending;

5. An assurance that the game has been offered initially to all casino licensees;

6. An agreement, satisfactory in form and content to the Commission, releasing and indemnifying the Commission and the State of New Jersey from all copyright, trademark, patent or other claims of petitioners and any other persons;

7. A request for a declaratory ruling, pursuant to N.J.A.C. 19:42-9.1, that the proposed new game is a variation of an authorized game, a composite of authorized games or is compatible with the public interest, as required by N.J.S.A. 5:12-5;

8. A request for a test or experiment of the game, if approved, under sections 5 and 69(e) of the Act; and

9. Any other pertinent information or material requested of specific petitioners by the Commission or the Division of Gaming Enforcement.

(e) In making a determination whether a proposed new game is an acceptable variation of an authorized game or a composite of authorized games, or is compatible with the public interest, the Commission may consider rules and method of play; true and payout odds; wagers offered; layout; equipment used to play the game; personnel requirements; game security and integrity; similarity to other authorized games or other games of chance; other variations or composites of the game previously approved as authorized games; as well as any other relevant factors. Any such determination shall be subject to a condition that the game must undergo a successful test for suitability of casino use under sections 5 and 69(e) of the Act, as provided below.

(f) If the proposed new game is preliminarily approved by the Commission in accordance with section (e) above, petitioners shall submit the following in connection with any proposed test of the game pursuant to sections 5 and 69(e) of the Act:

1. For any petitioner that is not a casino licensee or a casino service industry (CSI) licensee:

i. A completed application for the appropriate type of CSI license, together with the applicable non-refundable license application fee; and

ii. An application for a transactional waiver, pursuant to the Act and rules of the Commission, if required; and

2. A test submission, which shall include, at a minimum:

i. The names of the casinos where the test of the proposed new game will take place;

ii. The dates and times when the test will take place, and the gaming tables or other gaming equipment that will be involved;

iii. The proposed signage to be posted at the entrances to the casinos where the test is to be conducted;

iv. The criteria proposed for use in determining the success of the test, and the methods proposed for documenting it, including any necessary forms; and

v. Any other materials or information requested of specific petitioners by the Commission or the Division of Gaming Enforcement.

(g) A test of the new game pursuant to sections 5 and 69(e) of the Act shall take place at such times and places, and under such conditions, as the Commission may require. The rules of the game and the test may be modified at any time during the test period if the Commission deems it necessary to do so. No final approval of a new game shall be granted until:

1. The Commission has determined that the game is suitable for casino use pursuant to sections 5 and 69(e) of the Act;

2. Any necessary regulatory amendments have been adopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and have become effective.

3. All necessary CSI license applications have been filed, and all necessary transactional waivers have been issued; and

4. All regulatory review costs and other related expenses incurred by the Commission and the Division of Gaming Enforcement in the review, testing and approval of the game, have been paid in full.

(h) Nothing in this section shall be construed to restrict or limit the Commission in any way from proposing new games or game variations on its own initiative, at any time.

(a)

CASINO CONTROL COMMISSION

Casino Licensees

Persons Required To Be Licensed or Qualified
Financial Stability of Casino Licensees and Applicants

Proposed New Rules: N.J.A.C. 19:43; 19:49-1.4; and 19:51-1.15
Proposed Amendments: N.J.A.C. 19:45-1.4 and 1.7
Proposed Repeals: N.J.A.C. 19:41-1.1, 3.1 and 4.2
Proposed Recodifications: N.J.A.C. 19:41-2 as 19:43-6; 19:41-13 as 19:43-13; 19:43 as 19:51; 19:51-1 as 19:43-14; and 19:52 as 19:43-15

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

Authority: N.J.S.A. 5:12-69, 70b, h and l, and 84.

Proposal Number: PRN 1992-415.

Submit written comments by October 21, 1992 to:

Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

This proposal has three primary objectives. First, it creates a new chapter of rules concerning the application for and issuance of a casino license and the licensing standards and regulatory obligations associated therewith. In order to accomplish this objective, a number of the Commission's current rules are being recodified. Second, as part of the creation of this new chapter, the Commission is proposing a new subchapter of rules which address in some detail the statutory obligation of a casino licensee or applicant to establish and maintain its financial stability. Finally, the creation of a chapter on casino licensing is being used as a vehicle to codify a number of license conditions which have historically been imposed on all casino licensees. Since these standard license conditions are routinely imposed on all casino licensees, they satisfy the definition of a rule (see N.J.S.A. 52:14B-2) and are being proposed for codification as such.

In order to create a new chapter of rules on casino licensees, the Commission is proposing that the current chapters on advertising (N.J.A.C. 19:51) and entertainment (N.J.A.C. 19:52) be reorganized as subchapters 14 and 15 in the new casino licensee chapter. N.J.A.C. 19:43 of the Commission's current rules, which concerns casino service industry licensure, is being renamed "Persons Doing Business With Casino Licensees" and is being recodified as N.J.A.C. 19:51. N.J.A.C. 19:43 will then be used for the rules concerning casino licensees. N.J.A.C. 19:52 is being reserved at the present time, but will eventually contain the rules on gaming schools currently found in N.J.A.C. 19:44. N.J.A.C. 19:44 will be recodified as N.J.A.C. 19:52 when the Commission creates a chapter on employee licensees in a future rule proposal.

It should be noted that the entire chapter of rules on casino licensees is not being proposed at this time. The current proposal is mainly intended to initiate the creation and organization of the new chapter. Accordingly, certain subchapters such as N.J.A.C. 19:43-3 and 19:43-5 are created for purposes of organizational structure but do not currently contain any rules. Similarly, certain rules concerning casino licensees which are currently contained in other chapters, such as the rules on casino facilities (N.J.A.C. 19:41-2), are being recodified in the new N.J.A.C. 19:43 (N.J.A.C. 19:43-6) without amendment. The Commission is aware that several of these recodified rules require amendment in order to conform them to recent statutory amendments. The Commission intends to complete these reserved subchapters and make any required amendments to the recodified rules in an orderly fashion as time permits.

Subchapter 4 of the new chapter on casino licensees addresses the financial stability of casino licensees and applicants. The Casino Control Act mandates that each applicant for a casino license demonstrate its financial stability by clear and convincing evidence. N.J.S.A. 5:12-84a. The proposed new rules will provide a necessary structure and predictability to the process of determining the financial stability of a casino licensee or applicant.

In December 1991, the Commission received a report from its consultants, Christiansen/Cummings and Charterhouse, Inc., on the definition of financial stability. These recommendations were the focus of extensive discussion at a public hearing conducted by the Commission on March 31, 1992. Subsequent meetings among representatives of the casino industry, the Division of Gaming Enforcement and the Commission culminated in this proposal.

The proposed new rules define financial stability in terms of five core tests. First, each casino licensee or applicant must establish that it maintains adequate funds, either casino bankroll or equivalent provisions, to pay off winning wagers.

A second criterion requires evidence of the ability to meet ongoing operating expenses. Further, each casino licensee or applicant must demonstrate its ability to pay taxes imposed by the Act, N.J.S.A. 5:12-144 and 144.1, and any fees imposed by the Act or regulations.

The fourth core tests reflects the Legislature's intent that each casino licensee maintain a "first class facility of exceptional quality which will help restore Atlantic City as a resort, tourist and convention destination." N.J.S.A. 5:12-83i. The proposed rules require that each casino licensee or applicant establish its ability to make necessary capital and maintenance expenditures to ensure compliance with this statutory goal.

Finally, the rules require that each casino licensee or applicant establish its ability to service its debt obligations during the term of its casino license. A casino licensee or applicant might also be directed to advise the Commission and Division as to its plans to meet certain material debts coming due within 12 months after the end of the license term.

The new rules set forth evidentiary standards which will serve to establish compliance with certain of the core tests. While adding a greater predictability to the process, the various standards are not exclusive, and the casino licensee or applicant may offer other types of relevant evidence to the Commission in attempting to demonstrate its financial stability.

The new rules also provide for continuing assessment of financial stability. The prior approval of the Commission is required for material transactions involving borrowing for a purpose other than capital and maintenance expenditures, or involving the guarantee or assumption of the debt of an affiliate, or any encumbrance on the casino hotel facility to secure the debts of an affiliate. The Commission may restrict or prohibit a transfer of cash to, or assumption of liabilities on behalf of, an affiliate, if such transaction will deprive the licensee or applicant of financial stability as defined by the new rules.

The rules also establish financial stability reporting requirements for casino licensees in proposed N.J.A.C. 19:43-4.4. Finally, the rules outline the actions which may be taken by the Commission in the event that a casino licensee fails to establish its financial stability, as necessary to fulfill the purposes of the Act and to protect the public interest.

The final major objective of the proposal is to codify various standard license conditions currently imposed on all casino licensees. In order to assure that noncorporate entities comply with these requirements to the same extent possible as their corporate counterparts, proposed new rule N.J.A.C. 19:43-1.1 clearly sets forth this obligation.

The proposed new rules in N.J.A.C. 19:43-2 consist primarily of these standard license conditions. Two exceptions should be noted. The proposed new rule N.J.A.C. 19:43-2.1, Persons required to be licensed, replaces the existing rule N.J.A.C. 19:41-1.1 which is being proposed for repeal. The existing rule merely iterates the statutory requirements contained in N.J.S.A. 5:12-82 and thus serves no useful purpose. The statutory reference contained in N.J.A.C. 19:43-2.1 is sufficient to advise the public of the licensing requirements for casino licensees.

The same rationale serves as the basis for the repeal of N.J.A.C. 19:41-3.1 and the creation of new rule N.J.A.C. 19:43-2.2 concerning those persons required to qualify as part of an application for a casino license. Subsection (c) of proposed N.J.A.C. 19:43-2.2 is a codification of a standard license condition reserving the right of the Commission to require the qualification of any person deemed appropriate for qualification in the future. The existing rule N.J.A.C. 19:41-4.2 is also being proposed for repeal since it merely restates statutory standards which have, in some cases, been subsequently modified.

Proposed new rules N.J.A.C. 19:43-2.3, 2.4 and 2.5 are codified standard license conditions which address the obligation of casino licensees or applicants or their holding companies to notify the Commission and Division when certain events occur which may affect those persons who are required to qualify as part of the casino licensing process. Proposed new rule N.J.A.C. 19:43-2.6 is a standard licensing condition that clarifies that no new qualifier of a casino licensee is permitted to assume his or her duties until qualified or licensed by the Commission.

The procedures pursuant to which certain new qualifiers of a holding company of a casino licensee are permitted to assume the duties and powers of their positions are set forth in the codified license condition found at N.J.A.C. 19:43-2.7. Proposed new rule N.J.A.C. 19:43-2.8 codifies a standard license condition concerning prohibited transfers of interests in casino licensees or applicants and nonpublicly traded subsidiaries of their holding companies. The standard license condition codified in N.J.A.C. 19:43-2.9 sets forth other notification obligations concerning the creation or dissolution of subsidiaries of the casino licensee or applicant or of any holding company where the subsidiary of the holding company bears a significant relationship to the casino project.

Two standard license conditions concerning the casino hotel facility are codified as N.J.A.C. 19:43-6.8 and 6.9. Proposed new rule N.J.A.C. 19:43-6.8 requires casino licensees or applicants to make periodic filings of data concerning the current status of the casino hotel facility. Proposed new rule N.J.A.C. 19:43-6.9 concerns the obligation of a casino licensee or applicant to assist in the maintenance of an efficient flow of traffic in the area of its casino hotel facility.

Finally, proposed new subchapters N.J.A.C. 19:43-8, 9 and 10 contain codifications of standard license conditions concerning, respectively, the reporting of minutes of boards and committees, the submission of internal controls for employee licensing requirements and the submission of internal controls for vendor licensing and contract approvals. In addition, standard license conditions which concern the obligation to report holders of securities or to provide filings made with the Securities and Exchange Commission or other securities agencies have been added to similar provisions which are currently set forth in N.J.A.C. 19:45-1.4 and 1.7.

The recodification of the current chapter on advertising as a subchapter of the casino licensees chapter also created a need to cross reference the rules on advertising in the other two chapters which govern persons subject to the advertising rules, namely casino service industries (see proposed N.J.A.C. 19:51-1.15) and junket enterprises (see proposed N.J.A.C. 19:49-1.4).

Social Impact

The proposed new rules concerning financial stability can be expected to benefit both the casino industry and the regulatory agencies by clarifying and structuring the considerations involved in a determination of financial stability. Moreover, to the extent that these rules add predictability to the financial stability requirements, the proposed standards can be expected to encourage investment in the Atlantic City casino industry and thus further the purposes of the Casino Control Act.

The proposed new rules and amendments which codify currently imposed standard license conditions are not anticipated to have any social impact since the persons affected by these rules are already required to comply with the comparable license conditions. The substantive requirements reflected in these codified conditions are significant, however, in their contribution to the strict regulation of casino gaming and the persons involved therein consistent with the goals of the Act set forth at N.J.S.A. 5:12-1b.

Economic Impact

By introducing greater certainty to the evaluation of financial stability, the new rules and amendments should foster enhanced confidence in the Atlantic City casino industry in the financial community. As such, the new rules and amendments are expected to benefit casino licensees, their affiliates and investors and ultimately, the citizens of Atlantic City and the State of New Jersey.

None of the standard license conditions codified in the new rules and amendments nor the recodifications undertaken as part of the creation of a casino licensee chapter are anticipated to impose any new economic burden on the regulated entities or the State. They essentially provide for the continuation of an existing regulatory structure. Of course, that existing structure does have economic consequences. For example, many of the rules in question require that casino licensees notify the regulators of certain events, such as changes in corporate officers or directors, transfers of certain corporate securities, and changes to certain internal control procedures. Casino licensees incur costs in transmitting this information, and regulators incur costs in reviewing it to assure compliance with the Casino Control Act and the attendant rules. However, under the proposed rules these costs will certainly be no greater than those that are currently incurred.

Regulatory Flexibility Statement

The proposed new rules and amendments affect only the operations of casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:41-1.1 [Casino licenses] **(Reserved)**

[(a) No person shall own or operate a casino unless a casino license shall have first been issued to every person eligible to apply for a casino license concerning the said casino.

(b) Only the following persons shall be eligible to apply for a casino license:

1. Any person who either owns 100 percent of an approved hotel or owns or has a contract to purchase or construct a hotel which in the judgment of the Commission can become an approval hotel within 18 months;

2. Any person who in accordance with Section 104a of the Act, whether under terms involving payments of a fixed sum or otherwise and whether as either a lessor or a lessee, either leases 100 percent of an approved hotel or leases or has an agreement to lease 100 percent of a hotel which in the judgment of the Commission can become an approved hotel within 18 months;

3. Any person who both has an agreement for the complete management of a casino in accordance with Section 104a of the Act, whether under terms involving payments of a fixed sum or otherwise, and either owns 100 percent of or controls any approved hotel; and

4. Any other person who is eligible in accordance with Section 82b or any other provision of the Act.

(c) No corporation shall be eligible to apply for or hold a casino license unless it shall, in accordance with Sections 82d and 105 and any other provision of the Act and the regulations of the Commission:

1. Have been incorporated in this State;

2. Maintain an office in the premises licensed or to be licensed;

3. Comply with all requirements of the laws of this State pertaining to corporations;

4. Maintain a ledger in its principal office in this State reflecting the current ownership of every class of security issued by the said corporation;

5. Maintain all operating accounts required by the Commission in a bank or banks in this State;

6. Provide in its charter among the purposes stated the conduct of casino gaming;

7. If not a publicly traded corporation, establish by appropriate charter or bylaw provisions that, upon Commission disapproval of any future transfer of any corporate security of, share of or other interest in the applicant corporation or any holding company intermediary company or subsidiary thereof, such corporations and companies shall have the absolute right to repurchase same; and

8. If a publicly traded corporation, establish by appropriate charter of bylaw provisions that, upon Commission disqualification of any holder of any security of the applicant corporation, such holder shall dispose of his security interest therein.

(d) No corporation shall be eligible to apply for or hold a casino license unless each corporate and noncorporate holding company and intermediary company with respect thereto shall first qualify to do business in this State and register with the Commission in accordance with section 85b of the Act.]

Recodify existing N.J.A.C. 19:41-2 as **19:43-6** (No change in text.)

19:41-3.1 [Casino licenses] **(Reserved)**

[(a) No casino license shall issue unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the regulations of the Commission:

1. Each applicant for and person required to apply for a casino license in accordance with the casino license standards as set forth in sections 84a, 84b, 84c, 84d and 86 of the Act;

2. Each of the following financial sources, either in effect or proposed, of, in or to the submitted casino proposal in accordance with the casino license standards as set forth in sections 84a, 84c and 86 of the Act:

i. Each financial backer;

ii. Each investor;

iii. Each mortgagee;

iv. Each bond holder; and

v. Each holder of debentures, notes or other evidences of indebtedness, either in effect or proposed;

3. Each of the following persons of every corporate applicant for a casino license and of every corporate holding company of and corporate intermediary company of every corporate applicant for a casino license in accordance with the casino key employee standards as set forth in sections 85c, 86 and 89 of the Act:

i. Each officer;

ii. Each director;

iii. Each person who directly or indirectly holds any beneficial interest or ownership of the securities issued by the corporation;

iv. Any person who in the opinion of the Commission has the ability to control the corporation or elect a majority of the board of directors of that corporation, other than a banking or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business:

v. Each principal employee; and

vi. Any lender, underwriter, agent or employee of the corporation whom the Commission may consider appropriate for approval or qualification;

4. In the case of a publicly-traded corporate holding company of a corporate applicant for a casino license, the individual qualifications may be waived in accordance with section 85d of the Act as to:

i. Any such person of the publicly-traded corporate holding company who is not significantly involved in the activities of the corporate applicant for the casino license; and

ii. Any such security holder of the publicly-traded corporate holding company who does not have the ability to elect a director of or to control the said holding company;

5. Each of the following persons of every noncorporate applicant for a casino license and of every noncorporate holding company of and noncorporate intermediary company of every corporate applicant for a casino license in accordance with the casino key employee standards as set forth in sections 85e, 86 and 89 of the Act:

i. Each person who directly or indirectly holds any beneficial interest or ownership in the applicant for the casino license;

ii. Each person who in the opinion of the Commission has the ability to control the applicant for the casino license; and

iii. Each person whom the Commission may consider appropriate for approval or qualification.]

19:41-4.2 [Casino license standards] **(Reserved)**

[(a) The casino license standards are as follows:

1. The financial stability, integrity and responsibility of the person as set forth in Section 84a of the Act;

2. The good character and reputation of the person for honesty and integrity as set forth in Section 84c of the Act;

3. The sufficiency of the business ability and casino experience of the person to adequately establish the likelihood of the creation and maintenance of a successful and efficient casino operation as set forth in Section 84d of the Act; and

4. The adequacy of the financial resources of the person both as to the completion of the casino proposal and the operation of the casino as set forth in Section 84b of the Act.]

Recodify existing N.J.A.C. 19:41-13 as **19:43-13** (No change in text.)

Recodify existing N.J.A.C. 19:43 as **19:51** (No change in text.)

CHAPTER 43
CASINO LICENSEES

SUBCHAPTER 1. GENERAL PROVISIONS

19:43-1.1 Applicability of rules to noncorporate entities

For purposes of this chapter, noncorporate entities shall, to the extent possible, comply with all reporting requirements applicable to corporate entities.

SUBCHAPTER 2. PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

19:43-2.1 Persons required to be licensed

No person shall own or operate a casino unless a casino license shall have first been issued to every person eligible and required to apply for a casino license pursuant to the provisions of N.J.S.A. 5:12-82.

19:43-2.2 Persons required to be qualified

(a) Except as otherwise provided in N.J.A.C. 19:43-2.7, no casino license shall be issued or renewed by the Commission unless the individual qualifications of every person required by the Act and the Commission to qualify as part of the application for the issuance or renewal of the casino license shall have first been established in accordance with all relevant standards set forth in the Act and the rules of the Commission.

(b) The following persons shall be required to qualify as part of the application for the issuance or renewal of a casino license:

1. All persons eligible and required to apply for a casino license pursuant to the provisions of N.J.S.A. 5:12-82;

2. All financial sources required to qualify pursuant to the provisions of N.J.S.A. 5:12-84b; and

3. All persons required to qualify pursuant to the provisions of N.J.S.A. 5:12-85c, d and e.

(c) The Commission may at any time require a casino licensee or applicant to establish the qualification of any person that the Commission may deem appropriate for qualification pursuant to N.J.S.A. 5:12-84, 85, and 105. Any person deemed appropriate for qualification shall promptly file the required application form.

19:43-2.3 Notification of anticipated or actual changes in directors, officers or equivalent qualifiers of casino licensees and holding companies

Each casino licensee or applicant or holding company shall immediately notify the Commission and Division, in writing, as soon as is practicable, of the proposed appointment, appointment, proposed nomination, nomination, election, intended resignation, resignation, incapacitation or death of any member of, or partner in, its board of directors or partnership, as applicable, or of any officer or other person required to qualify pursuant to N.J.S.A. 5:12-85c, d or e.

19:43-2.4 Notification of new financial sources

Each casino licensee or applicant shall immediately notify the Commission, in writing, as soon as it becomes aware that it intends to enter into a transaction bearing any relation to its casino project which may result in any new financial backers, investors, mortgagees, bondholders, or holders of indentures, notes, or other evidences of indebtedness who may be subject to the provisions of N.J.S.A. 5:12-84b and Article 6B of the Act.

19:43-2.5 Notification concerning certain new qualifiers of publicly traded holding companies

(a) A casino licensee or applicant shall immediately notify the Commission and Division if the casino licensee or applicant becomes aware that, with regard to any publicly traded holding company of the casino licensee or applicant, any person has acquired:

1. Five percent or more of any class of equity securities;
2. The ability to control the holding company; or
3. The ability to elect one or more directors of the holding company.

(b) If any publicly traded holding company of a casino licensee or applicant either files or is served with any Schedule 13D, Schedule 13G or Section 13f filing under the Securities Exchange Act of 1934, copies of any such filing shall be immediately submitted to the Commission and Division by the casino licensee or applicant or the publicly traded holding company.

19:43-2.6 Qualification of new directors, officers or other qualifiers of a casino licensee

Any natural person required to qualify pursuant to N.J.S.A. 5:12-85c or e by virtue of his or her position with a casino licensee shall not perform any duties or exercise any powers relating to such position until qualified by the Commission or, where appropriate, until he or she is temporarily licensed by the Commission as a casino key employee pursuant to N.J.S.A. 5:12-89e.

19:43-2.7 Qualification of new directors, officers or other qualifiers of a holding company

(a) Any proposed new director, partner, officer or other natural person required to qualify pursuant to N.J.S.A. 5:12-85c, d or e by virtue of his or her position with a holding company of a casino licensee, shall submit to individual qualification to the standards, except for residency, of a casino key employee by filing any required application forms prior to or immediately upon being elected or appointed to such position.

(b) No person subject to (a) above shall perform any duties or exercise any powers relating to his or her position until qualified by the Commission unless:

1. At least 30 days have elapsed from the date on which initially required and completed application forms were first filed; and
2. Permission to perform duties and exercise powers has been granted by the Commission pursuant to written petition of the casino licensee.

(c) Notwithstanding the provisions of (b) above, any person permitted to perform duties or exercise powers pursuant to this section without having first been qualified shall:

1. Be immediately removed from his or her position if at any time the Division provides information which the Commission determines to indicate reasonable cause to believe that such person may not be qualified;
2. Only be permitted to perform duties or exercise powers without having been qualified for a maximum period of nine months from the date on which permission to assume duties was first granted unless the Commission determines, upon written petition and a showing of good cause by the casino licensee, to extend the nine month period; and
3. At the time of the next renewal hearing of the casino licensee, be required to establish his or her qualifications unless the requirement that he or she be qualified is, temporarily or otherwise, waived by the Commission pursuant to N.J.S.A. 5:12-85d(1).

19:43-2.8 Issuance or transfer of interests; approval

No person shall issue or transfer any security or ownership interest in a casino licensee or applicant or any nonpublicly traded subsidiary or holding company thereof without the express, prior written approval of the Commission. The Commission shall not grant any such approval without considering the provisions of N.J.S.A. 5:12-39, 44, 47.2, 82d(7) through (10), 85c and e, 95.12 through 95.16, and 105.

19:43-2.9 Subsidiaries

(a) Each casino licensee or applicant or holding company thereof shall report immediately, in writing, to the Commission and the Division the formation or dissolution of, or any transfer of a nonpublicly traded interest in, any subsidiary of the casino licensee or applicant or any subsidiary of any holding company of the casino licensee or applicant which bears any relationship to the casino project.

(b) Each casino licensee or applicant shall file with the Commission adopted charter provisions that comply with the requirements of N.J.S.A. 5:12-82d(7) through (10) for each subsidiary of the casino licensee or applicant.

SUBCHAPTER 3. STANDARDS FOR LICENSURE OR QUALIFICATION (RESERVED)

SUBCHAPTER 4. FINANCIAL STABILITY OF CASINO LICENSEES AND APPLICANTS

19:43-4.1 Definitions

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

"Affiliate" is defined at N.J.A.C. 19:40-1.2.

"Capital and maintenance expenditures" means expense items related to the approved casino hotel which are incurred in connection with furniture, fixtures, equipment and facilities, and capitalized costs. Such term shall include acquisition; replacement; repairs; refurbishment; renovation; improvements; maintenance, including public area housekeeping; and labor.

"Casino bankroll" means cash maintained in the casino, excluding any funds necessary for the normal operation of the casino, such as change banks, slot hopper fills, slot booths, cashier imprest funds and redemption area funds.

"Equivalent provisions" means lines of credit, parent company guarantees, or other arrangements approved by the Commission through which funds can be accessed on an immediate and as needed basis.

"Gross operating profit" means net revenues less operating expenses, as reflected on the casino licensee's or applicant's Statement of Income.

"Material debt" means debt of $25,000,000 or more, whether in a single transaction or cumulative transactions during any 12 month period, or such other amount as the Commission may, at the time of licensure or license renewal, determine is appropriate to ensure the continued financial stability of a casino licensee or applicant.

"Operating expenses" means the total of cost of goods and services; selling, general and administrative expenses; and the provision for doubtful accounts.

19:43-4.2 Financial stability

(a) Each casino licensee or applicant shall establish its financial stability by clear and convincing evidence in accordance with section 84(a) of the Act and this subchapter.

(b) The Commission may consider any relevant evidence of financial stability; provided however, that a casino licensee or applicant shall be considered to be financially stable if it establishes by clear and convincing evidence that it meets each of the following standards:

1. The ability to assure the financial integrity of casino operations by the maintenance of a casino bankroll or equivalent provisions adequate to pay winning wagers to casino patrons when due. A casino licensee or applicant shall be found to have established this standard if it maintains, on a daily basis, a casino bankroll, or a casino bankroll and equivalent provisions, in an amount which is at least equal to the average daily minimum casino bankroll or equivalent provisions, calculated on a monthly basis, for the corresponding month in the previous year. For any casino licensee or applicant which has been in operation for less than a year, such amount shall be determined by the Commission based upon levels maintained by a comparable casino licensee;
2. The ability to meet ongoing operating expenses which are essential to the maintenance of continuous and stable casino operations. A casino licensee or applicant shall be found to have established this standard if it demonstrates the ability to achieve positive gross operating profit, measured on an annual basis;

3. The ability to pay, as and when due, all local, State and Federal taxes, including the tax on gross revenues imposed by subsection 144(a) of the Act, the investment alternative tax obligations imposed by subsection 144(b) and section 144.1 of the Act, and any fees imposed by the Act and Commission rules;

4. The ability to make necessary capital and maintenance expenditures in a timely manner which are adequate to ensure maintenance of a superior first class facility of exceptional quality pursuant to subsection 83(i) of the Act. A casino licensee or applicant shall be found to have established this standard if it demonstrates that its capital and maintenance expenditures, over the five-year period which includes the previous three calendar years and the license period, average at least five percent of net revenue per annum, except that any casino licensee or applicant which has been in operation for less than three years shall be required to otherwise establish compliance with this standard; and

5. The ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts. The Commission also may require that a casino licensee or applicant advise the Commission and Division as to its plans to meet this standard with respect to any material debts coming due and payable within 12 months after the end of the license term.

19:43-4.3 Continuing assessment of financial condition

(a) No casino licensee shall consummate a material debt transaction which involves the following without the prior approval of the Commission. Any transaction not specified in this subsection shall not require prior Commission review and approval with regard to the financial stability standards set forth in this subchapter.

1. An agreement which provides for any borrowing for a purpose other than capital and maintenance expenditures; or

2. A guarantee of the debt of an affiliate, whether by cosignature or otherwise; an assumption of the debt of an affiliate, or an agreement to place any encumbrance on its approved casino hotel facility to secure the debts of an affiliate.

(b) In reviewing any transaction pursuant to (a) above, the Commission shall consider whether the transaction would deprive the casino licensee of financial stability, as defined by N.J.A.C. 19:43-4.2, taking into account the financial condition of the affiliate and the potential impact of any default on the licensee.

(c) Any subsequent use of the proceeds of a transaction previously approved by the Commission pursuant to (a) above, including subsequent drawings under previously approved borrowings, shall not require further Commission approval.

(d) The Commission may restrict or prohibit the transfer of cash to, or the assumption of liabilities on behalf of, an affiliate if, in the judgment of the Commission, such transfer or assumption would deprive the casino licensee of financial stability as defined by N.J.A.C. 19:43-4.2.

19:43-4.4 Financial stability reporting requirements

(a) Each casino licensee shall file with the Commission and Division the following:

1. A statement of compliance with the criteria in N.J.A.C. 19:43-4.2(b), which shall be included in the quarterly reports filed by the casino licensee pursuant to N.J.A.C. 19:45-1.6;

2. At the end of each calendar year:

i. An annual forecast by calendar quarters of the operating and financial performances of the casino licensee for the upcoming calendar year, including statement of income and balance sheet, which shall be submitted in the standard format prescribed by the Commission; and

ii. A detailed analysis of compliance with N.J.A.C. 19:43-4.2(b)4; and

3. Such other information as the Commission or Division shall deem material to a showing of financial stability for a particular casino licensee.

19:43-4.5 Failure to demonstrate financial stability

In the event that a casino licensee or applicant fails to demonstrate financial stability, the Commission may take such action as is necessary to fulfill the purposes of the Act and to protect the public interest, including, but not limited to: issuing conditional licenses, approvals or determinations; establishing an appropriate cure period; imposing reporting requirements in excess of those otherwise mandated by these regulations; placing such restrictions on the transfer of cash or the assumption of liabilities as is necessary to insure future compliance with the standards set forth in N.J.A.C. 19:43-4.2(b); requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts to insure future compliance with the standards set forth in N.J.A.C. 19:43-4.2(b); denying licensure; appointing a conservator pursuant to section 130.1 et seq. of the Act.

SUBCHAPTER 5. APPLICATION REQUIREMENTS (RESERVED)

SUBCHAPTER 6. CASINO HOTEL FACILITY REQUIREMENTS

[19:41-2.1]**19:43-6.1** Impact of facilities

(No change in text.)

[19:41-2.2]**19:43-6.2** The hotel

(No change in text.)

[19:41-2.3]**19:43-6.3** Declaratory rulings as to proposed casino hotel facilities

(No change in text.)

[19:41-2.4]**19:43-6.4** Policy requiring superior quality and favoring completely newly constructed convention hotel complexes

(No change in text.)

[19:41-2.5]**19:43-6.5** Minimum standards for reconstruction of existing buildings and facilities

(No change in text.)

[19:41-2.6]**19:43-6.6** Declaratory rulings as to reconstructed facilities

(No change in text.)

[19:41-2.7]**19:43-6.7** Duty to maintain and operate a superior quality facility

(No change in text.)

19:43-6.8 Periodic reports of facility data

Each casino licensee or applicant shall prepare and submit to the Commission, on forms provided by the Commission, a report concerning the current status of qualifying square footages and related casino hotel facility data. Such reports shall be filed on the first business day of each calendar quarter or on such other periodic schedule as may be directed by the Commission.

19:43-6.9 Traffic flow around the casino hotel facility

Each casino licensee or applicant shall take such steps as are necessary to establish and maintain an efficient flow of traffic within the general ingress and egress routes of the casino hotel complex and to develop an efficient system which accommodates employee parking and transportation requirements in cooperation and consultation with the appropriate government agencies.

SUBCHAPTER 7. OPERATION CERTIFICATE (RESERVED)

SUBCHAPTER 8. CONTINUING OBLIGATIONS OF CASINO LICENSEES AND QUALIFIERS

19:43-8.1 Minutes of meetings of boards and committees

Each casino licensee or applicant or holding company thereof shall file with the Commission and Division copies of the minutes of all meetings of its board of directors or partnership executive committee, as applicable, and of all committee meetings including, without limitation, the audit committee, within seven days of their formal adoption.

SUBCHAPTER 9. EMPLOYMENT REQUIREMENTS

19:43-9.1 Employee internal controls submission

(a) Each casino licensee or applicant shall, pursuant to N.J.S.A. 5:12-99, submit three copies to the Commission and one copy to the Division of a description of its internal procedures and administrative and accounting controls concerning employee licensing requirements. Unless otherwise directed by the Commission, an initial submission shall be made at least 60 days prior to the projected date of issuance of a certificate of operation. Each such submission shall be prepared and maintained in a format provided by the Commission; shall contain narrative and, where appropriate, diagrammatic representations of the internal control system to be utilized by the casino licensee or applicant; and shall address, without limitation, the following employee licensing requirements:

1. Procedures used to prepare and maintain a jobs compendium;

2. Procedures used to process and submit applications for casino key employee licenses, casino employee licenses and hotel employee registrations;

3. Procedures used to prepare and submit petitions for temporary employee licenses;

4. Procedures for assuring that only properly licensed or registered persons are employed in each position;

5. Procedures used to record the number of hours worked by employees;

6. Procedures used to assure the timely renewal of employee licenses; and

7. Procedures for the use of license credential holders.

(b) The Commission shall review each submission required by (a) above to determine whether it conforms to the requirements of the Act and the regulations of the Commission. If the Commission finds any insufficiencies, it shall specify same in writing to the casino licensee or applicant who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the casino licensee or applicant accordingly. No casino licensee shall commence or maintain gaming operations unless and until its employee licensing internal controls submission is approved by the Commission.

(c) Any proposed amendment to a previously approved employee licensing internal controls submission shall be submitted, unless otherwise directed by the Commission, at least 60 days before any change in those procedures or controls is to take effect. Such submission shall conform with the requirements set forth in (a) above.

SUBCHAPTER 10. VENDOR REQUIREMENTS

19:43-10.1 Vendor internal controls submission

(a) Each casino licensee or applicant shall, pursuant to N.J.S.A. 5:12-99, submit three copies to the Commission and one copy to the Division of a description of its internal procedures and administrative and accounting controls concerning compliance with the vendor licensing and approval requirements of N.J.S.A. 5:12-92 and 104b. Unless otherwise directed by the Commission, an initial submission shall be made at least 60 days prior to the commencement of purchasing operations by the casino licensee or applicant. Each such submission shall be prepared and maintained in a format provided by the Commission; shall contain narrative descriptions of the internal control system to be utilized by the casino licensee or applicant; and shall address, without limitation, the following vendor licensing and approval requirements:

1. Procedures governing the purchase of goods and services;

2. Procedures governing the disbursement of payments for goods and services;

3. Procedures for the filing of vendor registration forms and junket enterprise vendor registration forms;

4. Procedures for the control of petty cash accounts;

5. Procedures insuring compliance with travel industry requirements;

6. Procedures governing the issuance of temporary casino access credentials;

7. Procedures for the generation of purchasing and disbursing reports; and

8. Procedures regarding vendor registration and financial reporting requirements for construction companies and subcontractors.

(b) The Commission shall review each submission required by (a) above to determine whether it conforms to the requirements of the Act and the rules of the Commission. If the Commission finds any insufficiencies, it shall specify same in writing to the casino licensee or applicant who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the casino licensee or applicant accordingly.

(c) Any proposed amendment to a previously approved vendor internal controls submission shall be submitted, unless otherwise directed by the Commission, no later than five days after any change in those procedures or controls takes effect. Such submission shall conform with the requirements set forth in (a) above.

SUBCHAPTER 11. RENEWAL OF CASINO LICENSE (RESERVED)

SUBCHAPTER 12. INTERIM CASINO AUTHORIZATION (RESERVED)

SUBCHAPTER 13. CONSERVATORSHIP

[19:41-13.1]**19:43-13.1** Definitions
(No change in text.)

[19:41-13.2]**19:43-13.2** Institution of casino license conservatorship and appointment of conservators
(No change in text.)

[19:41-13.3]**19:43-13.3** Qualification of conservator
(No change in text.)

[19:41-13.4]**19:43-13.4** Bonding of conservators
(No change in text.)

[19:41-13.5]**19:43-13.5** Powers of multiple conservators
(No change in text.)

[19:41-13.6]**19:43-13.6** Powers and jurisdiction of the Commission
(No change in text.)

[19:41-13.7]**19:43-13.7** Effect of the conservatorship on licensed casino operation
(No change in text.)

[19:41-13.8]**19:43-13.8** Powers, authorities and duties of conservators
(No change in text.)

[19:41-13.9]**19:43-13.9** Compensation of conservators and others
(No change in text.)

[19:41-13.10]**19:43-13.10** Required reports of the conservator
(No change in text.)

[19:41-13.11]**19:43-13.11** Review of action of conservator
(No change in text.)

[19:41-13.12]**19:43-13.12** Payment of net earnings during the period of conservatorship
(No change in text.)

[19:41-13.13]**19:43-13.13** Payments following a bulk sale
(No change in text.)

[19:41-13.14]**19:43-13.14** Discontinuation of conservatorship
(No change in text.)

SUBCHAPTER 14. ADVERTISING

[19:51-1.1]**19:43-14.1** Applicability of advertising regulations
(a)-(b) (No change in text.)

[(c) Any advertisement by an applicant for a casino service industry license or by a casino service industry licensee pursuant to section 92(a) and (b) of the Act, or agent thereof, shall be subject to these regulations if such an advertisement is directly related to casino gaming or casino gaming activity.

(d) Any advertisement by an applicant for a junket representative license or a junket representative licensee or by an applicant for a junket enterprise license or a junket enterprise licensee shall be subject to these regulations if such an advertisement is directly related to casino gaming or casino gaming activity.]

[19:51-1.2]**19:43-14.2** Criteria governing advertising
(No change in text.)

[19:51-1.3]**19:43-14.3** Commission approval
(a) All advertising or in the case of standard or recurring advertising, a sample thereof, which is directly related to casino gaming or casino gaming activity, shall be maintained by the casino licensee or applicant[, or the casino service industry licensee or applicant, or the junket representative licensee or applicant or the junket enterprise licensee or applicant, as appropriate,] for a period of one year from the date of placement of such advertisement. Advertising which must be maintained shall include such advertising as may have been placed for or on behalf of the casino licensee or applicant [or casino service industry licensee or applicant or the junket representative licensee or applicant or the junket enterprise licensee or applicant]. Advertising required to be maintained by this section shall be maintained at the principal place of business of the licensee or applicant, and shall be made available or produced for inspection upon the request of the [Casino Control] Commission or the Division [of Gaming Enforcement].
(b)-(c) (No change in text.)

SUBCHAPTER 15. ENTERTAINMENT

[19:52-1.1]**19:43-15.1** Prohibited entertainment activities
(No change in text.)

[19:52-1.2]**19:43-15.2** Entertainment within the casino room
(No change in text.)

19:45-1.4 Records regarding ownership
(a)-(b) (No change.)
(c) Each casino licensee or applicant shall, upon request by the Commission or Division, provide a list of all record holders of any or all classes of securities issued by its holding companies.

19:45-1.7 Annual audit and other reports
(a)-(g) (No change.)
(h) If the casino licensee or **any of** its affiliates is publicly held, the licensee **or the affiliate** shall submit **five copies** to the Commission and **one copy to** the Division [one copy] of any report, including, but not limited to, forms S-1, 8-K, 10-Q **and** 10-K, **proxy or information statements and all registration statements,** required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency, at the time of filing with such [Commission] **commission** or agency.
(i) (No change.)

19:49-1.4 Advertising
(a) Any advertisement by a junket enterprise vendor registrant or by an applicant for or holder of a junket enterprise license or by any agent thereof, including a junket representative, shall be subject to the provisions of N.J.A.C. 19:43-14 to the same extent as if such advertisement were by a casino licensee or applicant.
(b) Notwithstanding the provisions of (a) above, a junket enterprise vendor registrant, an applicant for or holder of a junket enterprise license and any agent thereof, including a junket representative, shall not be subject to the provisions of N.J.A.C. 19:43-14.3(b).

CHAPTER 51
[ADVERTISING] **PERSONS DOING BUSINESS WITH CASINO LICENSEES**

(AGENCY NOTE: N.J.A.C. 19:51-1.1 through 19:51-1.3 are recodified as **19:43-14.1** through **19:43-14.3**.)

SUBCHAPTER 1. GENERAL PROVISIONS

[19:43-1.1]**19:51-1.1** Definitions
(No change in text.)

[19:43-1.2]**19:51-1.2** License requirements
(No change in text.)

[19:43-1.3]**19:51-1.3** Standards for qualification
(No change in text.)

[19:43-1.4]**19:51-1.4** Persons required to be qualified
(No change in text.)

[19:43-1.5]**19:51-1.5** Disqualification criteria
(No change in text.)

[19:43-1.6]**19:51-1.6** Competition
(No change in text.)

[19:43-1.7]**19:51-1.7** Investigations; supplementary information
(No change in text.)

[19:43-1.8]**19:51-1.8** Duration of licenses
(No change in text.)

[19:43-1.9]**19:51-1.9** Record keeping
(No change in text.)

[19:43-1.10]**19:51-1.10** Causes for suspension, failure to renew or revocation of a license
(No change in text.)

[19:43-1.11]**19:51-1.11** Equal employment opportunity
(No change in text.)

[19:43-12.]**19:51-1.12** Fees
(No change in text.)

[19:43-1.13]**19:51-1.13** Exemption
(No change in text.)

[19:43-1.14]**19:51-1.14** Casino service industry licenses
(No change in text.)

19:51-1.15 Advertising
(a) Any advertisement by an applicant for or holder of a casino service industry license issued pursuant to N.J.S.A. 5:12-92a and b or by any agent thereof shall be subject to the provisions of N.J.A.C. 19:43-14 to the same extent as if such advertisement were by a casino licensee or applicant.
(b) Notwithstanding the provisions of (a) above, an applicant for or holder of a casino service industry license issued pursuant to N.J.S.A. 5:12-92a and b and any agent thereof shall not be subject to the provisions of N.J.A.C. 19:43-14.3(b).

CHAPTER 52
[ENTERTAINMENT] **(RESERVED)**

(AGENCY NOTE: N.J.A.C. 19:52-1.1 and 19:52-1.2 are recodified as 19:43-15.1 and 19:43-15.2.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Counter Checks; Slot Counter Checks
Personal Checks; Redemption
Bank Checks
Cash Equivalents; Verification and Redemption

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.26, 1.27, 1.27A, 1.28, 1.29, 1.33 and 1.34
Proposed Repeals and New Rules: N.J.A.C. 19:45-1.25 and 1.25A
Proposed New Rules: N.J.A.C. 19:45-1.25B through 1.25I

Authorized By: Casino Control Comission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63, 69, 70, 99 and 101.
Proposal Number: PRN 1992-412.

Submit comments by October 21, 1992 to:
David C. Missimer, Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendments and new rules are intended to accomplish several objectives. First, the proposal specifically identifies and defines the six categories of financial instruments which casino licensees are now authorized to accept under the Casino Control Act, N.J.S.A. 5:12-1 et seq. The six categories are: counter checks, casino checks, bank checks, personal checks, cash equivalents and replacement checks (personal checks used to substitute for counter checks or other replacement checks). The proposal then examines each of the rules contained in N.J.A.C. 19:45 which address the acceptance of financial instruments and specifies the type or types of instruments which are covered by each rule. In doing so, an attempt has been made to eliminate ambiguous terms such as "patron check" or even the work "check" itself where it is difficult to determine the scope of the word by simply examining the context within which it is used.

Each of these categories of instruments is treated differently under the Act and the proposed rules recognize the unique characteristics associated with each category of instrument. For example, although a counter check, a personal check and a replacement check are all personal checks drawn by a patron on his or her personal checking account, the Act requires that each of these instruments be processed in a different manner. A counter check is a credit instrument which may be held by a casino licensee for a period of time before deposit. Therefore, the licensee is required to establish a credit account for the patron and to verify certain information about the patron and the checking account on which the instrument will be drawn before it can accept a counter check.

Conversely, the Act does not treat the acceptance of a personal check as a credit transaction. Therefore, a personal check does not have to be verified prior to acceptance. The check must be deposited, however, on the next banking day following the date of the transaction and each casino licensee is limited as to the amount of personal checks which may be accepted from a patron at any given time. Accordingly, a licensee must be able to identify which instruments were accepted as personal checks and to track the amount of personal checks which are outstanding at any time.

Finally, a replacement check is a personal check which is used to substitute for, consolidate or partially redeem one or more counter checks or replacement checks previously accepted from a patron. This particular personal check, therefore, must be separately identifiable because it must be accounted for as part of a credit transaction. In addition, a replacement check which is ultimately determined to be uncollectible in accordance with the Commission's rules may be credited toward the allowance against gross revenues permitted by N.J.S.A. 5:12-24 while an uncollectible personal check may not (see N.J.S.A. 5:12-101i.). Again, a casino licensee must be able to distinguish between the two types of personal checks.

As indicated above, the vast majority of the amendments contained in the proposal simply clarify the particular type of financial instrument which is being addressed in each particular rule. The proposed amendments to N.J.A.C. 19:45-1.1 introduce new definitions for bank checks, personal checks and replacement checks and delete the definitions which are no longer applicable under the revised terminology. For example, the definition of "slot counter check" is deleted due to recent statutory amendments which eliminated any distinctions which may have previously existed between a counter check and a slot counter check. The proposed amendments to N.J.A.C. 19:45-1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.27, 1.28, 1.33 and 1.34 incorporate the revised terminology into the existing substantive and procedural requirements of those rules. These amendments also reflect the incorporation of the new financial instruments introduced by this proposal, namely personal checks and bank checks, into the existing regulatory scheme.

The most significant changes contained in the proposal reorganize the rules which govern the acceptance and processing of counter checks and establish procedures for the acceptance and processing of personal checks. It should be noted that, despite the repeal of the existing rules contained in N.J.A.C. 19:45-1.25 and 1.25A, very few substantive or procedural changes have been proposed with regard to these rules. The current versions of these rules are being repealed to eliminate any apparent distinctions which may have existed between counter checks and slot counter checks and to reorganize the rules by subject matter so that they are easier to comprehend. Due to the complexity of presenting the amendments to these two sections as resulting in the creation of six separate new sections (N.J.A.C. 19:45-1.25 through 1.25E), it was decided that it would be simpler to repeal the current sections and publish new rules. A close examination of these new rules will reveal, however, that the processing requirements for counter checks have not undergone any significant revisions.

Proposed new rule N.J.A.C. 19:45-1.25 generally sets forth the basic limitations governing the extension of credit to casino patrons which are currently contained in subsections (a) and (b) of the rule. Subsections (c) and (d) of the current rule are superseded by similar provisions contained in proposed N.J.A.C. 19:45-1.25A. Subsection (d) in proposed new N.J.A.C. 19:45-1.25 is intended to clarify that the restrictions on the acceptance of cash equivalents stated in subsection (b) is not intended to preclude the acceptance of cash equivalents by casino licensees outside the casino room for nongaming purposes.

Proposed new rules N.J.A.C. 19:45-1.25A through 1.25D do not make any significant changes to the current rules governing the acceptance of counter checks. The reorganization of these rules is being proposed, as noted above, to conform the procedures currently applicable to counter checks and slot counter checks and in anticipation of the future revision of chapter 45 into various subchapters. Accordingly, the rules currently found in N.J.A.C. 19:45-1.25(j) through (p) and 1.25A concerning the processing of counter checks have been restated in proposed new rules N.J.A.C. 19:45-1.25A through 1.25D.

Consistent with this reorganization, the current provisions of subsections (e) through (i) of N.J.A.C. 19:45-1.25, which address the acceptance of cash equivalents and casino checks by casino licensees, have been represented as proposed new rule N.J.A.C. 19:45-1.25E. The proposed new rule also contains provisions to implement the recent statutory amendments which authorize casino licensees to accept bank to bank drafts ("bank checks"). The rules governing bank checks, which are similar to certain types of cash equivalents, are incorporated in proposed new procedures which set forth standards for the verification of cash equivalents other than travelers checks or credit cards. The promulgation of this proposal would therefore result in the establishment of specific procedures in the Commission's rules for the acceptance of all financial instruments authorized for acceptance under the Act.

The proposed new rule would also permit a casino licensee to submit internal control procedures pursuant to which a patron would be permitted to repurchase a cash equivalent, bank check or casino check from a casino licensee prior to its deposit in the normal course. The rule would explicitly require that cash equivalents, bank checks and casino checks otherwise be restrictively endorsed and deposited on the next banking day following the date of the transaction. If a casino licensee determined to offer the redemption option, however, the casino licensee, upon approval of its internal controls, could give a patron up to five

banking days after the acceptance of the cash equivalent, bank check or casino check to redeem the instrument.

The most extensive new rules contained in the proposal address proposed procedures for the implementation of the personal check cashing amendments recently added to the Act. The proposed new rules N.J.A.C. 19:45-1.25F through 1.25I, to the extent practical, parallel the procedures which govern the acceptance of counter checks. The proposed rules recognize, however, that not all casino licensees may wish to allow personal checks to be redeemed given the statutory requirement that personal checks be deposited on the first banking day following the date of acceptance. Therefore, the proposed new rules create separate procedures for casino licensees which will permit redemption of personal checks and those which will not.

The proposed rules also recognize that personal checks may be accepted at various locations within a casino hotel establishment and create separate procedures for the acceptance of personal checks at a gaming table, at a cashiers' cage or slot booth and in the hotel portion of the property. Finally, the rules establish procedures for assuring that a patron does not exceed the statutory limit of $1,500 in personal checks outstanding at any particular casino hotel at any time.

The proposed amendments to N.J.A.C. 19:45-1.26 create the concept of a "replacement check" to enable a casino licensee and the regulatory authorities to distinguish personal checks which are being accepted for purposes of substitution from those which are being cashed pursuant to N.J.S.A. 5:12-101h. As explained above, the two types of personal checks must be treated differently under the Act when determining the gross revenue tax obligations of a casino licensee. Other amendments to this section attempt to clarify the applicability of its provisions to the various types of instruments which may be accepted under the Act and establish procedures for the return of redeemed counter checks, replacement checks and personal checks to patrons either in person or by mail.

Consistent with the policy underlying the provisions of N.J.A.C. 19:45-1.27A, the proposed amendments to that section would extend the voluntary credit restrictions of that section to personal check cashing privileges as well. Any patron requesting that his or her casino credit privileges be suspended pursuant to the provisions of N.J.S.A. 5:12-101j and N.J.A.C. 19:45-1.27A, would also be required to request suspension of his or her personal check cashing privileges at casino hotels.

Finally, two alternative amendments to N.J.A.C. 19:45-1.29 concerning the collection of returned personal checks are being proposed. Under Alternative A, the collection of returned personal checks would be handled by the same personnel involved in the collection of returned counter checks. Under Alternative B, casino licensees would be permitted to use the services of independent collection agencies when attempting to collect returned personal checks.

Social Impact

The majority of the proposed amendments and new rules contained in the proposal are technical or procedural in nature and are not anticipated to have any social impact beyond the continued benefit of assuring the strict regulation of casino gaming in this State consistent with the legislative goals set forth in N.J.S.A. 5:12-1b. It is possible that the introduction of personal check cashing and the acceptance of instruments such as bank checks may have some impact on the number of persons who choose to participate in casino gaming in Atlantic City and the amount of money which is wagered by such persons. Any attempt to anticipate the degree to which this might occur would be highly speculative at best and is due to the Legislature's decision to authorize such activities as opposed to the promulgation of this proposal.

Economic Impact

For the same reasons noted above, it is impossible to project at this time whether the proposed rules will have any significant economic impact on the revenues of casino licensees and the taxes derived therefrom. Again, however, this impact, to whatever extent it occurs, will be attributable to the statutory amendments which authorized the acceptance of personal checks and bank checks and not to the procedural requirements set forth in the proposal.

It is not anticipated that the amendments and new rules will have any significant impact on casino licensees in terms of the cost of implementation. The procedures set forth throughout the amendments and new rules are identical or similar to procedures currently utilized by casino licensees in the operation of their casinos. The amendments and new rules should have no significant economic impact on the regulatory agencies.

Regulatory Flexibility Statement

This proposal will only affect the operations of casino licensees, none of which qualify as a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility statement is required.

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

19:45-1.1 Definitions

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

. . . .

"Bank check" means a draft which is drawn by a banking institution which is chartered in the United States or in any other country on its account at a federally or state chartered bank in the United States and is made payable to a casino licensee, "cash," "bearer" or the presenting patron; provided, however, that any draft made payable to the presenting patron shall be endorsed in blank and shall not have originally been made payable to any person other than the presenting patron. A bank check shall conform with the requirements of N.J.S.A. 5:12-101g.

. . . .

["Check" is defined in N.J.A.C. 19:45-1.25.

"Check credit slip" is defined in N.J.A.C. 19:45-1.25.]

. . . .

"Financial instrument" means a counter check, personal check, replacement check, casino check, bank check or cash equivalent authorized for acceptance by a casino licensee pursuant to the Act and the rules of the Commission.

. . . .

"Patron cash deposit" means an amount of cash, cash [equivalent] **equivalents, bank checks, casino checks,** gaming chips or plaques deposited with a casino by a patron for his **or her** subsequent use.

["patron check" is defined in N.J.A.C. 19:45-1.25.]

. . . .

"Personal check" means any check which meets the requirements of N.J.S.A. 5:12-101(h), N.J.A.C. 19:45-1.25(b) and N.J.A.C. 19:45-1.25F.

"Personal check voucher" is defined in N.J.A.C. 19:45-1.25F.

. . . .

"Replacement check" is defined in N.J.A.C. 19:45-1.26.

"Replacement check voucher" means any documentation or recordation method approved for use in a casino licensee's system of accounting and internal controls as a means of tracking and controlling the acceptance and processing of a replacement check.

["Slot Counter Check" is defined in N.J.A.C. 19:45-1.25A.]

. . . .

"Table game drop" means the sum of the total amount of currency and coin and the total amounts recorded on **personal checks and** issuance copies of [Counter Checks] **counter checks and personal check vouchers** removed from a drop box.

"Table game win or loss" means the amount of gaming chips and plaques and cash won from patrons at gaming tables less the amount of gaming chips, plaques and coins won by patrons at gaming tables. The table game win or loss is determined by adding the amount of cash, the amount recorded on the Closer, and the totals of amounts recorded on the Credits, **personal checks** and issuance copies of [Counter Checks] **counter checks and personal check vouchers** removed from a drop box and subtracting the amount recorded on the Opener and the total of amounts recorded on Fills removed from a drop box.

. . . .

"Verbalize" means to orally express something in words. [In construing the provisions of this regulation, except where otherwise declared or clearly apparent from the context:

1. Words in any tense shall include other tenses;

2. Words in the masculine shall include the feminine and neuter genders; and

3. Words in the singular shall include the plural and the plural shall include the singular.

4. No provisions in this regulation shall be construed to limit the functions of representatives of the Commission and Division in executing their responsibilities as authorized by law.]

....

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

1. Records of all [patron] **counter checks and replacement** checks initially accepted by the licensee, deposited by the licensee, returned to the licensee as "uncollected," and ultimately written-off as uncollectible.

2. Records of all personal checks initially accepted by the licensee, deposited by the licensee, returned to the licensee as "uncollected" and ultimately determined to be uncollectible.

Recodify 2.-3. as **3.-4.** (No change in text.)

[4.]5. Records of all investments, advances, loans and receivable balances, other than [patron] **personal checks, counter checks, and replacement** checks, due to the establishment.

Recodify 5.-9. as **6.-10.** (No change in text.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-8. (No change.)

9. A cashiers' cage supervised by a casino key employee holding a license endorsed with the position of cage manager. The supervisor of the cashiers' cage shall report to the supervisor of the casino accounting department and shall be responsible for the control and supervision of cage and slot cashiers, change persons and casino clerks. The cashiers' cage may be separated into independent operations for table games and slot machines. If a casino licensee elects to operate both a table games cage and a slot machine cage, each independent cage operation shall be supervised by a casino key employee holding a license endorsed with the position of cage manager. The cashiers' cage shall be responsible for, without limitation, the following:

i. The custody of currency, coin [patron checks] **financial instruments received from patrons**, gaming chips and plaques, and documents and records normally associated with the operation of a cashiers' cage;

ii. The approval, exchange, redemption, and consolidation of [patron] **counter checks, personal checks and replacement** checks received for the purpose of gaming;

iii.-iv. (No change.)

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. Casino clerk shall be the person located at a desk in the pit to prepare documentation required for the operation of table games including, without limitation, Requests for Fills, Requests for Credits, **personal check vouchers** and [Counter Checks] **counter checks**.

2.-8. (No change.)

(c)-(i) (No change.)

19:45-1.14 Cashiers' cage**; master coin bank; coin vaults**

(a) Each establishment shall have on or immediately adjacent to the gaming floor a physical structure known as a cashiers' cage ("cage") to house the cashiers and to serve as the central location in the casino for the following:

1. The custody of the cage inventory [comprising] **including, without limitation,** currency, [including patrons,] **patrons'** deposits, coin, [patron checks] **financial instruments accepted from patrons**, gaming chips and plaques, and of forms, documents, and records normally associated with the operation of a cage;

2. The approval, exchange, redemption, and consolidation of [patron] **counter checks, personal checks and replacement** checks received for the purposes of gaming in conformity with this chapter;

3.-4. (No change.)

(b) (No change.)

(c) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall be, at a minimum, as effective as the following:

1. Fully enclosed except for openings through which materials such as gaming chips and plaques, [patron checks] **financial instruments received from patrons**, cash, records, and documents can be passed to service the public, gaming tables, and slot booths;

2.-4. (No change.)

(d)-(g) (No change.)

19:45-1.15 Accounting controls for the cashiers' cage, master coin bank, and coin vaults

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

(c) The cashiers' cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and such cashiers' functions shall [be, but are not limited to] **include, without limitation**, the following:

i. Receive cash, cash equivalents, **counter checks, bank checks, casino checks, replacement** checks, gaming chips and plaques from patrons for check consolidations, total or partial redemptions or substitutions;

ii. Receive gaming chips from patrons in exchange for cash **or a casino check**;

iii. (No change.)

iv. Receive **bank checks, casino checks, and personal** checks [for non-gaming purposes] from patrons in exchange for cash;

v. Receive cash, cash equivalents**, bank checks, casino checks** and gaming chips from patrons in exchange for Customer Deposit Forms;

vi. Receive gaming plaques from patrons in exchange for cash**, a casino check** or Customer Deposit Form[s] in accordance with an approved system of accounting as required by N.J.A.C. 19:46-1.2(e);

vii. Receive Customer Deposit Forms from patrons in exchange for cash **or a casino check**;

viii. (No change.)

ix. Receive **counter checks and replacement** checks from check cashiers to be returned to patrons for check redemptions, partial redemptions, consolidations or substitutions;

x.-xii. (No change.)

xiii. Exchange [Slot Counter Checks] **counter checks** in accordance with N.J.A.C. 19:45-1.25A; and

xiv. (No change.)

2. Check cashiers shall not have access to cash, gaming chips and plaques and such cashiers' functions shall [be, but are not limited to] **include, without limitation**, the following:

i. Receive the original and redemption copies of [Counter Checks and Slot Counter Checks] **counter checks and replacement checks**;

ii. Receive from general cashiers, **counter checks and replacement** checks accepted for [total or] partial [Counter Check and Slot Counter Check] **counter check and replacement check** redemptions;

iii. Receive **counter checks and replacement** checks from general cashiers for [Counter Check and Slot Counter Check] **counter check and replacement check** consolidations;

iv. Receive [personal] **replacement** checks from general cashiers for [Counter Check and Slot Counter Check] **counter check** substitutions;

v. Receive personal checks and copies of personal check vouchers from casino clerks, general cashiers, slot cashiers, chip bank cashiers and other authorized employees;

[v.]**vi.** Prepare bank deposit slips or supporting documentation for **counter checks, replacement checks and personal** checks to be deposited;

[vi.]**vii.** Receive Wire Transfer Acknowledgment Forms in accordance with N.J.A.C. 19:45-1.14A for the purpose of redeeming [Counter Checks and Slot Counter Checks] **counter checks, replacement checks and personal checks** or accepting payment on returned [Counter Checks and Slot Counter Checks] **counter checks, replacement checks and personal checks**; and

Recodify vii. as **viii.** (No change in text.)

3. Chip bank cashiers shall not have access to currency or cash equivalents, but shall operate with a limited inventory of $0.50 and $0.25 cent coins which may only be used to facilitate odds payoffs or vigorish bets. Such cashiers' functions shall [be, but are not limited to] **include, without limitation**, the following:

i. Receive gaming chips and coin removed from gaming tables from a **casino** security department member in exchange for the issuance of a credit;

ii. Receive gaming plaques removed from gaming tables from a **casino** security department member in exchange for the issuance of a credit in accordance with an approved system of accounting as required by N.J.A.C. 19:46-1.2(e);

iii. Receive Requests for Fills in exchange for the issuance of a Fill, the dispersal of gaming chips and coin to a **casino** security department member and the dispersal of gaming plaques to a **casino** security department member in accordance with an approved system of accounting as required by N.J.A.C. 19:46-1.2(e);

iv. Receive chips from the general cashiers and main bank cashiers in exchange for proper documentation; [and]

v. Receive original counter checks, copies of counter checks, personal checks and copies of personal check vouchers from casino clerks and slot cashiers for forwarding in accordance with the provisions of this chapter; and

[v.]**vi.** Receive from general, check bank and reserve cash cashiers' documentation with signatures thereon, required for the effective segregation of functions in the cashiers' cage.

4. Reserve cash ("main bank") cashiers' functions shall [be, but are not limited to] **include, without limitation**, the following:

i. Receive cash, cash equivalents, **bank checks, casino checks,** issuance copies of [Slot Counter Checks] **counter checks and personal check vouchers**, original copies of Jackpot Payout slips, personal checks [received for non-gaming purposes], gaming chips and plaques from general cashiers in exchange for cash;

ii. Receive cash **and personal checks** from the coin and currency count rooms;

iii. Receive **counter checks, replacement checks, and personal** checks and supporting documentation from check cashiers for deposit if such deposit is not made by the check cashier;

iv.-v. (No change.)

vi. Receive from general, chip and check bank cashiers, documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage; [and]

vii. Receive personal checks and issuance copies of counter checks and personal check vouchers from slot cashiers in exchange for cash; and

Recodify vii. as **viii.** (No change in text.)

5. Master coin bank cashiers' functions shall [be, but not limited to] **include, without limitation**, the following:

i. Receive currency, coin, slot tokens, gaming chips, **and** coupons from slot cashiers in exchange for proper documentation[.];

ii. (No change.)

iii. Provide slot cashiers with currency, coin and slot tokens in exchange for **personal checks, issuance copies of counter checks and personal check vouchers and other** proper documentation;

iv. **Forward personal checks and issuance copies of counter checks and personal check vouchers to the main bank or accounting department in accordance with the provisions of this chapter;**

Recodify iv.-v. as **v.-vi.** (No change in text.)

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

19:45-1.16 Drop boxes and slot cash storage boxes

(a) Each gaming table in a casino shall have attached to it a metal container known as a "drop box" in which shall be deposited all cash, **nonredeemable personal checks,** issuance copies of [Counter Checks] **counter checks and personal check vouchers** exchanged at the gaming table for gaming chips and plaques, duplicate Fill and Credit Slips, Requests for Credit forms, Requests for Fill forms, and Table Inventory forms. Each drop box shall have:

1.-5. (No change.)

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

19:45-1.20 Table inventories

(a) Whenever a gaming table in a casino is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino shall cause or permit gaming chips, coins or plaques to be added to or removed from such table inventory during the gaming day except:

1. In exchange for cash, **nonredeemable personal checks** or issuance copies of [Counter Checks] **counter checks or personal check vouchers** presented by casino patrons in conformity with the provisions of N.J.A.C. 19:45-1.18, [and] 19:45-1.25 **and 19:45-1.25F**;

2.-5. (No change.)

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

19:45-1.24 Procedure for acceptance, accounting for and redemption of patron's cash deposits

(a) Whenever a patron requests that the casino hold his **or her** cash, cash equivalents, **bank checks, casino checks,** gaming chips or plaques for subsequent use, [he] **the patron** shall deposit the cash, cash equivalents, **bank checks, casino checks,** gaming chips or plaques with a general cashier. **The general cashier shall comply with all procedures set forth in N.J.A.C. 19:45-1.25E for the acceptance of cash equivalents, bank checks and casino checks.**

(b) A file for each patron shall be prepared manually or by computer prior to the acceptance of a cash deposit from a patron by a general cage cashier and such file shall include, at a minimum, the following:

1.-2. (No change.)

3. The date and amount of each [check] **Customer Deposit Withdrawal** initially accepted from the patron, as a draw against a cash deposit;

4. (No change.)

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

(g) For establishments in which Customer Deposit Forms are computer-prepared, each series of Customer Deposit Forms shall be a two-part form, at a minimum, and shall be [inserted in a printer] **generated by a computer system** that will[:] simultaneously print an original and duplicate and store, in machine-readable form, all information printed on the original and duplicate. The store data shall not be susceptible to change or removal by any personnel after preparation of a Customer Deposit form.

(h) On the original and duplicate of the Customer Deposit Form, or in stored data, the general cashier shall record, at a minimum, the following information:

1.-4. (No change.)

5. Nature of the amount received (cash, cash equivalents, **bank checks, casino checks,** chips, plaques or wire transfer).

(i) (No change.)

(j) A patron shall be allowed to use the deposit by supplyng information required by the casino to verify his or her identification.

1. The pit clerk, general cashier or slot cashier shall ascertain, from the cashiers' cage, the amount of the patron deposit available and request the amount the patron wishes to use against this balance. The pit clerk**, general cashier or slot cashier** shall prepare a [Counter Check in compliance with N.J.A.C. 19:45-1.25 or a general cashier or slot cashier shall prepare a Slot Counter Check] **counter check** in compliance with N.J.A.C. 19:45-1.25A with the exception that the words "Customer Deposit Withdrawal" shall be recorded on the [Counter Check or Slot Counter Check] **counter check** in place of the name of the patron's bank.

(k) Distribution of the [Counter Checks shall comply with N.J.A.C. 19:45-1.25 and distribution of Slot Counter Checks] **counter checks** shall comply with N.J.A.C. 19:45-1.25A.

(l) The patron's deposit balance shall be immediately reduced by amounts equal to [the Counter Checks issued in the pit or Slot

Counter Checks issued in the slot area or at the casino cage] **any counter checks issued as draws against his or her deposit.**

(m) A patron may obtain a refund of his or her deposit or any unused portion of a deposit by requesting the refund from a general cashier and returning his or her copy of the Customer Deposit Form. The general cashier shall verify the customer's identification and shall:

1.-2. (No change.)

3. Prepare necessary documentation evidencing such refund, which documentation may include a counter check or any other document which contains the following information:

i.-ii. (No change.)

iii. Type of refund made (cash, **casino** check or wire transfer);

iv.-v. (No change.)

(n) (No change.)

(o) The check cashier shall return the original [copies of the Counter Check(s)] **counter check** to the general cashier who shall return it to the patron and refund the unused balance of the deposit to the patron at which time the general cashier shall maintain any other necessary documentation to evidence such refund.

(p)-(q) (No change.)

19:45-1.24A Procedures for accepting, verifying and accounting for wire transfers

(a) A casino licensee may, in accordance with the rules of the Commission, accept a wire transfer of funds to enable the [following]:

1. (No change.)

2. Redemption of an outstanding [Counter Check or Slot Counter Check] **counter check, replacement check or personal check** pursuant to N.J.S.A. 5:12-101[c] and N.J.A.C. 19:45-1.26 and 1.27; or

3. Payment of a returned [Counter Check or Slot Counter Check] **counter check, replacement check or personal check** pursuant to N.J.S.A. 5:12-101e. and N.J.A.C. 19:45-1.29.

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

(f) Upon determining the purpose for the wire transfer, a cage supervisor shall prepare a Wire Transfer Acknowledgment Form, a two-part form containing, at a minimum, the following information:

1.-4. (No change.)

5. The purpose for the wire transfer (cash deposit; redemption; payment of returned [Counter Check or Slot Counter Check] **counter check, replacement check or personal check);**

6. (No change.)

7. The signature of either:

i. The check bank cashier, if the funds are to be used for [Counter Check or Slot Counter Check] **counter check, replacement check or personal check** redemption or the payment of a returned [Counter Check or Slot Counter Check] **counter check, replacement check or personal check;** or

ii. (No change.)

(g) Upon completion of the information required by (f)1 through 6 above, the cage supervisor who prepared the form shall obtain the signature required by (f)7 above on both copies of the Wire Transfer Acknowledgment Form, transmit the duplicate copy and any supporting documentation to the accounting department, and forward the original Wire Transfer Acknowledgment Form to:

1. The [Check] **check** bank cashier, if the funds are to be used for [Counter Check or Slot Counter Check] **counter check, replacement check or personal check** redemption or the payment of a returned [Counter Check or Slot Counter Check] **counter check, replacement check or personal check,** who shall:

i. Post the amount of the funds to the patron's credit account **or personal check log;**

ii. If appropriate, return the redeemed [Counter Check or Slot Counter Check] **counter check, replacement check or personal check** to the patron;

iii. (No change.)

iv. Forward to the accounting department the redemption copy of any [Counter Check redeemed in accordance with the requirements of N.J.A.C. 19:45-1.25 or Slot Counter Check redeemed, in accordance with the requirements of N.J.A.C. 19:45-1.25A] **counter check redeemed, the equivalent portion of any replacement check voucher for any replacement check redeemed or the redemption copy of a personal check voucher for any personal check redeemed;** or

2. (No change.)

(h) (No change.)

19:45-1.24B Procedure for sending funds by wire transfer

(a) Whenever a patron requests a casino licensee to send funds by wire transfer to a financial institution on behalf of the patron, the patron shall present to the general cashier the cash, cash equivalents, casino check, chips, plaques, or tokens representing the amount sought to be transferred, or, in the case of a cash deposit, request that the unused balance of the cash deposit be transferred. In the case of a cash deposit, the procedures set forth in N.J.A.C. 19:45-1.24 for redemption of a cash deposit shall be observed. **In the case of a cash equivalent or casino check, the procedures for acceptance of the instrument set forth in N.J.A.C. 19:45-1.25E shall be observed.**

(b)-(g) (No change.)

[19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

(a) Except as otherwise provided in this section, no casino licensee or any person licensed under the Casino Control Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Casino Control Act, shall:

1. Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player; or

2. Release or discharge any debt which is uncollectible, either in whole or in part, which represents any losses incurred by any player in gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by sections 19:45-1.28 and 19:45-1.29; or

3. Make any loan which represents any losses incurred by any player in gaming activity without receiving from said player in exchange therefor, a check in the amount of said loan, which check shall conform with the Casino Control Act and these regulations.

(b) No casino licensee or any person licensed under the Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, may accept a check, other than a recognized travelers' check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check unless the requirements of this section and N.J.A.C. 19:45-1.26, 19:45-1.27, 19:45-1.28, and 19:45-1.29 concerning check cashing, redeeming, consolidating, collecting and recording procedures are observed by the casino licensee and its employees and agents. For purposes of this chapter: the term "check" when used in connection with an exchange, redemption, substitution or consolidation by a patron shall mean any draft drawn by the patron which is a "cash item" as defined in Regulation J of the Board of Governors of the Federal Reserve System, 12 C.F.R. §210.2(e), and which is drawn on an account maintained in a "depository institution" as defined in Section 19(b) of the Federal Reserve Act, 12 U.S.C. §461(b), including share drafts and drafts drawn on negotiable order of withdrawal accounts or similar accounts; the term "checking account" shall mean any account on which a "check" is drawn; and the term "bank" shall include any "depository institution" as defined in 12 U.S.C. §461(b). For purposes this chapter, a check received from a person by cage cashiers may be presumed by the casino licensee not to be exchanged to enable such person to take part in gaming activity as a player, if the casino licensee shall cause to be posted at each general cashier station in the cashier's cage a conspicuous sign that reads: "By law, personal checks cannot be exchanged for currency or coin to be used for gaming purposes."

(c) All checks sought to be exchanged in a casino by a patron shall be:

1. Drawn on a bank and payable on demand;

2. Drawn for a specific amount;

3. Made payable to the casino licensee; and

4. Currently dated, but not post dated.

(d) All checks sought to be exchanged at the cashiers cage shall be:

1. Presented directly to the general cashier who shall:

i. Restrictively endorse the check "for deposit only" to the casino licensee's bank account;

ii. Initial the check;

iii. Date and time stamp the check;

iv. Record the junket number, if applicable;

v. Immediately exchange the check for currency and coin in an amount equal to the amount for which the check is drawn, not to exceed two hundred dollars ($200.00) per patron per day, if such check is exchanged for the purpose of non-gaming; and

vi. Forward redemption, consolidation and substitution checks to the Check Cashier and all non-gaming checks to the main bank cashier.

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall be only accepted at the cashiers' cage by general cashiers. Prior to the acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. In order to ensure the patron's identity, prior to the acceptance of a cash equivalent made payable to a presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall be required to examine that patron's identification credentials or verify that the patron's signature recorded on the cash equivalent or casino check and the patron's physical description agree with the information recorded in the patron's credit file prepared pursuant to N.J.A.C. 19:45-1.27. Each casino licensee shall maintain documentation supporting that examination or verification.

1. Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:

i. Requiring the patron to counter sign the travelers check in his or her presence;

ii. Comparing the countersignature with the original signature on the travelers check;

iii. Examining the travelers check for any other signs of tampering, forgery or alteration; and

iv. Performing any other procedures which the issuer of the travelers check requires in order to indemnify the acceptor against loss.

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino which issued the check and shall verify the following information:

1. The date of the check;

2. The check number;

3. The name of the payee appearing on the check;

4. The amount of the check; and

5. That the check represents:

i. The return of a patron's deposit money;

ii. The redemption of the casino's gaming chips; or

iii. The winnings from slot machine payoffs.

(g) The general cashier accepting a casino check shall document the verifications performed in (f) above in a log and record the name of the cashier providing such information and the date and time the information was obtained. In addition, the general cashier shall record his name and license number in the log.

(h) A general cashier of the New Jersey casino which issued the casino check shall provide such information, as required by (f) above, to the casino licensee accepting such check and shall indicate that verification was requested by notating in a log the following information:

1. The date and time of the request;

2. The name of the casino requesting the information;

3. The name of the general cage cashier making the request;

4. The check number;

5. The date of the check;

6. The name of the payee appearing on the check; and

7. The reason for the check as either:

i. The return of a patron's deposit money;

ii. The redemption of the casino's gaming chips; or

iii. The winnings from slot machine payoffs.

(i) A person may obtain cash at the cashiers' cage or slot booth to be used for gaming purposes by presenting a recognized credit card to a general cashier or slot cashier. Prior to the issuance of cash to a person, the general cashier or slot cashier shall verify through the recognized credit card company the validity of the person's credit card or shall verify through a recognized electronic funds transfer company which, in turn, verifies through the credit card company the validity of the person's credit card and shall obtain approval for the amount of cash the person has requested. The general cashier or slot cashier shall then prepare such documentation as required by the casino licensee to evidence such transactions and to balance the imprest fund prior to the issuance of the cash.

(j) The following procedures and requirements over Counter Checks shall be observed:

1. Counter Checks shall be serially prenumbered forms; each series of Counter Checks shall be used in sequential order, and the series numbers of all Counter Checks received by a casino licensee shall be accounted for by employees with no incompatible functions. The original and all copies of void Counter Checks shall be marked "VOID" and shall require the signature of the casino clerk.

2. For establishments in which Counter Checks are manually prepared:

i. Each series of Counter Checks shall be a five-part form, at a minimum, which consists of an original, a redemption copy, an accounting copy, an issuance copy and acknowledgement copy and shall be attached in a book that will permit an individual slip in the series and its copies to be written upon simultaneously, while still contained in the book, and that will allow the removal of the original and all duplicate copies; and

ii. Access to the Counter Checks shall be maintained and controlled at all times by the casino clerks responsible for controlling of and accounting for the unused supply of Counter Checks, and the preparation of Counter Checks for a patron's signature.

3. For establishments in which Counter Checks are computer prepared, each series of Counter Checks shall be a four-part form, at a minimum, which consists of an original, a redemption copy, an issuance copy and accounting copy and shall be inserted in a printer that will: simultaneously print an original and duplicates and store, in machine-readable form, all information printed on the original and duplicates; and discharge the original and duplicates. The stored data shall not be susceptible to change or removal by any personnel after preparation of a Counter Check.

(k) For each Counter Check exchanged at a gaming table, the casino clerk shall:

1. Verify the patron's identity by either:

i. Obtaining the patron's signature, on a form, which signature shall be compared to the original signature, or a computer generated facsimile thereof, contained within the patron's credit file. The casino clerk shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his credit file. Such form shall be attached to the accounting copy of the Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (p) below.

(l) After the patron's identity has been verified by the casino clerk as required above, the requirements for subsequent verification of the patron's identity during the same shift and in the same gaming pit may be satisfied by that casino clerk signing a form attesting to the patron's identity before each subsequent Counter Check is exchanged. The form shall include the patron's name and the serial number of the initial Counter Check exchanged by the patron. Such form shall be attached to the accounting copy of the Counter Check prior to forwarding it to the accounting department in conformity with (p) below; or

ii. Obtaining the attestation of a casino supervisor as to the identity of the patron. The casino supervisor shall sign a form attesting to the patron's identity and shall record his license number thereon. Such form shall be attached to the accounting copy of the

Counter Check exchanged by the patron prior to forwarding it to the accounting department in conformity with (p) below.

2. Determine the patron's remaining credit limit from the cashiers' cage.

3. Prepare the Counter Check for a patron's signature by recording, at a minimum, on the face of the original and all duplicates of the Counter Check, with the exception of the acknowledgement copy which shall only have recorded on it the game and table number, or in stored data, the following information:

i. The name of the patron exchanging the Counter Check;

ii. The name of the patron's bank (required on the original copy only);

iii. The current date and time;

iv. The amount of the Counter Check expressed in numerals;

v. The game and table number;

vi. The signature of the casino supervisor authorizing acceptance of the check; and

vii. The signature of the preparer or, if computer prepared, the identification code of the preparer.

4. Place an impression on the back of the original Counter Check a restrictive endorsement "for deposit only" to the casino licensee's bank account.

5. Present the original and all duplicate copies of the Counter Check to the patron for signature.

6. Receive the signed Counter Check directly from the patron; the issuance copy, which is the equivalent of a Check Credit Slip, of the Counter Check shall be immediately and directly given to the dealer or boxman. In no instance shall the chips or plaques be given to the patron prior to the receipt of the issuance copy of the Counter Check by the dealer or boxman.

i. The original, redemption, and acknowledgement copies of the Counter Check shall be expeditiously transported to the cashiers' cage where the original and redemption copies shall be maintained and controlled by the Check Bank Cashier;

ii. The accounting copy of the Counter Check, if manually prepared, shall be maintained and controlled at all times by the casino clerk; and

iii. The issuance copy of the Counter Check shall be deposited by the dealer or boxman in the drop box immediately after the issuance of chips or plaques to the patron.

(l) For establishments in which the Chip Bank Cashier receives the original, redemption and acknowledgement copies of the Counter Check the Chip Bank Cashier shall sign and time stamp the acknowledgement copy of the Counter Check and expeditiously return it to the casino clerk via a security department member or pneumatic tube system and shall transfer the original and redemption copies of the Counter Check to the Check Cashier in return for properly signed documentation.

(m) For establishments in which the Check Cashier receives the original, redemption and acknowledgement copy of the Counter Check directly from the casino clerk, whether through the use of the pneumatic tube system or transported by a security department member the Check Cashier shall:

1. Sign and time stamp the acknowledgement copy and shall transmit it to the casino clerk via a security department member or pneumatic tube system, and shall maintain the original and redemption copies of the Counter Check.

(n) The acknowledgement copy of the Counter Check returned to the casino clerk shall be agreed to the accounting copy and maintained and controlled by the casino clerk.

(o) If the total amount of chips or plaques possessed by a patron exceeds $500.00, the casino licensee shall request the patron to apply all chips or plaques in his possession to the redemption of Counter Checks or Slot Counter Checks exchanged for purposes of gaming prior to exchanging such chips or plaques for cash or prior to departing from the casino area.

(p) At the end of each gaming day, at a minimum, the following procedures and requirements shall be observed:

1. The original and all copies of void Counter Checks and the accounting and acknowledgement copies of the Counter Check shall be forwarded by a representative of the accounting or security department to the accounting department for agreement, on a daily basis, with the issuance copy of the Counter Check removed from the drop box or stored data.

2. The redemption copy of a Counter Check maintained and controlled in conformity with subsection (i) 6.i. above shall be forwarded to the accounting department subsequent to the redemption, consolidation or deposit of the original Counter Check for agreement with the accounting and issuance copies of the Counter Check or stored data.]

19:45-1.25 Credit; general requirements and restrictions

(a) Except as otherwise provided in N.J.A.C. 19:45-1.25A, 1.25E, 1.25F and 1.26, no casino licensee or any person licensed under the Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, shall:

1. Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming activity as a player; or

2. Release or discharge any debt which is uncollectible, either in whole or in part, which represents any losses incurred by any player in gaming activity without maintaining a written record of the deposit, check return and collection efforts as required by N.J.A.C. 19:45-1.28 and 1.29; or

3. Make any loan which represents any losses incurred by any player in gaming activity without receiving from said player in exchange therefor, an instrument in the amount of said loan, which instrument shall conform with the requirements of the Act and this chapter.

(b) No casino licensee or any person licensed under the Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, may accept a check, cash equivalent, bank check or casino check from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalents in exchange for such check, cash equivalent, bank check, or casino check unless the requirements of N.J.A.C. 19:45-1.25A, 1.25E, 1.25F, 1.26, 1.27, 1.28, and 1.29 are observed by the casino licensee and its employees and agents.

(c) For purposes of this chapter: the terms "counter check," "replacement check" or "personal check" when used in connection with any exchange, redemption, substitution or consolidation by a patron authorized by the Act or this chapter shall mean any draft drawn by the patron which is a "cash item" as defined in Regulation J of the Board of Governors of the Federal Reserve System, 12 C.F.R. §210.2(e), and which is drawn on an account maintained in a "depository institution" as defined in Section 19(b) of the Federal Reserve Act, 12 U.S.C. §461(b), including share drafts and drafts drawn on negotiable order of withdrawal accounts or similar accounts; the term "checking account" shall mean any account on which a "counter check," "replacement check" or "personal check" is drawn; and the term "bank" shall include any "depository institution" as defined in 12 U.S.C. §461(b).

(d) Notwithstanding the foregoing or any other provision of this chapter to the contrary, a casino licensee shall be permitted to accept, at locations outside the casino room, cash equivalents from a patron in exchange for cash to be used for non-gaming purposes or to pay non-gaming debts owed to the casino licensee.

[19:45-1.25A Procedure for exchange of slot counter checks by slot patrons

(a) A casino licensee may offer credit to slot patrons pursuant to N.J.A.C. 19:45-1.27. Slot Counter Checks may be prepared by slot cashiers at slot booths and coin redemption locations and by general cashiers at the cashiers' cage. For casino licensees which issue credit to slot players, the following procedures and requirements over Slot Counter Checks shall be observed:

1. Slot Counter Checks shall be serially prenumbered forms. Each series of Slot Counter Checks shall be used in sequential order; however, nothing in this subsection shall preclude a casino licensee from issuing Slot Counter Checks from the same numbering sequence used for the issuance of Counter Checks pursuant to

N.J.A.C. 19:45-1.25. The series numbers of all Slot Counter Checks shall be accounted for by employees with no incompatible functions.

i. The original and all copies of voided Slot Counter Checks shall be marked "VOID" and shall require the signature of the preparer.

2. For establishments in which Slot Counter Checks are manually prepared:

i. Each series of Slot Counter Checks shall be a five-part form, at a minimum, which consists of an original, a redemption copy, an accounting copy, an issuance copy and acknowledgement copy and shall be attached in a book that will permit an individual slip in the series and its copies to be written upon simultaneously, while still contained in the book, and that will allow the removal of the original and all duplicate copies.

ii. Access to the Slot Counter Checks shall be maintained and controlled at all times by the general cashier or slot cashier responsible for control of and accounting for the unused supply of Slot Counter Checks, and the preparation of Slot Counter Checks for a patron's signature.

3. For establishments in which Slot Counter Checks are computer prepared, each series of Slot Counter Checks shall be a four-part form, at a minimum, which consists of an original, a redemption copy, an issuance copy and accounting copy and shall be inserted in a printer that will: simultaneously print an original and duplicates and store, in machine readable form, all information printed on the original and duplicates; and discharge the original and duplicates. The stored data shall not be susceptible to change or removal by any personnel after preparation of a Slot Counter Check.

(b) For each Slot Counter Check exchanged, in accordance with (a) above, the general cashier or slot cashier shall:

1. Verify the patron's identity by either:

i. Obtaining, at a minimum, the amount of the requested Slot Counter Check and the patron's signature on a form, which signature shall be compared to the original signature, or a computer generated facsimile thereof, contained within the patron's credit file. The general cashier or slot cashier shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his or her credit file. Such form shall be attached to the accounting copy of the Slot Counter Check exchanged by the patron and deposited into a locked accounting box for forwarding to the accounting department in conformity with (h) below.

(1) After the patron's identity has been verified by the general cashier or slot cashier as required above, the requirements for subsequent verification of the patron's identity may be satisfied by that general cashier or slot cashier signing a form attesting to the patron's identity before each subsequent Slot Counter Check is exchanged. The form shall include the patron's name and the serial number of the initial Slot Counter Check exchanged by the patron. Such form shall be attached to the accounting copy of the Slot Counter Check and deposited into a locked accounting box for forwarding to the accounting department in conformity with (h) below; or

ii. Obtaining the attestation of a slot supervisor as to the identity of the patron. The slot supervisor shall sign a form attesting to the patron's identity and shall record his or her license number thereon and the amount requested by the patron. Such form shall be attached to the accounting copy of the Slot Counter Check exchanged by the patron and deposited into a locked accounting box for forwarding to the accounting department in conformity with (h) below;

2. Determine the patron's remaining credit limit either from a check bank cashier or from a computer terminal located in an area as approved by the Commission;

3. Prepare the Slot Counter Check for the patron's signature by recording, at the minimum, on the face of the original and all duplicates of the Slot Counter Check, with the exception of the acknowledgement copy which shall only have recorded on it the location of preparation, or in stored data, the following information:

i. The name of the patron exchanging the Slot Counter Check;

ii. The name of the patron's bank (required on the original copy only);

iii. The current date and time;

iv. The amount of the Slot Counter Check expressed in numerals;

v. The location of preparation of the Slot Counter Check;

vi. The signature of the cage supervisor or slot supervisor verifying that the Slot Counter Check was prepared for the correct amount and for the correct individual per the information recorded on the form referenced in (b)1 above; and

vii. The signature of the preparer or, if computer prepared, the identification code of the preparer;

4. Place an impression on the back of the original Slot Counter Check a restrictive endorsement "for deposit only" to the casino licensee's bank account;

5. Present the original and all duplicate copies of Slot Counter Check to the patron for signature;

6. Receive the signed original and all duplicate copies of the Slot Counter Check directly from the patron. The general cashier or slot cashier shall, if verification occurs in accordance with (b)1i above, compare the patron's signature on the signed Slot Counter Check to the form referenced in (b)1 above and sign the form referenced in (b)1 above if the signatures appear to agree. In no instance shall currency, coin or slot tokens be given to the patron prior to the receipt of the signed copy of the Slot Counter Check by the general cashier or slot cashier. Distribution of the Slot Counter Check copies shall be as follows:

i. The issuance copy of the Slot Counter Check which shall serve as documentation of the exchange of currency, coin or tokens for the Slot Counter Check and shall be maintained by the general cashier or slot cashier in his imprest fund immediately after the issuance of currency, coin or tokens to the patron.

ii. The original, redemption, and acknowledgement copies of the Slot Counter Check, if not issued by the general cashier, shall be expeditiously transported to the cashiers' cage by a security department member or via a pneumatic tube system where the original and redemption copies shall be maintained and controlled by the check bank cashier. If the Slot Counter Check was issued by a general cashier, the general cashier shall expeditiously transport the original, redemption and acknowledgement copies of the Slot Counter Check to the check bank cashier where the original and redemption copies shall be maintained. The acknowledgement copy shall be returned to the general cashier or slot cashier in accordance with either (d) or (e) below; and

iii. The accounting copy of the Slot Counter Check shall be attached to the form referenced in (b)1 above by the general cashier or slot cashier and deposited into a locked accounting box for forwarding to the accounting department in conformity with (h) below.

(c) Nothing in this section shall preclude a casino licensee from issuing a Slot Counter Check to a patron directly at a slot machine, provided the casino licensee follows the procedures and requirements established below:

1. A slot supervisor shall obtain, at a minimum, the amount of the requested Slot Counter Check and the patron's signature, on a two-part form ("Request"), and transport both copies of the Request directly to the general cashier or slot cashier. The general cashier or slot cashier shall compare the patron's signature pursuant to (b)1i above.

2. Once the patron's signature has been verified in accordance with (b)1 above the general cashier or slot cashier shall prepare the Slot Counter Check in accordance with (b)2, (b)3i. through v and b(4) above.

3. The general cashier or slot cashier shall obtain the signature of the slot supervisor responsible for obtaining the information on the Request referenced in (c)1 above on the Slot Counter Check. The general cashier or slot cashier shall sign the Slot Counter Check as the preparer of the Slot Counter Check, and present the original and all duplicate copies of the Slot Counter check and the original and duplicate copy of the Request, and the currency, coin, and/or slot tokens in the amount of the Slot Counter Check to an accounting department representative with no incompatible functions.

4. The accounting department representative, with no incompatible functions, shall verify the currency, coin and/or tokens against the amount recorded on the Slot Counter Check and the Request. If in agreement, the accounting department representative shall sign

the original and duplicate copy of the Request and return the duplicate copy of the Request to the general cashier or slot cashier.

5. The general cashier or slot cashier shall retain the duplicate copy of the Request as evidence of the funds and Slot Counter Check being received by the accounting department representative.

6. Once the currency, coin and/or tokens has been verified in accordance with (c)4 above, the funds shall be secured in a sealed envelope or container along with the original and all copies of the Slot Counter Check and the original Request for transportation to the patron by the accounting department representative in the presence of the slot supervisor referenced in (c)1 above.

7. The accounting department representative shall present the original and all duplicate copies of the Slot Counter Check to the patron for signature.

8. Upon receiving the signed original and all duplicate copies of the Slot Counter Check directly from the patron, the accounting department representative shall verify the patron's signature on the Slot Counter Check against the patron's signature on the original Request. If in agreement, the funds shall be immediately given to the patron. In no instance shall the funds be given to the patron prior to the receipt of the signed Slot Counter Check from the patron.

9. Once the patron has received the funds, the slot supervisor referenced in (c)1 above shall sign the back of the accounting copy of the Slot Counter Check as a witness to the transfer of funds to the patron in exchange for the signed Slot Counter Check from the patron. The slot supervisor shall immediately deposit the accounting copy of the Slot Counter Check with the original Request in a locked accounting box for forwarding to the accounting department in conformity with (h) below.

10. The accounting department representative shall immediately return the original, redemption, acknowledgement (manual mode only) and issuance copies of the Slot Counter Check to the general cashier or slot cashier who issued the funds. The general cashier or slot cashier shall attach the duplicate of the Request to the issuance copy of the Slot Counter Check and shall maintain them in his imprest fund for forwarding to the main bank or master coin bank at the end of their shift.

i. The original, redemption and acknowledgement (manual mode only) copies of the Slot Counter Check, if not issued by the general cashier, shall be expeditiously transported to the cashiers' cage by a security department member or via a pneumatic tube system where the original and redemption copies shall be maintained and controlled by the check bank cashier. If the Slot Counter Check was issued by a general cashier, the general cashier shall expeditiously transport the original, redemption and acknowledgement copies of the Slot Counter Check to the check bank cashier where the original and redemption copies shall be maintained and controlled by the check bank cashier. The acknowledgement copy shall be returned to the general cashier or slot cashier in accordance with either (d) or (e) below.

(d) For establishments in which the chip bank cashier receives the original, redemption and acknowledgement copies of the Slot Counter Check, the chip bank cashier shall sign and time stamp the acknowledgement copy of the Slot Counter Check and expeditiously return it to the general cashier or slot cashier via a security department member or pneumatic tube system and shall transfer the original and redemption copies of the Slot Counter Check to the check bank cashier in return for properly signed documentation.

(e) For establishments in which the check bank cashier receives the original, redemption and acknowledgement copies of the Slot Counter Check directly from the general cashier or slot cashier, whether directly through the use of the pneumatic tube system or transported by a security department member the check bank cashier shall:

1. Sign and time stamp the acknowledgement copy and shall transmit it to the general cashier directly or to the slot cashier via a security department member or pneumatic tube system, and shall maintain the original and redemption copies of the Slot Counter Check.

(f) If there is no acknowledgement copy, the check bank cashier shall be responsible for consummating the transaction in the computer upon receipt of the original and redemption copies of the Slot Counter Check.

(g) Once the acknowledgement copy of the Slot Counter Check has been returned to the general cashier or slot cashier, it shall be attached to the issuance copy of the Slot Counter Check and forwarded to the main bank or master coin bank at the end of the cashier's shift.

(h) At the end of the gaming activity each day, at a minimum, the following procedures and requirements shall be observed:

1. The original and all copies of voided Slot Counter Check and the accounting copy of the Slot Counter Check shall be picked up by a representative of the accounting department with no incompatible functions and returned to the accounting department for agreement, on a daily basis, with the issuance and acknowledgement copies of the Slot Counter Check received from the general cashiers or slot cashiers.

2. The redemption copy of a Slot Counter Check maintained and controlled in conformity with (b)6ii and (c)10i above shall be forwarded to the accounting department subsequent to the redemption, consolidation or deposit of the original Slot Counter Check for agreement with the accounting and issuance copies of the Slot Counter Check or stored data.]

19:45-1.25A Counter checks; description; general procedures and requirements

(a) A casino licensee may, in accordance with the provisions of N.J.S.A. 5:12-101 and this chapter, offer casino credit to patrons through the acceptance of counter checks. A counter check may be accepted by a casino licensee from any patron who has credit available pursuant to a credit limit established in accordance with the provisions of N.J.A.C. 19:45-1.27. A counter check may be exchanged by a patron for cash, cash equivalents, slot tokens, gaming chips or plaques to enable the patron to take part in gaming activity as a player or for partial redemption or consolidation of counter checks or replacement checks previously exchanged.

(b) All counter checks sought to be exchanged in a casino by a patron shall be:

1. Drawn on a bank and, as a matter of commercial practice, payable on demand;

2. Drawn for a specific amount;

3. Made payable to the casino licensee;

4. Dated with the date of exchange; and

5. Signed by the patron.

(c) A counter check sought to be exchanged pursuant to this section may only be accepted by the following employees at the following locations:

1. By a casino clerk at a gaming table pursuant to N.J.A.C. 19:45-1.25B;

2. By a general cashier at the cashiers' cage or by a slot cashier at a slot booth pursuant to N.J.A.C. 19:45-1.25C; or

3. By a general cashier or slot cashier, with the assistance of a slot department supervisor and accounting department representative, at a slot machine pursuant to N.J.A.C. 19:45-1.25D;

(d) Counter checks shall be serially prenumbered forms. Each series of counter checks shall be used in sequential order, and the series numbers of all counter checks received by a casino licensee shall be accounted for by employees with no incompatible functions.

1. Notwithstanding the foregoing, a casino licensee may, in its discretion, use a different numbering sequence for counter checks which are accepted at gaming tables.

2. In establishments where counter checks are computer generated, a casino licensee may include customer deposit withdrawals (N.J.A.C. 19:45-1.24) and replacement check vouchers (N.J.A.C. 19:45-1.26) in the same numbering sequence used for the issuance of counter checks at gaming tables.

(e) For establishments in which counter checks are manually prepared:

1. Each counter check in a series shall be, at a minimum, a five-part form which consists of an original, a redemption copy, an

accounting copy, an issuance copy and an acknowledgement copy. Counter checks shall be attached in a book that will permit:

i. An individual counter check in the series and its copies to be written upon simultaneously while still contained in the book; and

ii. The removal of the original and all duplicate copies.

2. Access to the counter checks, prior to use, shall be limited to employees of the casino licensee responsible for:

i. Controlling and accounting for the unused supply of and counter checks; and

ii. The preparation of counter checks for a patron's signature.

(f) For establishments in which counter checks are computer prepared:

1. Each counter check in a series shall be, at a minimum, a four-part form which consists of an original, a redemption copy, an issuance copy and an accounting copy. Each counter check shall be generated by a computer system that will:

i. Simultaneously print the original and all three copies;

ii. Store, in machine-readable form, all information printed on the original counter check and copies; and

iii. Discharge the original and copies.

2. Stored data shall not be susceptible to change or removal by any personnel after preparation of a counter check.

(g) Prior to the exchange of cash, cash equivalents, slot tokens, chips or plaques for a counter check at a gaming table, the cashiers' cage or a slot booth in accordance with the requirements of this chapter, the casino clerk, general cashier or slot cashier preparing the counter check ("the preparer") shall:

1. Verify the identity of the patron in accordance with the procedures set forth in (i) or (j) below;

2. Determine the remaining credit limit of the patron from a check bank cashier or from a computer terminal located in an area approved by the Commission;

3. Prepare the counter check for the signature of the patron in accordance with the procedures set forth in (k) below;

4. Restrictively endorse the back of the original counter check "For Deposit Only" to the bank account of the casino licensee;

5. Present the original and all copies of the counter check to the patron for his or her signature;

6. Obtain the signed original and all copies directly from the patron and verify the signature of the patron on the counter check in accordance with the procedures set forth in (l) below; and

7. Comply with the applicable procedures set forth in N.J.A.C. 19:45-1.25B or 19:45-1.25C.

(h) Prior to the exchange of currency, coin or slot tokens for a counter check at a slot machine, the general cashier or slot cashier preparing the counter check shall comply with the requirements and procedures set forth in N.J.A.C. 19:45-1.25D.

(i) The preparer of the counter check shall verify the identity of a patron by obtaining, at a minimum, the amount of the requested counter check and the signature of the patron on a form, which signature shall be compared to the original signature, or a computer generated facsimile thereof, contained within the credit file of the patron. The preparer shall sign the form indicating that the signature of the patron on the form appears to agree with the signature on his or her credit file. Such form shall be attached to the accounting copy of the counter check by the preparer prior to forwarding it to the accounting department in conformity with (n) below.

1. Once the identity of the patron has been verified by the preparer as required above, the requirement for subsequent verification of the identity of the patron by the same preparer during the same gaming day may be satisfied by that preparer signing a form attesting to the identity of the patron before each subsequent counter check is exchanged. The form shall include the name of the patron and the serial number of the initial counter check exchanged by the patron.

2. The form prepared pursuant to (i)1 above shall be attached to the accounting copy of the counter check by the preparer prior to forwarding it to the accounting department in conformity with (n) below.

(j) As an alternative to the procedures required in (i) above, the preparer may verify the identity of the patron by:

1. Obtaining a form which, at a minimum, includes:

i. The amount of the requested counter check and the signature of the patron; and

ii. The signature of a supervisor of the preparer, a casino supervisor or slot supervisor attesting as to the identity of the patron; and

2. Attaching such form to the accounting copy of the counter check prior to forwarding it to the accounting department in conformity with (n) below.

(k) The preparer shall prepare the counter check for the signature of the patron by recording, at a minimum, on the face of the original and all copies of the counter check, with the exception of the acknowledgment copy, which shall only have recorded on it the specific location where the counter check was prepared, or in stored data, the following information:

1. The name of the patron exchanging the counter check;

2. The name of the patron's bank (required on the original copy only);

3. The current date and time;

4. The amount of the counter check expressed in numerals;

5. The specific location where the counter check was prepared (cashiers' cage; slot booth number; or game and table number);

6. The signature of the supervisor of the preparer, casino supervisor or slot supervisor verifying that the counter check was prepared for the correct amount and for the correct patron through comparison to the form required by (i) or (j) above; and

7. The signature of the preparer or, if computer prepared, the identification code of the preparer.

(l) If verification of the identity of the patron occurred in accordance with:

1. Subsection (i) above, the preparer shall compare the signature of the patron on the signed counter check to the signature of the patron on the form required by (i) above and sign the form required by (i) above again if the signatures appear to agree;

2. Subsection (j) above, the supervisor of the preparer, casino supervisor or slot supervisor shall compare the signature of the patron on the signed counter check to the signature of the patron on the form required by (j) above and sign the form required by (j) above again if the signatures appear to agree.

(m) All copies of void counter checks shall be marked "VOID," signed by the preparer who voided the counter check and maintained in a secure manner at the location where the voiding occurred until the counter check is forwarded to the accounting department in acccordance with (n) below.

(n) At the end of each gaming day, at a minimum, the following procedures and requirements shall be observed:

1. The original and all copies of void counter checks and the accounting copy and, if applicable, acknowledgment copy of all counter checks shall be forwarded by a representative of the accounting or casino security department to the accounting department for agreement, on a daily basis, with the issuance copy of the counter check and, if applicable, stored data.

2. The redemption copy of the counter check maintained by the check cashier shall be forwarded to the accounting department subsequent to the redemption, consolidation or deposit of the original counter check for agreement with the accounting and issuance copies of the counter check and either the acknowledgment copy or stored data.

(o) If the total amount of chips or plaques possessed by a patron exceeds $500.00, the casino licensee shall request the patron to apply any chips or plaques in his or her possession to the redemption of counter checks exchanged for purposes of gaming prior to exchanging such chips or plaques for cash or prior to departing from the casino area.

19:45-1.25B Procedure for exchange of counter checks at gaming tables

(a) If a counter check is prepared for exchange at a gaming table, the procedures required by N.J.A.C. 19:45-1.25A(g) shall be

performed by the casino clerk. After completion of these procedures, the casino clerk shall then expeditiously:

1. Present the issuance copy of the counter check to the dealer or boxperson, who shall deposit the issuance copy in the drop box immediately after the issuance of chips or plaques to the patron; provided, however, that in no instance shall the chips or plaques be given to the patron prior to the receipt of the issuance copy of the counter check by the dealer or boxperson;

2. Maintain and control the accounting copy of the counter check until forwarded to the accounting department in accordance with N.J.A.C. 19:45-1.25A(n); and

3. Cause the transport, either via a casino security department member or pneumatic tube system, of the original counter check, the redemption copy of the counter check and, if applicable, the acknowledgment copy of the counter check to the chip bank cashier or check cashier.

(b) Upon receipt of the original counter check and copies, the chip bank cashier or check cashier shall, if applicable, sign and time stamp the acknowledgment copy of the counter check and expeditiously return the acknowledgment copy to the casino clerk via a casino security department member or pneumatic tube system.

(c) If received by the chip bank cashier, the chip bank cashier shall transfer the original counter check and the redemption copy to the check cashier in return for properly signed documentation.

(d) The check cashier, upon receipt of the original counter check and redemption copy, shall:

1. If the counter check was computer generated, consummate the transaction in the computer or otherwise acknowledge receipt of the counter check in accordancce with an approved system of internal controls;

2. Maintain the original counter check until redeemed by the patron or forwarded to the main bank cashier for deposit in the bank account of the casino licensee; and

3. Maintain the redemption copy of the counter check until the counter check is redeemed by the patron or forwarded to the main bank cashier for deposit, whereupon the redemption copy shall be forwarded to the accounting department for comparison in accordance with N.J.A.C. 19:45-1.25A(n).

(e) The casino clerk shall, if the counter check was manually prepared, compare the acknowledgment copy upon its return from the cashiers' cage to the accounting copy and maintain and control the acknowledgment copy until forwarded to the accounting department in accordance with N.J.A.C. 19:45-1.25A(n).

19:45-1.25C Procedure for exchange of counter checks at the cashiers' cage or slot booths

(a) If a counter check is prepared for exchange at the cashier's cage or a slot booth, the procedures required by N.J.A.C. 19:45-1.25A(g) shall be performed by the general cashier or slot cashier, respectively. After completion of these procedures, the general cashier or slot cashier shall then expeditiously:

1. Provide currency, coin or slot tokens to the patron in exchange for the signed counter check; provided, however, that in no instance shall the currency, coin or slot tokens be given to the patron prior to the receipt of the signed counter check from the patron;

2. Maintain the issuance copy in his or her imprest fund for forwarding to the main bank or master coin bank at the end of the shift;

3. Transport the original counter check, the redemption copy of the counter check and, if applicable, the acknowledgment copy of the counter check to the chip bank cashier or check cashier, either directly if the counter check was accepted by a general cashier or via a casino security department member or pneumatic tube system if the counter check was accepted by a slot booth cashier; and

4. Deposit the accounting copy into a locked accounting box for forwarding to the accounting department in accordance with N.J.A.C. 19:45-1.25A(n).

(b) Upon receipt of the original counter check and copies, the chip bank cashier or check cashier shall, if applicable, sign and time stamp the acknowledgment copy of the counter check and expeditiously return the acknowledgment copy to either the general cashier directly or to the slot booth cashier via a casino security department member or pneumatic tube system.

(c) If received by the chip bank cashier, the chip bank cashier shall transfer the original counter check and the redemption copy to the check cashier in return for properly signed documentation.

(d) The check cashier, upon receipt of the original counter check and redemption copy, shall:

1. If the counter check was computer generated, consummate the transaction in the computer or otherwise acknowledge receipt of the counter check in accordance with an approved system of internal controls;

2. Maintain the original counter check until redeemed by the patron or forwarded to the main bank cashier for deposit in the bank account of the casino licensee; and

3. Maintain the redemption copy of the counter check until the original counter check is redeemed by the patron or forwarded to the main bank cashier for deposit, whereupon the redemption copy shall be forwarded to the accounting department for comparison in accordance with N.J.A.C. 19:45-1.25A(n).

(e) The general cashier or slot cashier shall, if the counter check was manually prepared, compare the acknowledgment copy upon its return from the cashiers' cage to the issuance copy, attach it to the issuance copy and forward it to the main bank or master coin bank at the end of the shift.

19:45-1.25D Procedure for exchange of counter checks at slot machines

(a) A casino licensee may accept a counter check from a patron at a slot machine in exchange for currency, coin or slot tokens if the casino licensee complies with the requirements and procedures set forth in this section.

(b) If a patron at a slot machine asks to exchange a counter check, a slot supervisor shall:

1. Obtain, at a minimum, the amount of the requested counter check and the signature of the patron on a two-part form ("Request"); and

2. Transport both copies of the Request directly to a general cashier or slot cashier.

(c) The general cashier or slot cashier ("the preparer"), upon receipt of the Request, shall verify the identity of the patron by comparing the signature of the patron on the Request to the original signature, or a computer generated facsimile thereof, contained within the credit file of the patron. The preparer shall sign both copies of the Request indicating that the signature of the patron on the Request appears to agree with the signature on his or her credit file.

(d) Once the identity of the patron has been verified in accordance with (c) above, the preparer shall:

1. Determine the remaining credit limit of the patron from a check bank cashier or from a computer terminal located in an area approved by the Commission;

2. Prepare the counter check for the signature of the patron by recording, at a minimum, on the face of the original and all copies of the counter check, with the exception of the acknowledgment copy, which shall only have recorded on it the specific location where the counter check was prepared, or in stored data, the following information:

i. The name of the patron exchanging the counter check;

ii. The name of the patron's bank (required on the original copy only);

iii. The current date and time;

iv. The amount of the counter check expressed in numerals; and

v. The specific location where the counter check was prepared (cashiers' cage or slot booth number);

3. Restrictively endorse the back of the original counter check "For Deposit Only" to the bank account of the casino licensee;

4. Obtain the signature of the slot supervisor who submitted the Request on the counter check;

5. Sign the counter check as the preparer; and

6. Present the original and all copies of the counter check, the original and copy of the Request, and the currency, coin or slot

tokens in the amount of the counter check to an accounting department representative with no incompatible functions.

(e) The accounting department representative with no incompatible functions shall verify the amount of currency, coin or slot tokens against the amount recorded on the counter check and the Request. If in agreement, the accounting department representative shall:

1. Sign the original and copy of the Request;

2. Return the copy of the Request to the general cashier or slot cashier, who shall retain the copy of the Request as evidence that the funds and counter check were received by the accounting department representative;

3. Secure the currency, coin or slot tokens, the original and all copies of the counter check and the original Request in a sealed envelope or container;

4. Transport the sealed envelope or container to the patron in the presence of the slot supervisor who submitted the Request;

5. Present the original and all copies of the counter check to the patron for signature;

6. Obtain the signed original and all duplicate copies of the counter check directly from the patron; and

7. Compare the signature of the patron on the counter check to the signature of the patron on the original Request and, if in agreement, immediately present the currency, coin or slot tokens to the patron; provided, however, that in no instance shall the funds be given to the patron prior to the receipt of the signed counter check from the patron.

(f) Once the patron has received the currency, coin or slot tokens, the slot supervisor who submitted the Request shall sign the back of the accounting copy of the counter check as a witness to the transfer of the funds to the patron in exchange for the signed counter check. The slot supervisor shall immediately deposit the accounting copy of the counter check and the original Request in a locked accounting box for forwarding to the accounting department in comformity with N.J.A.C. 19:45-1.25(A)(n).

(g) The accounting department representative shall immediately return the original, redemption, issuance and, if applicable, acknowledgment copies of the counter check to the general cashier or slot cashier who issued the funds.

(h) The general cashier or slot cashier shall:

1. Attach the copy of the Request to the issuance copy of the counter check; and

2. Distribute the original counter check and copies in accordance with the applicable procedures set forth in N.J.A.C. 19:45-1.25C.

19:45-1.25E Procedures for exchange of cash equivalents, bank checks and casino checks

(a) Cash equivalents, bank checks and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. Prior to the acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent.

(b) In order to ensure the patron's identity prior to the acceptance of a cash equivalent or bank check made payable to a presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall be required to examine that patron's identification credentials or verify that the patron's signature recorded on the cash equivalent, bank check or casino check and the patron's physical description agree with the information recorded in the patron's credit file prepared pursuant to N.J.A.C. 19:45-1.27. Each casino licensee shall maintain documentation supporting that examination or verification.

(c) Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:

1. Requiring the patron to countersign the travelers check in his or her presence;

2. Comparing the countersignature with the original signature on the travelers check;

3. Examining the travelers check for any other signs of tampering, forgery or alteration; and

4. Performing any other procedures which the issuer of the travelers check requires in order to indemnify the acceptor against loss.

(d) Prior to the acceptance of a certified check, cashiers check, treasurers check, recognized money order or a bank check from a patron, the general cashier shall verify its validity by:

1. Examining the instrument for any physical signs of tampering, forgery or alteration;

2. Confirming the existence of each banking institution identified on the instrument by referring to a recognized bank reference directory; and

3. Using any other reasonable means of verifying the validity of the instrument under the circumstances, which shall include a consideration of the identity of the patron and the number, denomination and source of the instruments presented together with any other facts appropriate to the circumstances of the transaction.

(e) If the general cashier is unable to confirm the existence of any banking institution as required by (d)2 above or has reason to question the validity of the instrument pursuant to (d)3 above, the casino licensee may still accept the instrument if the casino licensee either directly verifies the validity of the instrument with the drawee or, upon further consideration of the applicable facts, concludes that the instrument will be honored upon presentation for payment, and maintains appropriate documentation explaining its decision to accept the instrument. The casino licensee may consider, among other circumstances:

1. The casino licensee's knowledge of the patron and the source of that knowledge;

2. Whether the patron has previously established a casino credit or customer deposit account with the casino licensee;

3. Other previous dealings with the patron;

4. Whether copies of similar instruments issued or honored by the drawee banking institution are contained in a check reference log maintained by the casino licensee;

5. Whether the drawee banking institution is located in the United States;

6. Previous dealings with the drawee or drawer banking institution;

7. Any representations made by the patron and memorialized in the casino licensee's records; and

8. Any other relevant information.

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino which issued the check and shall verify the following information:

1. The date of the check;

2. The check number;

3. The name of the payee appearing on the check;

4. The amount of the check; and

5. That the check represents:

i. The return of a patron's deposit money;

ii. The redemption of the casino's gaming chips; or

iii. The winnings from slot machine payoffs.

(g) The general cashier accepting a casino check shall document the verifications performed in (f) above in a log and record the name of the cashier providing such information and the date and time the information was obtained. In addition, the general cashier shall record his or her name and license number in the log.

(h) A general cashier of the New Jersey casino which issued the casino check shall provide such information, as required by (f) above, to the casino licensee accepting such check and shall indicate that verification was requested by notating in a log the following information:

1. The date and time of the request;

2. The name of the casino requesting the information;

3. The name of the general cage cashier making the request;

4. The check number;

5. The date of the check;

6. The name of the payee appearing on the check; and

7. The reason for the check as either:

i. The return of a patron's deposit money;
ii. The redemption of the casino's gaming chips; or
iii. The winnings from slot machine payoffs.

(i) Except as otherwise provided herein, any cash equivalent, bank check or casino check accepted by a general cashier from a patron shall be restrictively endorsed "For Deposit Only" to the bank account of the casino licensee and shall be deposited no later than the next banking day following the date of the transaction. A casino licensee may, in its discretion, allow a patron who has exchanged a cash equivalent, bank check or casino check for currency, coin or a Customer Deposit Form to repurchase the cash equivalent, bank check or casino check for an equal amount of cash, gaming chips or plaques prior to the deposit of the instrument by the casino licensee in accordance with this section. If a casino licensee agrees to provide a patron with this option, the general cashier shall, prior to acceptance of the instrument:

1. Require the patron, if applicable, to endorse the instrument in blank so that the casino licensee may deposit the instrument without further action by the patron;

2. Immediately determine the validity of the instrument by performing the verification required by this section;

3. In lieu of restrictively endorsing the instrument to the bank account of the casino licensee, comply with the internal control procedures submitted by the casino licensee for the processing of such transactions, which procedures shall include, at a minimum, the following:

i. The creation of an audit trail which shall assure that no single employee is in a position to convert the instrument to his or her personal use without detection;

ii. The establishment of a definite time limit on the repurchase rights of the patron, which time limit shall be no later than the end of the fifth banking day following the date of acceptance of the instrument; and

iii. Upon expiration of the time limit required by 3ii above, the immediate restrictive endorsement of the instrument "For Deposit Only" to the bank account of the casino licensee and the deposit of the instrument no later than the next banking day.

(j) A person may obtain cash at the cashiers' cage or slot booth to be used for gaming purposes by presenting a recognized credit card to a general cashier or slot cashier. Prior to the issuance of cash to a person, the general cashier or slot cashier shall verify through the recognized credit card company the validity of the person's credit card or shall verify through a recognized electronic funds transfer company which, in turn, verifies through the credit card company the validity of the person's credit card and shall obtain approval for the amount of cash the person has requested. The general cashier or slot cashier shall then prepare such documentation as required by the casino licensee to evidence such transactions and to balance the imprest fund prior to the issuance of the cash.

19:45-1.25F Exchange of personal checks; general procedures and requirements

(a) A casino licensee may, in accordance with the provisions of N.J.S.A. 5:12-101h and this chapter, accept a personal check from a patron in exchange for cash, cash equivalents, slot tokens, chips or plaques to enable the patron to take part in gaming activity as a player or in exchange for cash or cash equivalents to be used by the patron for non-gaming purposes.

(b) All personal checks sought to be exchanged with a casino licensee by a patron shall be:

1. Drawn on the patron's personal bank account or brokerage cash management account;

2. Drawn for a specific amount;

3. Made payable to the casino licensee;

4. Dated with the date of exchange; and

5. Signed by the patron.

(c) A casino licensee may not accept a personal check from a patron in exchange for cash, cash equivalents, slot tokens, chips or plaques if, as of the date and time of the proposed transaction, as determined in accordance with the provisions of this section:

1. That patron has $1,500 in personal checks outstanding with that particular casino licensee; or

2. Acceptance of the personal check would cause that patron to have more than $1,500 in personal checks outstanding with that particular casino licensee; or

3. The casino licensee has an outstanding dishonored personal check, counter check or replacement check (a "returned check") from that patron.

(d) A personal check sought to be exchanged by a patron pursuant to this section may only be accepted by the casino licensee at the following locations:

1. At a gaming table pursuant to N.J.A.C. 19:45-1.25G;

2. At the cashiers' cage or a slot booth pursuant to N.J.A.C. 19:45-1.25H; or

3. At any location in the casino hotel outside the casino room identified in the submission required pursuant to N.J.A.C. 19:45-1.25I.

(e) No casino licensee may accept a personal check from a patron unless a personal check voucher is completed in accordance with the requirements of this section prior to the exchange of the assets of the casino licensee for the check. The personal check voucher shall be completed by the employee of the casino licensee accepting the personal check. A personal check voucher shall be a serially prenumbered form and each series of personal check vouchers shall be used in sequential order. The series numbers of all personal check vouchers received by a casino licensee shall be accounted for by employees with no incompatible functions.

(f) Personal check vouchers shall be manually prepared or computer generated and shall contain, at a minimum, the following information:

1. The name of the patron;

2. The address of the patron's residence, unless the address is printed on the personal check, which shall be noted on the voucher;

3. The telephone number of the patron's residence, unless the telephone number is printed on the check, which shall be noted on the voucher;

4. The amount of the check expressed in numerals;

5. The following information obtained from the cashiers' cage or an approved computer system:

i. The amount of outstanding personal checks exchanged by the patron as of the date and time of preparation of the voucher;

ii. An acknowledgment that the patron has no outstanding returned checks as of the date and time of preparation of the voucher; and

iii. If applicable, the name of the cage employee who reported the information;

6. The specific location where the personal check is being accepted (for example, the cashier's cage, the slot booth number, the game and table number or the hotel front desk);

7. The date and time of preparation of the voucher;

8. The specific type of identification credential containing the signature of the patron which was examined by the employee accepting the personal check;

9. The signature of the supervisor of the accepting employee or of the casino supervisor or slot supervisor who authorized acceptance of the check and confirmed that the amount of the personal check was the same as the amount recorded on the voucher; and

10. The signature or, if computer prepared, the identification code of the employee accepting the personal check.

(g) For establishments in which personal checks may be redeemed prior to deposit and personal check vouchers are manually prepared:

1. Each personal check voucher in a series shall be, at a minimum, a four-part form which consists of an issuance copy, an accounting copy, a redemption copy and an acknowledgment copy and shall be attached in a book that will permit each copy of a voucher to be written upon simultaneously while still contained in the book and that will permit the removal of each copy.

2. Access to the personal check vouchers, prior to use, shall be limited to those employees authorized to accept personal checks.

(h) For establishments in which personal checks may be redeemed prior to deposit and personal check vouchers are computer prepared, each personal check voucher in a series shall be, at a minimum, a three-part form which consists of an issuance copy, an accounting copy and a redemption copy and shall be generated by a computer system that will:

1. Simultaneously print all three copies of the voucher;

2. Store, in machine readable form, all information printed on the voucher in such a manner that the stored data shall not be susceptible to change or removal by any person after the preparation of the personal check voucher; and

3. Discharge the issuance, accounting and redemption copies.

(i) For establishments in which personal checks may not be redeemed prior to deposit and personal check vouchers are manually prepared:

1. Each personal check voucher in a series shall be, at a minimum, a one-part form which shall be contained in a book that will permit the removal of each voucher on an individual basis.

2. Access to the personal check vouchers, prior to use, shall be limited to those employees authorized to accept personal checks.

(j) For establishments in which personal checks may not be redeemed prior to deposit and personal check vouchers are computer prepared, each personal check voucher in a series shall be, at a minimum, a one-part form and shall be generated by a computer system that will:

1. Print the voucher;

2. Store, in machine readable form, all information printed on the voucher in such a manner that the stored data shall not be susceptible to change or removal by any person after the preparation of the personal check voucher; and

3. Discharge the voucher.

(k) Prior to the exchange of cash, cash equivalents, slot tokens, chips or plaques for a personal check, the employee accepting the personal check shall:

1. Examine the identification credential of the patron and verify that the signature contained thereon matches the signature on the personal check;

2. Determine the current amount of the patron's outstanding personal checks by contacting the cashier's cage or through an approved computer system;

3. Prepare a personal check voucher by obtaining and completing the information required by (f) above;

4. Obtain the signature of a supervisor who shall compare the amounts contained on the personal check and the voucher and, if appropriate, authorize acceptance of the check;

5. Record the serial number of the personal check voucher on the upper right hand corner of the front of the personal check;

6. Restrictively endorse the back of the personal check "For Deposit Only" to the bank account of the casino licensee; and

7. Comply with the applicable procedures in N.J.A.C. 19:45-1.25G, 19:45-1.25H or 19:45-1.25I.

(l) All copies of void personal check vouchers shall be marked "VOID," signed by the employee who voided the voucher and maintained in a secure manner at the location where the voiding occurred until the voucher is forwarded to the accounting department in accordance with (m) below.

(m) At the end of each gaming day, at a minimum, the following procedures and requirements shall be observed:

1. For establishments in which personal checks may be redeemed:

i. All copies of void personal check vouchers and the accounting copy and, if applicable, the ackowledgment copy of all personal check vouchers shall be forwarded to the accounting department by a representative of the accounting or casino security department for agreement, on a daily basis, with the issuance copy of the vouchers and, if applicable, stored data.

ii. The redemption copy of the personal check voucher maintained by the check cashier shall be forwarded to the accounting department subsequent to the redemption of the personal check by the patron or the forwarding of the personal check to the main bank for deposit, for agreement with the accounting copy, issuance copy and, as applicable, acknowledgment copy or stored data.

2. For establishments in which personal checks may not be redeemed, the personal check voucher shall be forwarded to the accounting department by a representative of the accounting or casino security department for agreement with, on a daily basis, as appropriate, the Master Game Report or supporting documentation, the Cashiers' Count Sheets or related documentation, the daily bank deposit and, if applicable, stored data.

(n) Each casino licensee shall maintain a log in the cashiers' cage or in an approved computer system of all personal checks accepted from its patrons. The log shall be updated on a continuous basis by the check cashier. The log shall include, at a minimum, the following information concerning each patron who has exchanged a personal check pursuant to this section:

1. The name and address of the patron;

2. The date and time of each personal check accepted from the patron;

3. The amount of each personal check;

4. The serial number of each personal check voucher;

5. The date each personal check was deposited and the date and time that the personal check shall be considered paid pursuant to N.J.A.C. 19:45-1.28 and the approved internal controls of the casino licensee;

6. An indication whether any outstanding counter check, replacement check or personal check of the patron has been dishonored and returned by a bank unpaid; and

7. The current amount of outstanding personal checks accepted by the casino licensee from the patron.

(o) Any patron having a counter check, replacement check or personal check returned to any casino unpaid by the patron's bank shall have his or her personal check cashing privileges suspended at all New Jersey casinos until such time as the returned check has been paid in full or the reason for the derogatory information has been satisfactorily explained. All derogatory information concerning the outstanding personal checks of patrons shall be reported by each casino licensee on a daily basis to a casino credit bureau used by New Jersey casinos. Each New Jersey casino licensee shall request written documentation of any derogatory information pertaining to its patrons to be reported to that casino on a daily basis by a casino credit bureau used by New Jersey casinos. All documentation of derogatory information obtained from the casino credit bureau shall be noted in the personal check log and maintained by the casino licensee. Any casino licensee desiring to continue the patron's personal check cashing privileges on the basis of a satisfactory explanation having been obtained for the returned check may do so if, prior to accepting any further personal checks from the patron, the casino licensee:

1. Creates and maintains a record of the basis for its decision, which record shall be signed by the credit department representative accepting the explanation;

2. Records the approval of the explanation in the personal check log along with the signature of the credit department representative accepting the explanation.

(p) Nothing in this section shall be deemed to preclude a casino licensee which otherwise prohibits the redemption of personal checks from exercising its discretion to permit the redemption of particular personal checks. Any casino licensee which allows redemption of personal checks on a discretionary basis shall follow the required procedures for the appropriate type of transaction.

19:45-1.25G Procedure for exchange of personal checks at gaming tables

(a) If a personal check is offered for exchange at a gaming table, the procedures required by N.J.A.C. 19:45-1.25F(k) shall be performed by the casino clerk.

(b) If a personal check is accepted at a gaming table in an establishment where redemption of personal checks is permitted, the casino clerk shall then expeditiously:

1. Present the issuance copy of the personal check voucher to the dealer or boxperson, who shall deposit the issuance copy in the drop box immediately after the issuance of chips or plaques to the patron; provided, however, that in no instance shall the chips or plaques

be given to the patron prior to the receipt of the issuance copy of the voucher by the dealer or boxperson;

2. Maintain and control the accounting copy of the personal check voucher until forwarded to the accounting department in accordance with N.J.A.C. 19:45-1.25G(m); and

3. Cause the transport, either via a casino security department member or pneumatic tube system, of the personal check, the redemption copy of the voucher and, if applicable, the acknowledgment copy of the voucher to the cashiers' cage.

(c) Upon receipt of the personal check and voucher copies, the chip bank cashier or check cashier shall, if applicable, sign and time stamp the acknowledgment copy of the voucher and expeditiously return the acknowledgment copy to the casino clerk via a casino security department member or pneumatic tube system.

(d) If received by the chip bank cashier, the chip bank cashier shall transfer the personal check and the redemption copy of the voucher to the check cashier in return for properly signed documentation.

(e) The check cashier, upon receipt of the personal check and redemption copy of the voucher, shall:

1. If the personal check voucher was computer generated, consummate the transaction in the computer or otherwise acknowledge receipt of the personal check in accordance with an approved system of internal controls;

2. Maintain the personal check until redeemed by the patron or forwarded to the main bank cashier for deposit in the bank account of the casino licensee no later than the first banking day following the date of the check; and

3. Maintain the redemption copy of the voucher until the personal check is redeemed by the patron or forwarded to the main bank cashier for deposit, whereupon the redemption copy shall be forwarded to the accounting department for comparison in accordance with N.J.A.C. 19:45-1.25F(m).

(f) If the voucher was manually prepared, the casino clerk shall compare the acknowledgment copy upon its return from the cashiers' cage to the accounting copy and maintain and control the acknowledgment copy until forwarded to the accounting department in accordance with N.J.A.C. 19:45-1.25G(m).

(g) If the personal check is accepted at a gaming table in an establishment where redemption of personal checks is not permitted, the casino clerk shall then expeditiously:

1. Present the personal check to the dealer or boxperson, who shall deposit the personal check in the drop box immediately after the issuance of chips or plaques to the patron; provided, however, that in no instance shall the chips or plaques be given to the patron prior to the receipt of the personal check by the dealer or boxperson; and

2. Maintain and control the personal check voucher until forwarded to the accounting department in accordance with N.J.A.C. 19:45-1.25F(m).

19:45-1.25H Procedure for exchange of personal checks at the cashiers' cage and slot booths

(a) If a personal check is offered for exchange at the cashiers' cage or a slot booth, the procedures required by N.J.A.C. 19:45-1.25F(k) shall be performed by a general cashier or slot booth cashier, respectively.

(b) If a personal check is accepted at an establishment where redemption of personal checks is permitted, the general cashier or slot booth cashier shall then expeditiously:

1. Provide currency, coin or slot tokens to the patron in exchange for the personal check; provided, however, that in no instance shall the currency, coin or slot tokens be given to the patron prior to the receipt of the signed personal check from the patron;

2. Maintain the issuance copy of the personal check voucher in his or her imprest fund for forwarding to the main bank or master coin bank at the end of the shift;

3. Transport the personal check, the redemption copy of the voucher and, if applicable, the acknowledgment copy of the voucher to the cashiers' cage, either directly if the personal check was accepted by a general cashier or via a casino security department member or pneumatic tube system if the personal check was accepted by a slot booth cashier; and

4. Deposit the accounting copy into a locked accounting box for forwarding to the accounting department in accordance with N.J.A.C. 19:45-1.25F(m);

(c) Upon receipt of the personal check and voucher copies, the chip bank cashier or check cashier shall, if applicable, sign and time stamp the acknowledgment copy of the voucher and expeditiously return the acknowledgment copy to either the general cashier directly or to the slot booth cashier via a casino security department member or pneumatic tube system.

(d) If received by the chip bank cashier, the chip bank cashier shall transfer the personal check and the redemption copy of the voucher to the check cashier in return for properly signed documentation.

(e) Upon receipt of the personal check and redemption copy of the voucher, the check cashier shall:

1. If the personal check voucher was computer generated, consummate the transaction in the computer or otherwise acknowledge receipt of the personal check in accordance with an approved system of internal controls;

2. Maintain the personal check until redeemed by the patron or forwarded to the main bank cashier for deposit in the bank account of the casino licensee no later than the first banking day following the date of the check; and

3. Maintain the redemption copy of the voucher until the personal check is redeemed by the patron or forwarded to the main bank cashier for deposit, whereupon the redemption copy shall be forwarded to the accounting department for comparison in accordance with N.J.A.C. 19:45-1.25F(m).

(f) If the personal check voucher was manually prepared, the general cashier or slot cashier shall compare the acknowledgment copy upon its return from the cashiers' cage to the issuance copy, attach it to the issuance copy and forward it to the main bank or master coin bank at the end of the shift.

(g) If the personal check is accepted at an establishment where redemption of personal checks is not permitted, the general cashier or slot booth cashier shall then expeditiously:

1. Provide currency, coin or slot tokens to the patron in exchange for the personal check and maintain the personal check in his or her imprest fund for forwarding to the main bank or master coin bank at the end of the shift; provided, however, that in no instance shall the currency, coin or slot tokens be given to the patron prior to the receipt of the signed personal check from the patron; and

2. Deposit the personal check voucher into a locked accounting box for forwarding to the accounting department in accordance with N.J.A.C. 19:45-1.25F(m).

19:45-1.25I Procedure for exchange of personal checks at locations outside the casino room

(a) If a casino licensee proposes to accept personal checks from patrons in exchange for cash or cash equivalents at locations in the casino hotel outside the casino room, the casino licensee shall submit for approval internal controls which shall describe in detail how personal checks shall be accepted and accounted for at such locations. To the extent practicable, these internal controls shall follow the procedures and requirements contained in N.J.A.C. 19:45-1.25F(k) and 19:45-1.25H and shall, at a minimum, specifically identify:

1. The locations in the casino hotel where personal checks may be accepted;

2. The type of employees who will be authorized to accept personal checks and the supervisory employees who will be authorized to approve their acceptance;

3. The manner in which unused personal check vouchers shall be controlled;

4. The manner in which the current amount of personal checks which a patron has outstanding will be determined; and

5. The manner in which necessary documentation shall be secured at each location and transported to the accounting department at the end of the gaming day.

(b) Notwithstanding any other provision of this chapter to the contrary, including N.J.A.C. 19:45-1.25F(p), no casino licensee shall allow patrons to redeem personal checks exchanged at locations outside the casino room.

19:45-1.26 Procedure for redemption, consolidation or substitution of [checks submitted by gaming patrons] **counter checks, replacement checks and personal checks**

(a) For purposes of this chapter, a "replacement check" is any check which satisfies the requirements of a personal check except that:

1. A replacement check shall be drawn on a checking account which has been verified pursuant to N.J.A.C. 19:45-1.27;

2. The drawer's identity shall be verified in accordance with N.J.A.C. 19:45-1.27;

3. The replacement check shall be deposited or redeemed within the time periods established by N.J.S.A. 5:12-101(c) and in accordance with the requirements of this chapter;

4. The outstanding personal check limitations imposed by N.J.S.A. 5:12-101(h) and N.J.A.C. 19:45-1.25F shall not apply to replacement checks; and

5. The original replacement check shall be marked or embossed in such a manner as will permit it to be distinguished from other personal checks accepted by the casino licensee.

[(a)](**b**) The drawer of [a Counter Check or Slot Counter Check] **an undeposited counter check or replacement check** may redeem it:

1. In its entirety by exchanging cash, cash equivalents, **bank checks, casino checks,** gaming chips[,] **or** plaques[, or any combination of another check, cash,] **in an amount equal to the amount of the counter check or replacement check being redeemed; or**

2. In part by exchanging:

i. Another counter check or replacement check in a lesser amount; and

ii. Cash, cash equivalents, **bank checks, casino checks,** gaming chips or plaques **in an amount which equals the difference between the check exchanged in 2i above and the amount of the counter check or replacement check being partially redeemed.**

(**c**) If a drawer has more than one [Counter Check or Slot Counter Check] **undeposited counter check or replacement check** outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated **counter check or replacement** check shall always be redeemed first). If more than one **counter check or replacement** check bears the same date, the drawer may choose the order in which [he wishes] to redeem the identically dated checks.

[(b)](**d**) The drawer of a **counter check or replacement** check may consolidate some or all [Counter Checks or Slot Counter Checks] **undeposited counter checks or replacement checks** by exchanging another **counter check or replacement** check in an amount equal to the total **amount of the outstanding counter checks and replacement** [of] checks [previously exchanged] **being consolidated.**

[(c)](**e**) The drawer of [a Counter Check or Slot Counter Check] **an undeposited counter check or replacement check** may substitute a [personal] **replacement** check for the [Counter Check or Slot Counter Check] **counter check or replacement check.**

(f) If the casino licensee permits redemption of personal checks and follows the appropriate procedures in N.J.A.C. 19:45-1.25F, the drawer of an undeposited personal check may redeem it in its entirety by exchanging cash, cash equivalents, bank checks, casino checks, gaming chips or plaques in an amount equal to the amount of the personal check being redeemed.

[(d)](**g**) All consolidations, total or partial redemptions or substitutions of **counter checks and replacement** checks **and all redemptions of personal checks** by gaming patrons shall be made at the general cashiers' cage. Consolidation, [or] **partial** redemption **or** substitution of [non-gaming] **personal** checks shall not be allowed.

[(e)](**h**) No casino licensee or any other person licensed under the [Casino Control] Act, or any other person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the [Casino Control] Act, shall accept any **counter check or replacement** check or series of checks in redemption, consolidation or substitution of another **counter check or replacement** check or checks for the purpose of avoiding or delaying the deposit of a **counter check or replacement** check or checks in a bank for collection or payment within the time periods specified in N.J.A.C. 19:45-1.28.

[(f)](**i**) [Under acceptance of cash or cash equivalents, gaming chips and plaques, or another check in] **Upon completion of** a redemption, consolidation or substitution [of a check(s)] **transaction pursuant to this section,** the general cashier shall [immediately] return [to the gaming patron the check(s)] **the original counter check, replacement check or personal check or checks** being redeemed, consolidated or substituted **to the drawer in accordance with the requirements established in (j) below.** If [such] **the** redemption, consolidation or substitution **of a counter check or replacement check** is accomplished by the acceptance of another **counter check or replacement** check, the general cashier accepting [such] **the new counter check or replacement** check shall date and time stamp the **new** check, place his **or her** initials on the **new** check, and record on the **new** check the serial number of [the Counter Check(s) or Slot Counter Check(s)] **any counter check or the voucher number, if any, of any replacement check** being redeemed, consolidated or [replaced] **substituted.**

(j) Any original counter check, replacement check or personal check which may be returned to the drawer as the result of a redemption, consolidation or substitution transaction shall be returned directly to the drawer by one of the following methods:

1. If the drawer personally appears at the cage and requests the return of the check, the general cashier shall:

i. Obtain the original counter check, replacement check or personal check fom the check bank cashier;

ii. Verify the identity of the drawer through signature comparison, examination of identification credentials, comparison of the drawer's actual appearance to the physical description in the drawer's credit file or personal attestation by a cage supervisor as to the identity of the drawer; and

iii. Return the original check to the drawer.

2. If the drawer requests the return of the check in a signed written communication, the check bank cashier shall:

i. Obtain the original counter check, replacement check or personal check;

ii. Compare the signature on the check to the signature on the written request; and

iii. Present the original check to a cage supervisor who shall mail the check to the drawer's current address as indicated in his or her credit file or to any other address requested by the patron in the written communication.

19:45-1.27 Procedures for granting credit, and recording **counter checks and replacement** checks exchanged, redeemed or consolidated

(a) A credit file for each patron shall be prepared by a general cage cashier or credit department representative with no incompatible functions either manually or by computer prior to the casino licensee's approval of a patron's credit limit. All patron credit limits and changes thereto shall be supported by the information contained in the credit file. Such file shall contain a credit application form upon which shall be recorded, at a minimum, the following information provided by the patron:

1.-5. (No change.)

6. Banking information including:

i. (No change.)

ii. The account number of the patron's personal checking account upon which the patron is individually authorized to draw and upon which all [Counter Checks, Slot Counter Checks] **counter checks** and all **replacement** checks used for substitution, redemption or consolidation will be drawn. Checking accounts of sole proprietorships shall be considered as personal checking accounts. Partnership or corporate checking accounts shall not be considered personal checking accounts.

7.-11. (No change.)

(b) (No change.)

(c) Prior to the casino licensee's approval of the patron's credit limit, a credit department representative with no incompatible functions shall:

1. (No change.)

2. Verify the patron's current casino credit limits and outstanding balances which shall include the following:

i.-ii. (No change.)

iii. The current balance and status of the patron's credit account at each casino including **counter checks and replacement** checks deposited by New Jersey casinos that have not yet cleared the bank and derogatory information. ("Derogatory is defined as patron credit accounts partially or completely uncollectible[,]; **counter checks, replacement checks and personal** checks returned unpaid by the patron's bank[,]; settlements[,]; liens[,]; judgments, and any other credit problems of the patron);

3.-5. (No change.)

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

(g) Prior to approving a credit limit increase, a representative of the casino licensee's credit department shall:

1.-7. (No change.)

8. Consider the patron's personal check cashing history at that casino, if any.

(h) (No change.)

(i) The casino licensee's credit department shall:

1. Comply with the requirements of either 2 or 3 below whenever:

i.-ii. (No change.)

iii. A **counter check or replacement** check is returned to any casino by a patron's bank; or

iv.-v. (No change.)

2.-4. (No change.)

(j) Any patron having a **counter check or replacement** check returned to any casino unpaid by the patron's bank shall have his credit privileges suspended at all New Jersey casinos until such time as the returned **counter check or replacement** check has been paid in full or the reason for the derogatory information has been satisfactorily explained. All derogatory information concerning a patron's credit account shall be reported by each casino licensee on a daily basis to a casino credit bureau used by New Jersey casinos. Each New Jersey casino licensee shall request written documentation of any derogatory information pertaining to its patrons to be reported to that casino on a daily basis by a casino credit bureau used by New Jersey casinos. All documentation obtained from the casino credit bureau shall be maintained in the patron's credit file. Any casino licensee desiring to continue the patron's credit privileges on the basis of a satisfactory explanation having been obtained for the returned check may do so if the licensee records the explanation for its decision in the credit file before accepting any further checks from the patron along with the signature of the credit department representative accepting the explanation.

(k) All transactions affecting a patron's outstanding indebtedness to the casino licensee shall be recorded in chronological order in the patron's credit file and credit transactions shall be segregated from the safekeeping deposit transactions. The following information shall be included:

1. (No change.)

2. The date, amount and **counter** check **or replacement check voucher** number of each consolidation check and the **counter** check **or replacement check voucher** numbers of the **counter checks or replacement** checks returned to the patron;

3. The date, method, amount and **counter** check **or replacement check voucher** number of each redemption transaction and the **counter** check **or replacement check voucher** number of the redeemed **counter check or replacement** check returned to the patron;

4. The date, amount and **replacement** check **voucher** number of each substitution transaction and the **counter** check **or replacement check voucher** number of the **counter check or replacement** check returned to the patron;

5. The date, amount and **counter** check **or replacement check voucher** number of each **counter check or replacement** check deposited;

6. The date, amount and **counter** check **or replacement check voucher** number of each **counter check or replacement** check returned to the casino licensee by the patron's bank and the reason for its return;

7. (No change.)

8. The date, amount and **counter** check **or replacement check voucher** number of any **counter checks or replacement** checks which have been partially or completely written off by the casino licensee and a brief explanation of the reason for such write off.

(l) A log of all [Counter Checks and Slot Counter Checks] **counter checks** exchanged and of all **counter checks and replacement** checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a daily basis, by check cashiers and such log shall include, at the minimum, the following:

1. The balance of the **counter checks and replacement** checks on hand in the cashier's cage at the beginning of each shift;

2. For [checks] **counter checks** initially accepted and for **counter checks and replacement** checks received for consolidation, redemption or substitution:

i.-iii. (No change.)

iv. The [Counter Check and Slot Counter Check] **counter check** serial number[(s) for Counter Check(s) and Slot Counter Check(s) received] **or the replacement check voucher number**; and

v. (No change.)

3. For **counter checks or replacement** checks deposited, redeemed by patrons for cash or cash equivalents, **bank checks, casino checks,** gaming chips and plaques, or any combination thereof, consolidated or replaced:

i.-iii. (No change.)

iv. The [Counter Check and Slot Counter Check] **counter check** serial number[(s) for Counter Check(s) and Slot Counter Check(s) deposited, redeemed, consolidated or replaced] **or the replacement check voucher number**; and

v. (No change.)

4. The balance of the **counter checks or replacement** checks on hand in the cashiers' cage at the end of each shift.

(m) A list of all [Counter Checks and Slot Counter Checks] **counter checks** on hand, and of all **counter checks or replacement** checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a monthly basis, at a minimum, and shall include the following:

1.-3. (No change.)

4. The [Counter Check and Slot Counter Check] **counter check** serial number[(s) for Counter Check(s) and Slot Counter Check(s) received] **or replacement check voucher number**.

(n) At the end of each gaming day, at a minimum, the following procedures shall be performed:

1. The daily total of the amounts of **counter checks and replacement** checks initially recorded as described in (l)2 above shall be agreed to the daily total of [Counter Checks and Slot Counter Checks] **counter checks and replacement check vouchers** issued;

2. The daily total of the **counter checks and replacement** checks indicated as deposited on a log required by (l)3 above shall be agreed by employees with no incompatible functions to the bank deposit slips corresponding to such [check] **checks**; and

3. The balance required by (l)4 above shall be agreed to the total of the **counter checks and replacement** checks on hand in the cashiers' cage.

(o) All information recorded in the credit file shall be in accordance with the licensee's system of internal **and** accounting [control] **controls** submitted to the Commission.

19:45-1.27A Patron request for suspension of credit **and personal check cashing** privileges

(a) Any person may voluntarily suspend his or her credit **and personal check cashing** privileges at all licensed casinos by submitting a written request to the Commission in accordance with this section.

1. (No change.)

2. Any person requesting suspension of credit **and personal check cashing** privileges shall present valid identification credentials con-

taining the person's signature and either a photograph or a general description of that person.

(b) A request for suspension of credit **and personal check cashing** privileges shall be in a form prescribed by the Commission, which shall include the following:

1. The name of the person requesting suspension of credit **and check cashing** privileges;

2.-4. (No change.)

5. The signature of the person requesting suspension of credit **and personal check cashing** privileges, indicating acknowledgment of the following statement: "I certify that the information which I have provided above is true and accurate. I am aware that my signature below authorizes the Casino Control Commission to direct all New Jersey casino licensees to suspend my credit **and personal check cashing** privileges for a minimum period of 30 days from the date of this request and indefinitely thereafter, until such time as I submit a written request to the Commission for the reinstatement of any such credit **and personal check cashing** privileges";

6. (No change.)

7. The signature of a Commission employee authorized to accept such request, indicating that the signature of the person requesting suspension of credit **and personal check cashing** privileges appears to agree with that contained on his or her identification credentials and that any physical description or photograph of the person appears to agree with his or her actual appearance.

(c) The Commission shall maintain an updated master list of all persons who have requested suspension of credit **and personal check cashing** privileges pursuant to this section, and shall notify the credit department of each casino licensee in writing of any additions to or deletions from the list. The casino licensee shall date and time stamp any such notice immediately upon receipt.

1. Each casino licensee shall suspend the credit **and personal check cashing** privileges of any listed person, effective immediately upon receipt of notice that such person's name has been added to the list.

2. An updated master list of persons who have requested suspension of credit **and personal check cashing privileges** shall be maintained by the credit department of each licensed casino **and supplied to the check cashier**.

3. Each casino licensee shall note any suspension or reinstatement of credit **and personal check cashing** privileges pursuant to this section in any existing credit file for the affected patron, including the following:

i. A copy of any applicable Commission notice of the suspension or reinstatement of credit **and personal check cashing** privileges; and

ii. (No change.)

(d) Any person whose credit **and personal check cashing** privileges have been suspended pursuant to this section may, no sooner than 30 days after the request for suspension of credit **and personal check cashing** privileges, request reinstatement of his or her credit **and personal check cashing** privileges by submitting a written request to the Commission in accordance with the procedures specified in (a)1 and 2 above.

1. Such request shall be in a form prescribed by the Commission, which shall include the following:

i. (No change.)

ii. The signature of the person requesting reinstatement of credit **and personal check cashing** privileges, indicating acknowledgment of the following statement: "I certify that the information which I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previous request for suspension of credit **and personal check cashing** privileges, and authorizes the Casino Control Commission to permit any New Jersey casino licensee to reinstate my credit **and personal check cashing** privileges."

2. The Commission shall delete such person's name from the list established pursuant to (c) above, and so notify the credit department of each casino licensee, no later than three days from submission of the written request for reinstatement of credit **and personal check cashing** privileges. The casino licensee shall date and time stamp any such notice immediately upon receipt.

3. Upon receipt of notice that such person's name has been deleted from the list, a casino licensee may reinstate such person's credit upon reverification of the information required by N.J.A.C. 19:45-1.27(c), [or] may extend credit to such person in accordance with the procedures set forth in N.J.A.C. 19:45-1.27 **or may cash personal checks for such person in accordance with the procedures set forth in N.J.A.C. 19:45-1.25F**.

(e) (No change.)

19:45-1.28 Procedure for depositing **counter checks, replacement checks and personal** checks received from [gaming] patrons

(a) All **counter checks and replacement** checks, unless redeemed, [or] consolidated **or replaced** prior to the time requirements herein, received from gaming patrons in conformity with N.J.A.C. 19:45-1.25 **and 19:45-1.26** shall be deposited in the casino licensee's bank account in accordance with the casino licensee's normal business practice, [and such] **which** practice [must] **shall** be submitted in writing to [both] the Commission and Division, but in no event later than:

1. [The banking day after the date of the check for a non-gaming check;

2.] Seven calendar days after the date of the check for a check in an amount of $1,000 or less;

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

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

(b) All **counter checks or replacement** checks received [for] **in a** consolidation **transaction** in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account within:

1.-3. (No change.)

(c) All **counter checks or replacement** checks received as part of a **partial** redemption **transaction** in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account within:

1.-3. (No change.)

(d) (No change.)

(e) In the event of a series of consolidation or redemption transactions with a patron, the initial **counter check or replacement** check shall be the earliest dated check returned to the patron in the first of the series of consolidation or redemption transactions.

(f) All personal checks accepted by a casino licensee pursuant to the provisions of N.J.S.A. 5:12-101h and N.J.A.C. 19:45-1.25F shall be deposited in the bank account of the casino licensee on the first banking day following the date of the personal check; provided, however, that a personal check which has been deposited into a drop box pursuant to the provisions of N.J.A.C. 19:45-1.25G(g) shall be deposited on the first banking day following the receipt of the personal check by the main bank.

[(f)](g) Any **counter check, replacement check or personal** check deposited into a bank will not be considered clear until a reasonable time has been allowed for such check to clear the bank. The licensee must submit to the Commission and Division the time allotted for checks to clear the bank.

19:45-1.29 Procedure for collecting and recording **counter checks, replacement checks and personal** checks returned to the casino after deposit

ALTERNATIVE A

(a) All dishonored **counter checks, replacement checks and personal** checks returned by a bank ("returned checks") after deposit shall be returned directly to, and controlled by, accounting department employees and shall **be maintained by check bank cashiers. Such employees shall** have no incompatible functions. **Each casino licensee's system of internal controls shall include procedures to assure that all employees who need to be aware of the names of patrons who have outstanding returned checks are so advised as soon as is practicable after the information is received by the casino licensee.**

(b) (No change.)

(c) Continuous records of all returned checks shall be maintained by accounting department employees with no incompatible functions. Such records shall include, at a minimum, the following:

1.-4. (No change.)

5. The [Counter Check or Slot Counter Check] **counter check** serial number [for Counter Checks or Slot Counter Checks] **or the replacement check or personal check voucher number**; and

6. (No change.)

(d)-(i) (No change.)

(j) After reasonable collection efforts, returned checks may be considered uncollectible for accounting purposes and, **except for returned personal checks,** charged to the casino licensee's allowance for uncollectible patrons' checks. A check which is unenforceable pursuant to section 101 of the Act shall not be charged to the allowance account for the purpose of computing the maximum provision allowed pursuant to section 24 of the Act. Any patron's indebtedness, **other than returned personal checks**, in excess of $1,000, may only be considered uncollectible for accounting purposes and charged to the allowance for uncollectible patrons' checks account after the following information has been included in the patron's credit file:

1. Documentation by two or more of the casino licensee's collection department employees evidencing independent efforts to collect the patron's outstanding **counter checks or replacement** [check(s)] **checks** and the reason why such collection efforts were unsuccessful; and/or

2. A letter from an attorney representing the casino documenting the efforts to collect the patron's outstanding **counter checks or replacement** checks and the reasons why such collection efforts were unsuccessful or were not pursued further.

(k) Listings of uncollectible **returned** checks shall be approved in writing by, at a minimum, the Chief Executive Officer, Vice-President of Casino Operations or equivalent executives of a casino licensee that is either a partnership or sole proprietorship and Controller and such checks and listing shall be maintained and controlled by accounting department employees. A continuous trial balance of all uncollectible **returned** checks shall be maintained by employees of the accounting department with no incompatible functions. The continuous trial balance shall be adjusted for any subsequent collections.

(l) The requirements set forth in (e) above shall not apply to collection efforts associated with returned personal checks. Each casino licensee shall submit its collection practices and policies concerning returned personal checks as part of its system of internal controls.

ALTERNATIVE B

(a) All dishonored **counter checks, replacement checks and personal** checks returned by a bank ("returned checks") after deposit shall be returned directly to, and controlled by, accounting department employees and shall **be maintained by check bank cashiers. Such employees shall** have no incompatible functions. **Each casino licensee's system of internal controls shall include procedures to assure that all employees who need to be aware of the names of patrons who have outstanding returned checks are so advised immediately after the information is received by the casino licensee.**

(b) No person other than one licensed in a separate collection section within the accounting department as a casino key employee or as a casino employee, and one who has no incompatible functions may engage in efforts to collect returned checks except that an attorney-at-law representing a casino licensee may bring action for such collection. Any verbal or written communication with patrons regarding collection efforts, shall be made with the full knowledge of the collection employees and shall be documented in the collection section. **Notwithstanding the foregoing, a casino licensee may engage a collection agency to effect collection efforts in the cas of returned personal checks.**

(c)-(k) (No change.)

(l) For personal checks dishonored and returned by a bank, only subsections (a) through (c) and (k) of this section shall apply. The collection efforts of the casino licensee shall be in accordance with its internal controls, but the casino licensee shall be afforded maximum discretion in its procedures.

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

(a)-(g) (No change.)

(h) Procedures and requirements for conducting the count shall be the following:

1.-5. (No change.)

6. As the contents of each drop box are counted, one count team member shall record on a Master Game Report or supporting documents, by game, table number, and shift, the following information:

i.-vi. (No change.)

vii. The serial number and amount of each [Counter Check] **counter check**;

viii. The amount of all [Counter Checks] **counter checks**;

ix. The voucher number and amount of each personal check;

x. The amount of all personal checks counted;

xi. The voucher number and amount of each personal check voucher issuance copy;

xii. The amount of all personal check voucher issuance copies counted;

Recodify ix.-xiii. as **xiii.-xvii.** (No change in text.)

7. After the contents of each drop box are counted and recorded, one member of the count team shall record by game and shift on the Master Game Report, the total amounts of currency and coin, Table Inventory Slips, [Counter Checks] **counter checks, personal checks, personal check voucher issuance copies,** Fills, and Credits counted, and win or loss, together with such additional information as may be required on the Master Game Report by the Commission or the establishment;

8. Notwithstanding the requirements of (h)6 and (h)7 above, if the casino licensee's system of internal accounting control provides for the recording on the Master Game Report or supporting documents of Fills, Credits, [Counter Checks] **counter checks, personal checks, personal check voucher issuance copies** and Table Inventory Slips by cage cashiers prior to commencement of the count, a count team shall compare for agreement the totals of the amounts recorded thereon to the Fills, Credits, [Counter Checks] **counter checks, personal checks, personal check voucher issuance copies** and Table Inventory Slips removed from the drop boxes.

9.-11. (No change.)

(i) Procedures and requirements at the conclusion of the count for each gaming shift shall be the following:

1. All cash **and personal checks** removed from the drop boxes or slot cash storage boxes shall be immediately presented in the count room by a count team member to a reserve cash cashier who, prior to having access to the information recorded on the Master Game Report or the Slot Cash Storage Box Report and in the presence of a count team member and the Commission inspector, shall recount, either manually or mechanically, the cash **and personal checks** received and attest by signature on the Master Game Report and Slot Cash Storage Box Report, if applicable, the amount of cash **and personal checks** received; after which the Commission inspector shall sign the reports evidencing his or her presence during the count and the fact that both the cashier and count team have agreed on the total amount of cash **and personal checks** counted.

2. The Master Game Report, after signing, and the Requests for Fills, the Fills, the Requests for Credits, the Credits, the issuance copies of the [Counter Checks] **counter checks, the issuance copies of the personal check vouchers** and the Table Inventory Slips removed from drop boxes shall be transported directly to the accounting department and shall not be available to any cashiers' cage personnel.

3. (No change.)

4. If the casino licensee's system of internal accounting control does not provide for the forwarding from the cashiers' cage of the originals of the Fills, Credits, Requests for Credits, and [the] Requests for Fills[, and the issuance copies of the Counter Checks,] directly to the accounting department, the originals of all such slips recorded, or to be recorded, on the Master Game Report shall be transported from the count room directly to the accounting department.

(j) The originals and copies of the Master Game Report, the Slot Cash Storage Box Report, [Counter Checks] **counter checks, personal check vouchers,** Requests for Fills, Fills, Requests for Credits, Credits, Table Inventory Slips and the test receipts from the currency counting equipment shall, on a daily basis, in the accounting department be:

1.-6. (No change.)

19:45-1.34 Slot booths

(a) Each establishment may have on, or immediately adjacent to, the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-6. (No change.)

7. The exchange by patrons of signed [Slot Counter Checks] **counter checks** for currency, coin or slot tokens in conformity with N.J.A.C. 19:45-1.25[A];

8. The exchange by patrons of personal checks for currency, coin or slot tokens in conformity with N.J.A.C. 19:45-1.25F;

Recodify 8.-11. as **9.-12.** (No change in text.)

[12.]**13.** The exchange with the cashiers' cage or master coin bank of any coin, currency, slot tokens, chips, plaques, **personal checks, issuance copies of personal check vouchers,** issuance copies of [Slot Counter Checks] **counter checks** and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier or master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons, the slot booth shall not be allowed to obtain coin or slot tokens, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage, the master coin bank, or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). Such exchanges must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.

(b) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Definitions
Jackpot Payouts of Cash or Slot Tokens that Are Not Paid Directly from the Slot Machine

Proposed Amendments: N.J.A.C. 19:45-1.1 and 1.40

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

Authority: N.J.S.A. 5:12-63(c), 99(a)4 and 12.

Proposal Number: PRN 1992-418.

Submit comments by October 21, 1992 to:

Catherine A. Walker, Senior Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.40 incorporates existing casino practices concerning the payment of jackpots that are not totally and automatically paid directly from a slot machine. The amendment incorporates the use of a Request for Jackpot Payout Slip which is prepared to document the winning reel combinations on the slot machine and the appropriate payout, as well as other pertinent information. Additionally, the proposed amendment incorporates the use of a Jackpot Payout Receipt which is given to a winning patron if the jackpot is not paid to the patron before the slot machine or progressive meter is reset. The amendment also sets forth the procedures that must be followed when using a Jackpot Payout Slip, a Jackpot Payout Receipt or a Request for Jackpot Payout.

The amendment also increases the threshold dollar amount of a jackpot payment that requires participation by two members of the slot department from $10,000 to $25,000. The amendment to N.J.A.C. 19:45-1.40(k)2 will permit a slot attendant or slot attendant supervisor and a slot shift manager to pay jackpots of $25,000 or more. Additionally, the amendment gives casino licensees the option of using either a slot attendant or a slot attendant supervisor for payment of jackpots that are less than $25,000. The signature and verification requirements of N.J.A.C. 19:45-1.40(h) and (i) are replaced by the requirements of new subsections (l) and (m).

The proposed amendment to N.J.A.C. 19:45-1.1 adds Jackpot Payout Slip, Jackpot Payout Receipt and Request for Jackpot Payout to the definitions list, referencing N.J.A.C. 19:45-1.40.

Social Impact

The proposed amendment to N.J.A.C. 19:45-1.40 serves to codify and modify exsiting casino procedures for paying jackpots. Increasing the dollar threshold of the jackpot limits may allow for better customer service, since jackpot payout transactions may be completed more expeditiously and efficiently. Casino procedures require the use of a Jackpot Payout Receipt, which is issued to a patron if the progressive meter or slot machine is reset prior to payment of the jackpot, and a Request for Jackpot Payout Slip, which is used by a slot attendant or slot attendant supervisor to record pertinent information concerning the slot machine and the appropriate amount of the payment. Use of these forms should help ensure that winning patrons receive the correct amount of money for each jackpot that is not totally and automatically paid by a slot machine.

Economic Impact

The proposed amendment to N.J.A.C. 19:45-1.40 concerning the Request for Jackpot Payout Slip and Jackpot Payout Receipt and attendant procedures is anticipated to have no direct economic impact on the regulated public, except as noted below. The proposed amendment codifies existing casino procedures. A positive economic impact is anticipated for casino licensees regarding those portions of the amendment which give casino licensees the option to have either a slot attendant or a slot attendant supervisor pay jackpots of less than $25,000. This positive economic impact is anticipated because the proposed amendment would enable casino licensees to more effectively utilize slot operations resources.

Regulatory Flexibility Statement

The amendment to N.J.A.C. 19:45-1.40 will affect only the operations of New Jersey casino licensees, none of which qualifies as a "small business" protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:45-1.1 Definitions

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

. . .

"Jackpot Payout Receipt" is defined in N.J.A.C. 19:45-1.40.

"Jackpot Payout Slip" is defined in N.J.A.C. 19:45-1.40.

. . .

"Request for Jackpot Payout Slip" is defined in N.J.A.C. 19:45-1.40.

. . .

19:45-1.40 Jackpot payouts of cash or slot tokens that are not paid directly from the slot machine

(a) Whenever a patron wins a jackpot of [cash] **coins** or slot tokens [to be exchange for cash] that is not totally and automatically paid directly from the slot machine, [a slot booth cashier ("slot cashier"), a general cashier or a master coin bank cashier shall prepare a jackpot payout slip] **a Request for Jackpot Payout Slip ("Request") shall be prepared by a slot attendant or a slot attendant supervisor after observing the combinations on the slot machine and determining the appropriate amount of the payout, based on the winning combinations. The Request shall be, at a minimum, a one-part form, access to which, prior to use, shall be restricted to slot attendants and slot attendant supervisors.**

(b) The following information, at a minimum, shall be recorded on the Request:

1. The date, shift and time of the jackpot;

2. The asset number of the slot machine on which the jackpot was registered;

3. The winning combination of characters constituting the jackpot;

4. The total amount of the jackpot;

5. The amount paid by the slot machine, if applicable;

6. The amount to be paid to the winning patron;

7. The method of payment requested by the patron (cash, slot tokens or casino check);

8. The signature of the preparer; and

9. The following additional signatures shall be required if the slot machine or the progressive meter is reset prior to the patron being paid or if payment is made directly to the patron by a slot cashier, master coin bank cashier or general cashier;

i. The signature of the casino security department member attesting to the characters constituting the jackpot and the amount to be paid to the winning patron; and

ii. The signature of the slot shift manager attesting to the characters constituting the jackpot and the amount to be paid to the winning patron when the jackpot amount is $25,000 or more.

(c) Following preparation, the Request shall be immediately transported by the preparer to a slot booth, the master coin bank or the cashiers' cage where it will serve to authorize the preparation of a Jackpot Payout Slip ("Payout") by a slot cashier, master coin bank cashier or general cashier.

(d) If the winning patron will not be paid before the slot machine or progressive meter is reset, the slot attendant or slot attendant supervisor shall prepare, in addition to the Request referenced in (a) above, a Jackpot Payout Receipt ("Receipt"). The Receipt shall be, at a minimum, a two-part form, and shall contain the following information:

1. The date, shift and time of the jackpot;

2. The asset number of the slot machine on which the jackpot was registered;

3. The winning combination of characters constituting the jackpot;

4. The amount to be paid to the winning patron stated in numbers and in words;

5. The signature of the winning patron; and

6. The signature of the preparer indicating that the information on the Receipt is correct and agrees with the information recorded on the Request required by (a) above.

(e) Upon preparation, the Receipt shall be distributed as follows:

1. The original shall be immediately delivered to the slot cashier, master coin bank cashier or general cashier along with the Request in accordance with (c) above; and

2. The duplicate shall be immediately presented to the winning patron who shall be required to present the duplicate Request before being paid the jackpot in accordance with the procedures set forth in this section.

Recodify existing (b)-(d) as **(f)-(h)** (No change in text.)

[(e)]**(i)** On originals, duplicates, triplicates, or in stored data, the preparer shall record, **or if computerized, the printer shall print,** at a minimum, the following information:

1. (No change.)

2. The winning combination of [reel] characters constituting the jackpot;

3. (No change.)

4. The amount to be paid from cashiers' cage, **master coin bank** or slot booth funds;

5.-7. (No change.)

[(f)]**(j)** The time of preparation of the [jackpot] **payment** shall be recorded, at a minimum, on the original and duplicate upon preparation.

[(g)]**(k)** All [coin or currency] **cash or slot tokens** paid or any casino check issued to a patron as a result of winning a jackpot shall be:

1. Distributed by the slot cashier, general cashier or master coin bank cashier directly to the patron **in accordance with the procedures in (1) below**; or

2. Disbursed by a slot cashier, general cashier or master coin bank cashier to a slot attendant or slot attendant supervisor and if the [manual] **amount of the** jackpot **to be paid pursuant to this section** is [$1,200] **$25,000** or more, to a **slot attendant or** slot **attendant** supervisor, **and a slot shift manager** who shall **jointly** transport the [coin, currency] **cash, slot tokens** or casino check directly to the patron **in accordance with (m) below**.

[(h) Signatures attesting to the accuracy of the information contained on the original shall be, at a minimum, of the following personnel at the following times:

1. The original:

i. The slot cashier, general cashier or master coin bank cashier upon preparation; and

ii. A slot attendant or slot supervisor after observing the reel characters of the slot machine or if the manual jackpot is $1,200 or more, a slot supervisor after observing the reel characters of the slot machine; and

2. The duplicate:

i. The slot cashier, or general cashier or master coin bank cashier upon preparation;

ii. A slot attendant or slot supervisor after observing the reel characters of the slot machine or if the manual jackpot is $1,200 or more, a slot supervisor after observing the reel characters of the slot machine;

iii. A security department member after observing the reel characters of the slot machine; and

iv. A slot shift manager after observing the reel characters of the slot machine if the amount of the jackpot is in excess of $10,000.]

[(i) Upon meeting the signature requirements as described in (h)1 and (h)2 above, the security department member shall maintain and control the duplicate and the slot, master coin bank or general cashier shall maintain and control the original.]

(l) Whenever the winning patron is paid directly by the slot cashier, general cashier or master coin bank cashier the following procedures shall be followed:

1. The cashier shall prepare or generate a Payout in accordance with (i) and (j) above;

2. If a casino security department member has not signed the Request, the cashier shall summon a casino security department member and provide him or her with the Request. The casino security department member shall proceed to the slot machine identified on the Request and shall verify that the winning characters on the slot machine and the amount to be paid match those which appear on the Request and sign the Request. If the jackpot amount is more than $25,000, a slot shift manager shall similarly verify that the winning characters of the slot machine and the amount to be paid match those which appear on the Request and sign the Request. The Request shall then be immediately returned to the cashier by the casino security department member;

3. After the cashier determines that all required signatures verifying the characters of the slot machine and the amount to be paid have been placed on the Request, if the amount being paid is less than $25,000, the cashier shall pay the winning patron in the presence of the casino security department member and the slot attendant or slot attendant supervisor who signed the Request in accordance with this section. If the amount being paid by the cashier is $25,000 or more, the cashier shall pay the winning patron in the presence of the casino security department member, the slot attendant or slot attendant supervisor, and the slot shift manager who signed the Request in accordance with this section. All casino personnel required by this section to witness the payment shall sign the duplicate Payout attesting to the accuracy of the information on the Payout and the disbursement of the payment to the patron;

4. If a Receipt was issued and all the required verifications of the characters were completed in accordance with (b) above, the cashier shall summon a casino security department member and a slot attendant or slot attendant supervisor or, if the jackpot is $25,000 or more, a slot attendant or a slot attendant supervisor and

a slot shift manager. The patron shall be required to present the duplicate Receipt to the cashier in order to receive payment. The cashier shall compare the duplicate Receipt to the original Receipt and, if in agreement, make the payment to the winning patron. All casino personnel required by this section to witness the payment shall sign the duplicate Payout attesting to the accuracy of the information on the Payout and the disbursement of the payment to the patron;

5. Once payment has been made and all required signatures obtained, the cashier shall give the duplicate Payout to the casino security department member, who shall as expeditiously as possible deposit it into a locked accounting box at the casino security podium or other location as approved by the Commission; and

6. The cashier shall attach the Request and the original and duplicate Receipt, if applicable, to the original Payout. If the disbursement is made from a slot booth all forms shall be forwarded by the end of the gaming day to the master coin bank for reimbursement. If the disbursement is made from the cashiers' cage, all forms shall be forwarded by the end of the gaming day to the main bank for reimbursement.

(m) Whenever a winning patron will be paid by a slot attendant or slot attendant supervisor, the following procedures shall be followed:

1. The slot cashier, general cashier or master coin bank cashier shall prepare or generate a Payout in accordance with (i) and (j) above;

2. The cashier shall disburse the cash, slot tokens or casino check to the slot attendant or slot attendant supervisor. The slot attendant or slot attendant supervisor receiving the payment shall verify the amount to be paid to the patron and sign the original and duplicate Payout attesting to the accuracy of the informaton on the Payout and the receipt of the payment from the cashier. The cashier shall retain the original Payout and the duplicate Payout shall be transported with the payment by the slot attendant or slot attendant supervisor;

3. If a casino security department member has not signed the Request, the slot attendant or slot attendant supervisor shall provide the duplicate Payout to the casino security department member who shall verify that the winning characters of the slot machine and the amount to be paid match those which appear on the duplicate Payout. If the jackpot amount is $25,000 or more and the slot shift manager has not signed the Request, the slot shift manager shall similarly verify that the winning characters of the slot machine and the amount to be paid match those which appear on the duplicate Payout;

4. Once the verifications required by (m)3 above have been completed, if the payment is less than $25,000, the slot attendant or slot attendant supervisor shall pay the winning patron in the presence of the casino security department member who verified the winning characters and the amount to be paid and, if the payment is $25,000 or more, the payment shall be made in the presence of the casino security department member and the slot shift manager who verified the winning characters and the amount to be paid. Once the patron has been paid, all casino personnel required by this section to witness the payment shall sign the duplicate Payout attesting to the verification of the characters, the accuracy of the information on the Payout and the disbursement of the payment to the winning patron;

5. If a Receipt was issued and all the required verifications of the characters were completed in accordance with (b) above, the cashier shall give the slot attendant or slot attendant supervisor the original Receipt along with the duplicate Payout in accordance with (m)2 above to be transported with the payment. The patron shall be required to present the duplicate Receipt to the slot attendant or slot attendant supervisor in order to receive the payment. The slot attendant or slot attendant supervisor shall compare the duplicate Receipt to the original Receipt and if in agreement make the payment to the winning patron;

6. Once the patron has been paid and all necessary signatures have been obtained on the duplicate Payout in accordance with (m)4 above, a casino security department member shall, as expeditiously as possible, deposit the duplicate Payout into a locked accounting box at the security podium or other location as approved by the Commission;

7. The slot attendant or slot attendant supervisor shall immediately return the original and duplicate Receipt, if applicable, to the slot booth, cashiers' cage or master coin bank; and

8. The cashier shall attach the Request, and the original and duplicate Receipt, if applicable, to the original Payout. If the disbursement is made from a slot booth all forms shall be forwarded by the end of the gaming day to the master coin bank for reimbursement. If the disbursement is made from the cashiers' cage, all forms shall be forwarded by the end of the gaming day to the main bank for reimbursement.

[(j)](**n**) At the end of each gaming day, at a minimum, [the original and duplicate of the Jackpot Payout Slip] **all forms required by this section** shall be forwarded as follows:

1. The [slot cashier shall forward the] original [to the master coin bank cashier in exchange for coin, currency or credit, after which the original] **Payout with the attached Request and the original and duplicate Receipt, if applicable,** shall be forwarded to the accounting department for agreement with the triplicate **Payout** or stored data [or, if prepared in the master coin bank, shall forward the original directly to the accounting department for agreement with the triplicate or stored data]; **and**

[2. The general cashier shall forward the original to the main bank cashier in exchange for coin, currency or credit, after which the original shall be forwarded to the accounting department for agreement with the triplicate or stored data; and]

[3.]**2.** The duplicate [jackpot payout slip] **Payout** shall be [forwarded directly to the] **collected from the locked accounting boxes located at the casino security podium or other approved location by an accounting department employee and returned to the** accounting department for recording on the Slot Win Sheet, agreement with the meter reading [stored] **recorded** on the Slot Meter Sheet, and agreement with the triplicate **Payout** or stored data.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Procedure for Opening, Counting and Recording Contents of Drop Boxes and Slot Cash Storage Boxes
Slot Machines and Bill Changers; Identification; Signs; Meters; Other Devices
Proposed Amendments: N.J.A.C. 19:45-1.33 and 19:46-1.26

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69(a), 70(i) and 99(a)10.
Proposal Number: PRN 1992-416.

Submit comments by October 21, 1992 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

All slot machines and any bill changers that are attached to them are required to have "asset numbers" attached to their outer cabinets to identify them. These asset numbers must be at least two inches high, which ensures that the numbers are large enough to be identified on closed circuit television cameras.

The two-inch size requirement is needed for slot machines. However, it is not necessary for a bill changer, whose asset number only needs to be visible to the persons involved in removing and replacing the cash

slot storage box in the bill changer, to make certain that the correct cash box (which is also numbered) is placed in the correct bill changer.

These proposed amendments would delete the two-inch size requirement for bill changer asset numbers, and would also permit the asset number to be located on either the bill changer or the slot machine to which it is attached. Present bill changer requirements would be replaced with a more flexible standard that would permit the bill changer asset number to be a different size, and to be located in a different location, as long as it is "conspicuous," is "easily visible to the persons involved in removing and replacing the slot cash storage box in the bill changer," and is approved by the Commission. See N.J.A.C. 19:46-1.26(b)1.

Additionally, both N.J.A.C. 19:45-1.33 and 19:46-1.26 would be amended to replace the term "casino number" with "asset number," which is the correct, updated term now used in N.J.A.C. 19:45-1.1. See 23 N.J.R. 1461(a).

Social Impact

These proposed amendments should have no social impact because they concern a technical aspect of casino operations that does not involve the general public.

Economic Impact

These proposed amendments are not expected to have any economic impact upon casino licensees, the Commission, the Division of Gaming Enforcement, or the general public. They should, however, give casino licensees somewhat more flexibility in designing and installing bill changers.

Regulatory Flexibility Statement

These proposed amendments would affect only casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

(a)-(g) (No change.)

(h) Procedures and requirements for conducting the count shall be the following:

1.-8. (No change.)

9. As the contents of each slot cash storage box are counted, one count team member shall record on the Slot Cash Storage Box Report or supporting documentation the following information:

i. The [casino] **asset** number of the bill changer to which the slot cash storage box contents correspond;

ii.-v. (No change.)

10.-11. (No change.)

(i)-(j) (No change.)

19:46-1.26 Slot machines and bill changers; identification; signs; meters other devices

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each bill changer shall have the following identifying features:

1. [A casino] **An asset** number[, at least two inches in height,] **that is** permanently imprinted, affixed or impressed on the outside cabinet of the bill changer [which corresponds to the casino number affixed on the outside cabinet or the slot machine to which it is attached] **or the slot machine to which it is attached. The asset number must be conspicuous and easily visible to persons involved in removing or replacing the slot cash storage box in the bill changer, and it must correspond to the asset number affixed to the slot machine in accordance with (a) above. The size and location of the asset number must be approved in advance by the Commission;**

2.-4. (No change.)

(c)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Internal Controls

Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs

Proposed Amendment: N.J.A.C. 19:45-1.46

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

Authority: N.J.S.A. 5:12-69(a), 70(l), and 102(m).

Proposal Number: PRN 1992-414.

Submit written comments by October 21, 1992 to:

Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission rules presently require that each casino licensee file a monthly report with the Commission and the Division of Gaming Enforcement regarding coupon redemption and other complimentary distribution programs. N.J.A.C. 19:45-1.46(l). These reports provide such information as the type, number and total value of coupons or other complimentary items and services given to casino patrons. The rules also require that these reports include the name of any person receiving a complimentary item or service in an amount of $100.00 or more.

Upon review of this reporting system, the Commission has determined that quarterly reporting of coupon redemption programs would provide adequate information to address all regulatory concerns in this area. Reports for other types of complimentary distribution programs would be prepared on a monthly basis, to be made available upon request of the Commission or Division. The proposed amendment implements these changes.

Social Impact

The proposed amendment, by instituting quarterly coupon reports and eliminating the monthly filing of complimentary reports, will benefit casino licensees by reducing administrative costs.

Economic Impact

The proposed quarterly streamlined reporting requirements should reduce the costs of compliance for the casino industry, and should also result in savings of time and expense for the regulatory agencies.

Regulatory Flexibility Statement

The proposed amendment affects only the operations of casino licensees, none of which qualify as a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(l) Each casino licensee shall [file a monthly report with the Commission and Division which shall include the following information]:

1. [For] **File a quarterly report for** all programs regulated by (a) above, [each licensee] **which** shall list, by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash or slot tokens given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; and

2. [For] **Prepare a monthly report for** all programs regulated by (b) above, [each licensee] **which** shall list, by program offered during the month, a description of the complimentary items and services provided, the total number of persons receiving complimentary items or services, the total dollar amount of complimentary items or services provided, and the names of all persons receiving a com-

plimentary item or service in a dollar amount equal to or greater than $100.00. **Such report shall be available upon request by the Commission or Division.**

(m) (No change.)

(n) In addition to the [monthly report] **reports** required [to be filed] in (l) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons pursuant to (a) above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including cash and slot tokens, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-1.2.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures and Requirements for the Use of Automated Coupon Redemption Machines
Reproposed Amendment: N.J.A.C. 19:45-1.46A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g) and (l) and 99(a),
Proposal Number: PRN 1992-417.

Submit comments by October 21, 1992 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

On April 20, 1992, the Commission proposed amendments to N.J.A.C. 19:45-1.10, 1.11 and 1.46A (see 24 N.J.R. 1472(a)). This reproposed amendment to N.J.A.C. 19:45-1.46A supersedes the prior proposal concerning automated coupon redemption machines, and the Commission welcomes public comment on it.

The prior amendments, as proposed, would have codified a recent Commission interpretation of its rules, which permitted such a machine to be located immediately adjacent to the casino floor, if there is proper closed circuit television (CCTV) surveillance of the machine. A comment was received from the Division of Gaming Enforcement in support of the proposed amendments, and a comment was received from the Sands Hotel and Casino (Sands) opposing the proposed amendment. The Sands contended that closed circuit television surveillance of automated coupon redemption machines, whether located on or immediately adjacent to the casino floor, was unnecessary and ineffective.

On June 3, 1992, the Commission determined to delete the portion of the proposal that required CCTV coverage for coupon redemption machines located off the casino floor. Further, it then determined to propose the rulemaking without the CCTV requirement.

This amendment to N.J.A.C. 19:45-1.46A would permit automated coupon redemption machines to be located immediately adjacent to the casino floor, but would not require CCTV coverage of such machines.

Social Impact

By permitting coupon redemption machines to be located adjacent to the casino floor, the proposed amendment would provide casino licensees with greater flexibility to serve their patrons. Such an arrangement would also conserve and make more efficient use of casino floor space.

By permitting coupon redemption machines to be located off the casino floor, such machines should become more available to casino patrons, thus decreasing the amount of time patrons need to spend redeeming their coupons.

Economic Impact

Although the ultimate economic impact of this proposed amendment cannot be predicted with certainty, it is anticipated that casino licensees may eventually be able to reduce the time, labor and expense involved in redeeming coupons by installing additional automated coupon redemption machines immediately adjacent to the casino floor.

Regulatory Flexibility Statement

This amendment would affect only casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

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

(f) **Automated coupon redemption machines may be located on or immediately adjacent to the casino floor.** Each automated coupon redemption machine shall have imprinted, affixed or impressed on the outside of the machine a unique asset identification number. Each automated coupon redemption machine shall contain a lockable coupon storage box which retains the coupons accepted by the machine. Each coupon storage box located inside the machine shall also have imprinted, affixed or impressed thereon the asset identification number of the corresponding machine.

(g)-(p) (No change.)

HEALTH

(b)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Office of Emergency Medical Services
Mobile Intensive Care Programs
Proposed New Rules: N.J.A.C. 8:41-1 through 8:41-7 and 8:41-9 and 8:41-10
Proposed Readoption with Amendments: N.J.A.C. 8:41

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Authority: N.J.S.A. 26:1A-15 and 26:2K-7 et seq.
Proposal Number: PRN 1992-410.

Submit comments by October 21, 1992 to:
George Leggett, Chief Administrator
Office of Emergency Medical Services
New Jersey State Department of Health
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

Summary

The proposed repeals and new rules and the proposed readoption of rules with amendments seek to provide a uniform code of standards for the operation of the State's 33 mobile intensive care programs. These programs operate over 70 vehicles Statewide and provide advanced life support to the most critical patients seen in the prehospital environment. Staffed by mobile intensive care paramedics and nurses, the mobile intensive care units are operated by licensed hospitals to provide a Statewide network of advanced life support.

Currently, the Department regulates mobile intensive care programs through the use of a policy manual. These new rules are proposed in compliance with N.J.S.A. 26:2K-17, which require the Commissioner of Health to develop rules for these programs. Once adopted as part of the New Jersey Administrative Code, the rules will serve as a uniform standard for the operation of these programs. In addition, the proposed new rules will provide a standard for uniform enforcement should violations occur.

The proposed new rules are divided into nine subchapters, which cover most operational aspects of the mobile intensive care programs. Subchapter 8, Administration of Medications, is currently operational as

part of the New Jersey Administrative Code and serves as the formulary for all MICUs. In addition, the rules specify requirements for the storage and handling of medications and syringes. The proposed changes to Subchapter 8 include the addition of flumazenil to the formulary carried by the mobile intensive care units (MICUs). Flumazenil acts to reverse the effects of certain types of tranquilizers, including diazepam. Also, certain parts of the subchapter have been reworded to provide more clarity in the intent of the rule.

The remaining nine subchapters in N.J.A.C. 8:41 are proposed new rules. Subchapter 1 covers the scope and authority of the rules, and also contains the definition of terms used in this chapter. Subchapter 2 contains rules covering the approval of programs and the programmatic requirements for operation of MICUs. It also covers the inspection and enforcement roles of the Department. Subchapter 3 pertains to the vehicles used by approved mobile intensive care programs. It defines the standards for operation of these vehicles, including supplies to be carried. Under the proposed rules, all vehicles shall be licensed on an annual basis. Subchapter 4 covers the training and certification of paramedic students, the recertification of paramedics, the endorsement of mobile intensive care nurses and reciprocity with other jurisdictions. In addition, this subchapter also defines the disciplinary process for prehospital advanced life support providers. Subchapter 5 defines the communications requirements that mobile intensive care programs must meet. Under Subchapter 6, the role of the physician medical director is defined. In addition, standards are proposed for the physician directed care provided by the MICUs. Subchapter 7 defines the scope of practice for prehospital advanced life support providers, including procedures, treatments and other therapeutic modalities that may be provided. Subchapter 9 sets forth the requirements for quality assurance, policy development and record maintenance by all approved programs. In addition, Subchapter 9 specifies record maintenance requirements for all approved training sites, and the reporting requirements that the Department places on all approved programs. Subchapter 10 contains standing orders to be used when treating multiple trauma and cardiac arrest and when performing endotracheal intubation or establishing intravenous therapy.

Social Impact

These proposed new rules reflect the standards for operation of mobile intensive care programs throughout the State. Through the implementation of standard rules for these programs, the Department seeks to ensure that the population served by the MICUs provide a consistently high level of care. As a component of the emergency medical services system, mobile intensive care units can effectively reduce the mortality and morbidity associated with certain types of prehospital emergencies. These proposed rules will provide a uniform standard for all approved programs and licensed vehicles. Virtually all citizens of the State are potential patients of these programs. These rules seek to protect the health and safety of the citizens of the State by ensuring that the quality of care provided by a MICU will be the same, regardless of where in the State it is provided. These rules also mandate that all programs authorized to operate MICUs engage in active quality assurance to guarantee sound system monitoring. The general public stands to benefit from a system-wide approach to prehospital care.

Economic Impact

It has been suggested that prehospital treatment, utilizing advanced life support techniques and procedures, can be a major determinant in patient prognosis and survival rates. Appropriate and rapid prehospital interventions can prevent unnecessary hospital admissions and decrease the need for more costly in-hospital management techniques. These interventions can also decrease the length of stay in the hospital if the patient is admitted, thereby reducing the in-hospital costs.

Subchapter 8 permits substitution of medications, so that the less expensive generic equivalent may be used. No specific brands of equipment are required, so the programs may seek the best price from a variety of vendors.

Inspection fees are assessed each MICU: $100.00 per vehicle and $25.00 per additional survey, if needed, per year.

Some of the rules proposed will require certain programs to purchase new or additional equipment in order to meet the standards, although most MICUs have the required equipment at this time. Some examples of equipment, and the approximate costs, are:

External cardiac pacemaker $11,000
Spinal immobilization devices $50.00 to $100.00
Extrication devices $55.00
Personal protective gear $500.00
Pulse oximeter $2,000 to $3,000
Time-cycle ventilator $1,000 or more

Some of the equipment is required by other rules or regulations, such as OSHA standards, or Certificate of Need requirements. Some of the requirements include training costs, to maintain a current knowledge base in the MICU staff. Such costs are typically assumed by the organization and not by the individual members. The additional requirements are considered to represent the current standard of care for mobile intensive care units and advanced prehospital life support. MICUs will be permitted to ask for waivers for requirements they are unable to meet at the time these rules become effective.

Regulatory Flexibility Statement

In accordance with New Jersey law, only hospitals specially authorized by the Commissioner may develop and maintain mobile intensive care programs and provide advanced prehospital life support services in New Jersey. None of the hospitals which have the potential to be so authorized can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a Regulatory Flexibility Analysis is not required.

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

CHAPTER 41
MOBILE INTENSIVE CARE PROGRAMS

[SUBCHAPTER 1. THROUGH SUBCHAPTER 7. (RESERVED)]

SUBCHAPTER 1. AUTHORITY, SCOPE AND DEFINITIONS

8:41-1.1 Authority; delegation

These rules are promulgated pursuant to N.J.S.A. 26:1A-15 and 26:2K-17, which authorize the Commissioner of the State Department of Health to enact rules pertaining to the operation of mobile intensive care units, and the provision of prehospital advanced life support in general.

8:41-1.2 Scope and purpose

These rules shall apply to all hospitals, agencies, persons and authorized programs that operate mobile intensive care programs, or which are seeking authorization to do so. These rules serve to define the operational requirements of these programs, to provide for a uniform application of standards, and to specify the personnel, equipment, organization and other resources required to operate a mobile intensive care program.

8:41-1.3 Definitions

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

"Advanced life support (ALS)" means an advanced level of prehospital, inter-hospital and emergency medical service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized by the Commissioner.

"Advanced life support ambulance" means a vehicle which is utilized for the delivery of advanced life support and for the purpose of emergency patient transportation, which serves as a mobile intensive care unit as defined by this chapter, and which serves as an emergency ambulance as defined by N.J.A.C. 8:40, Manual of Standards for Licensure of Invalid Coach and Ambulance Services.

"Authorized mobile intensive care unit" means a mobile intensive care unit authorized by the Department to provide advanced life support services to a specific population, geographic region, or political subdivision.

"Authorized" means approved by the Commissioner of the New Jersey State Department of Health, or his or her designee, in accordance with the provisions of this chapter.

"Available" means ready for immediate use (pertaining to equipment, vehicles and personnel); or, immediately accessible (pertaining to records).

"Base station physician" means any physician licensed by the Board of Medical Examiners of New Jersey who provides medical command to advanced life support personnel by radio, telephone or other direct means, as part of an authorized intensive care program.

"Basic life support (BLS)" means a basic level of prehospital care which includes patient stabilization, airway maintenance, cardiopulmonary resuscitation (to the standards of the American Heart Association), control of hemorrhage, initial wound care, fracture stabilization, victim extrication, and other techniques and procedures as defined in the United States Department of Transportation (U.S.D.O.T.) curriculum for Emergency Medical Technician-Ambulance (obtainable from the Superintendent of Government Documents, Washington, D.C. 20402) incorporated herein by reference and as promulgated by the Commissioner.

"Certified" means an individual who has completed the requirements of an approved program and has demonstrated a competence in the subject matter to the satisfaction of the certifying agency.

"Chief Administrator" means the Chief Administrator of the Office of Emergency Medical Services of the New Jersey State Department of Health.

"Commissioner" means the Commissioner of Health of the State of New Jersey.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its toxic products from a reservoir to a susceptible host.

"Department" means the New Jersey State Department of Health.

"Didactic coordinator" means the person responsible for the didactic training, offered in conjunction with a college, in accordance with this chapter.

"Didactic training" means the classroom portion of the paramedic training program, as authorized by the Commissioner, and which meets, at a minimum, the requirements as outlined by the U.S. Department of Transportation curriculum for EMT-paramedic (obtainable from the Superintendent of Government Documents, Washington, D.C. 20402), incorporated herein by reference.

"Director" means the individual responsible for the general operation of a mobile intensive care program.

"Dispatch center" means a facility that provides coordinated dispatching of emergency services for a given area.

"Emergency medical services (EMS)" means a system for the provision of emergency care and transportation of individuals who are sick or injured.

"Emergency medical services (EMS) educator" means the individual responsible for the clinical training of paramedics, paramedic students, EMTs, nurses and physicians as defined by and required in this chapter.

"Emergency Medical Technician—Ambulance (EMT-A)" means an individual trained and currently certified by the Commissioner, in accordance with the United States Department of Transportation (U.S.D.O.T.) EMT-A training course, as outlined in the standards established by the Federal Highway Safety Act of 1966, 23 U.S.C. 401 et seq. (as amended), to deliver basic life support services, and who has completed the national standard curriculum, as published by the U.S. D.O.T. for Emergency Medical Technicians-Ambulance.

"Governing body" means the organization or persons holding legal responsibility for the operation of a hospital, health care facility, business or other agency.

"Health care facility" means a facility so defined in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1.1 et seq.

"JEMS (Jersey Emergency Medical Services) Communication Plan" means the authorized communication plan for emergency medical services, as issued by the Department.

"Licensed vehicle" means a vehicle that has been licensed in accordance with this chapter for the purpose of providing prehospital advanced life support as a mobile intensive care unit.

"MED channels" means those specific radio frequencies designated by the Federal Communications Commission for the exclusive use in providing medical command to MICUs, as defined in 47 CFR 90.53(15)(i).

"Medical command" means medical supervision provided to prehospital advanced life support providers by a licensed physician via radio, telephone or other direct means of communication.

"Medical control" means the medical oversight provided to the operations of a mobile intensive care unit (MICU), including written protocols, quality assurance and other medical supervision of the MICUs operations.

"Medical director" means a physician who meets the requirements of this chapter and is responsible to provide medical oversight to the operations of the MICU.

"Medical record" means the documentation completed each time the MICU makes physical or verbal contact with a patient, in accordance with the requirements of this chapter.

"Mobile intensive care nurse (MICN)" means a registered professional nurse licensed by the New Jersey State Board of Nursing who has at least one year of emergency or critical care nursing experience, is currently certified in advanced cardiac life support and basic cardiac life support to the standards of the American Heart Association, is currently certified by the Commissioner as an EMT-A, is endorsed by the program's medical director, and is staffing an authorized mobile intensive care unit.

"Mobile intensive care unit (MICU)" means any vehicle licensed by the Department to provide advanced life support, as defined by this chapter.

"National Registry (NREMT)" means the National Registry of Emergency Medical Technicians, P.O. Box 29233, Columbus, OH 43229.

"Office of Emergency Management (OEM)" means the Office of Emergency Management of the New Jersey State Police.

"Office of Emergency Medical Services (OEMS)" means the Office of Emergency Medical Services in the New Jersey State Department of Health, Division of Health Facilities Evaluation and Licensing.

"Paramedic" means a person who has completed a training program authorized by the Department and who is certified by the Commissioner pursuant to N.J.A.C. 8:41-4.

"Patient" means any person who is ill or injured, living or deceased and with whom the mobile intensive care unit has established physical and verbal contact.

"Prehospital ALS provider" means a mobile intensive care paramedic as defined by N.J.S.A. 26:2K-7 et seq., who is certified in accordance with the provisions of this chapter, or a mobile intensive care nurse as defined by this chapter.

"Physician" means a person who has earned the degree of M.D. or D.O. and who is licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners.

"Provide" means furnishing, conducting, maintaining, advertising, or in any way engaging in or professing to engage in any activity regulated by this chapter.

"Provider" means any person, agency or institution, public or private, that provides authorized mobile intensive care unit services.

"Radio failure," when applied to medical command, means circumstances that prevent prehospital advanced life support providers from communicating with their base station physician for medical command due to technical difficulties.

"Radio failure protocols" means the specific course of treatment to be followed by the prehospital advanced life support provider in the event contact with the base station cannot be made, and which is authorized by the Commissioner.

"Receiving hospital" means any hospital to which a patient is transferred following the provision of advanced life support services, including those patients evaluated but not treated by the MICU.

"Regional communications center" means a facility designated by the Department to coordinate communications of mobile intensive care units, including biomedical telemetry, radio and telephone services essential to dispatch and medical command.

"Revocation" and "revoked" mean the permanent removal of a license, certificate or endorsement, and shall have the effect of permanent debarment.

"Specific order" means an order by a licensed base station physician or other medical command physician with regard to the treatment of a patient, whether directly transmitted by the physician or relayed through a licensed registered professional nurse in accordance with this chapter.

"Standing orders" means specific treatment protocols that are authorized by the Commissioner, that relate to immediate life saving treatment of a patient and that occur without any communications with the base station physician.

"Suspended" means the temporary cancellation of any license, certificate, endorsement or privilege.

"Therapeutic agent" means any drug or agent which is used in the treatment of the sick or injured, including those authorized in accordance with N.J.A.C. 8:41-8.

"Unsafe vehicle" means, but is not limited to, any vehicle used as an MICU with any defect of the vehicle's exhaust, brakes, suspension, tires, and/or engine systems and any defect or fault in any required patient care equipment that poses a risk of harm, injury or death to patients, employees or passengers.

"Valid" means current, up-to-date, not expired, and in effect.

SUBCHAPTER 2. APPROVAL; LICENSING; PENALTIES

8:41-2.1 Approvals required

(a) No person, institution or agency, public or private, shall provide mobile intensive care services in any form or manner unless the provider is approved by the Department to do so.

(b) No research or study shall be conducted unless the approval of the Commissioner has been granted, in accordance with the provisions of N.J.A.C. 8:41-2.10.

8:41-2.2 Certificate of need required

(a) No applicant shall be approved to provide mobile intensive care unit services unless approval is granted under the Department's Certificate of Need Program, pursuant to N.J.A.C. 8:33N and N.J.S.A. 26:2H-1.1 et seq.

(b) The terms and conditions set forth in the certificate of need and any subsequent conditions shall be binding upon the program. Failure to comply with any such condition shall be deemed cause for action against the program, in accordance with N.J.A.C. 8:41-2.7, 2.8 and 4.12.

8:41-2.3 Approval procedures

(a) Following their approval by the Certificate of Need program, any qualified applicant desiring to provide mobile intensive care services shall make application in accordance with the requirements of this chapter.

(b) No authorization or certificate issued by the Department shall be transferred or otherwise assigned to any other party. Any proposed change to the operations of the program as specified in the approval or Certificate of Need shall not occur prior to Department approval.

8:41-2.4 Surveys and inspections

(a) Authorized representatives of the Department shall conduct surveys and inspections to determine compliance with this chapter.

(b) Survey visits may be made by any authorized representative of the Department at any time to any location used or occupied by the program or its agents. The survey may also take place at any place where the vehicle is located. Such visits may include, but are not limited to, the review of all documents and patient records, riding along with the crew of the MICU and/or conferences with patients.

(c) The program and its employees shall permit authorized representatives of the Department to make such surveys as required by the Department.

8:41-2.5 Report of unusual occurrences

(a) The program shall notify the Department by telephone by the next business day, followed by written confirmation, of:

1. Any death or injury requiring hospitalization or emergency department evaluation of an employee due to an on-the-job incident;
2. Any police reported motor vehicle accident in which the mobile intensive care unit was involved, regardless of injuries. The written report shall include a copy of the police report and shall be forwarded within 14 days of the accident;
3. Any event occurring on or within the licensee's vehicle(s) or place of business that results in damage to records;
4. The loss of any controlled dangerous substance of Schedule I-V inclusive, as defined by N.J.S.A. 24:21-1 et seq. This does not relieve the provider of any responsibility for reporting as required by N.J.A.C. 8:65; or
5. Any instance when a licensed MICU vehicle is out of service for more than eight consecutive hours.

(b) All telephone reports of unusual occurrences shall be made to the Office of Emergency Medical Services on or before the next business day during regular business hours.

(c) The required written confirmation shall include any additional information known to the licensee, copies of any official reports and licensee's estimate of the degree of disruption of services. This confirmation shall be received by the Department no later than 14 days after the incident.

8:41-2.6 Policy and personnel files

No approval shall be issued unless the applicant has a policy and procedure manual that meets the requirements of N.J.A.C. 8:41-9 and has personnel files on each employee that consist of the employee's name, home address and documentation of current required certifications and continuing education units on personnel recertified by the program. No program shall develop policies that are contrary to public law or rule.

8:41-2.7 Enforcement

(a) The Office of Emergency Medical Services of the Department is empowered to act for the Commissioner and the Department to enforce the provisions of this chapter.

(b) Violation of any portion of this chapter by a program may be cause for action against the program, including, but not limited to, reprimand, suspension of approval or licensure, revocation of approval or licensure, fines, placing of conditions for continued operation of a program, the reassignment of medical command or any combination of these penalties. In addition to any action taken under this chapter, all matters of a criminal nature shall be forwarded to the appropriate authorities for disposition.

(c) Violation of any portion of this chapter by an individual may be cause for action against the individual, including, but not limited to, reprimand, probation, suspension of certification or privileges, revocation of certification or privileges, fines, or any combination of these. In addition to any action taken under this chapter, all matters of professional misconduct shall be referred to the appropriate licensing board(s). Matters of a criminal nature shall be forwarded to the appropriate authorities for disposition.

(d) The Chief Administrator of the Office of Emergency Medical Service may authorize action against a program which is utilizing an unsafe vehicle, as defined by this chapter, including:

1. Immediately placing the unsafe vehicle out of service;
2. Instituting a Departmental action against the program and/or provider responsible for the violation; and
3. Instituting other actions as allowed by law or rule.

8:41-2.8 Hearings

Except when required in the interest of public health and safety, no penalty shall be assessed nor approval suspended or revoked without affording the program or accused individual an opportunity for a hearing. In the event action which results in the suspension of a certificate, approval, license or endorsement, the hearing shall be held within 30 days unless an adjournment is requested by the program or accused individual. Unless otherwise required by this chapter, the procedures governing all hearings shall be in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and N.J.S.A. 26:2H-1 et seq., as well as the Uniform Administrative Rules of Practice N.J.A.C. 1:1.

8:41-2.9 Waiver

(a) The Commissioner or his or her designee may grant a waiver of parts of this chapter if, in his or her opinion, such a waiver would not:

1. Endanger the life, safety or health of any person who utilizes the services; or

2. Adversely affect the provision of the service.

(b) A program seeking a waiver of part(s) of this chapter shall apply in writing to:

Office of Emergency Medical Services
New Jersey State Department of Health
CN 364
Trenton, NJ 08625-0364

8:41-2.10 Research proposals

(a) As used in this section, the following terms are defined as follows:

"Research" means a scientific investigation designed to establish facts and to analyze their significance, including:

i. Any study directed at systemizing data related to the causes, mechanisms, diagnosis and treatment of injuries;

ii. Data collection for purposes other than EMS management or evaluation; and

iii. Any other use of EMS client data, unless specifically authorized by this chapter;

2. "Principal investigator" means the person responsible for proposing and coordinating the research project;

3. "Human subject" means the person under consideration who is affected with a disease or condition which is being treated or observed with medical and surgical procedures and about whom the researcher obtains:

i. Historical data (for example, initial symptoms, circumstances surrounding the event, associated medical conditions) through intervention or interaction with the individuals or their family; and

ii. Identifiable private client data as recorded in the ED record, the hospital chart or the EMS prehospital run report;

4. "The Institutional Review Board (IRB)" means the board established by a licensed hospital to review biomedical and/or behavioral research using human subjects that is conducted at or supported by the hospital, in order to protect the rights of the human subject, and to approve said research; and

5. "Participating organizations" means volunteer, municipal or proprietary ambulance companies, licensed MICU programs, a receiving hospital and/or other specific EMS-related organization.

(b) No licensee shall engage in any research activity, including drug trials, unless first authorized to do so by the Commissioner.

(c) The procedure to request approval to conduct research projects shall be as follows:

1. The principal investigator shall first meet all requirements of the Federal regulations, including those in 42 U.S.C. 6a, III, G289;

2. The principal investigator shall obtain the approval of the IRB at the hospital sponsoring or endorsing the study;

i. If the principal investigator is not a member of the sponsoring institution's medical staff, the proposal shall include the name of the institution's principal investigator responsible for the conduct of the study;

3. The principal investigator shall obtain approval of the MICU's medical director. The MICU medical director has ultimate authority and responsibility for the conduct of the research project;

4. The application shall also include specification of any procedure or drug that is proposed that is not manifestly approved by this chapter;

5. If the proposal is directed to operational systems and is not directly related to human subjects, the principal investigator shall submit documentation that IRB approval is not necessary;

6. Forty copies of the proposal shall be submitted to the Department through the Office of Emergency Medical Services (OEMS) no later than 30 days before the scheduled meeting of the MICU Advisory Council at which the principal investigator wishes to present the proposal;

7. The proposal shall be reviewed at the MICU Advisory Council meeting. The Council shall review the proposal, make any comments it deems necessary, and make a recommendation with regard to approval or disapproval of the proposal. The recommendation, comments and proposal shall be forwarded to the Commissioner by OEMS; and

8. The Commissioner shall have final authority in the approval or disapproval of all research studies. The Department shall notify the principal investigator of its determination via mail. The study shall not be started until approval is obtained from the Commissioner.

(d) The format of the proposal shall include:

1. Background information, including rationale and relevant literature;

2. Specific aims and objectives, which shall be clearly stated, including the hypothesis and data to be gathered or tested;

3. Significance, relevance, benefits of and justification of the research;

4. Details of the methods utilized, including research design, how results will be analyzed, number and type of clients, research tools utilized, amount of time necessary and any risks involved;

5. If patient procedures or drugs are needed, an explanation of the procedures, risks, frequency, duration and precautions in detail, and a summary of the competence of personnel performing the procedure and the time frames of the study;

6. A detailed description of the mechanisms of patient protection, including:

i. How confidentiality of client data will be maintained, including methods of safeguarding client-identifiable data; and

ii. If the research directly involves human subjects, how consent will be obtained and documented; and

7. Administrative details, including budget, facilities used, and personnel issues.

(e) The Commissioner retains the right to revoke or suspend approval for any research project, regardless of stage of the research, for violations of the terms of the approval, violations of any part of this chapter or applicable statute, violations of patient's rights or confidentiality or for reasons of patient safety.

(f) The principal investigator shall submit interim reports as required by the approval notice to the MICU Advisory Council. These reports shall include:

1. A brief summary of the project with the methodology of the study;

2. Objectives of the study;

3. Results of the study, to date;

4. Amount and type of work remaining; and

5. Any conclusions reached to date.

(g) The principal investigator shall submit a final report to the Commissioner, OEMS and the MICU Advisory Council, including a one page abstract.

(h) If the proposal involves a therapeutic agent not approved in accordance with N.J.A.C. 8:41-8, the Commissioner may authorize the use of said agent in his or her approval of the study. The Commissioner's approval shall specify the length of time the agent may be used, and shall be subject to the terms and conditions imposed in the approval notice. Thereafter, if the medication is to be continued, it must be added to N.J.A.C. 8:41-8 in accordance with the provisions of the Administrative Procedure Act. Only programs officially designated by the principal investigator and authorized by the Commissioner shall utilize any medication under study.

SUBCHAPTER 3. VEHICLES AND PERSONNEL

8:41-3.1 Vehicle license required

(a) No program shall utilize any vehicle as a primary or back-up MICU unless the vehicle is first inspected and licensed by the Department in accordance with this chapter. The Department shall acknowledge all requests for inspection of new vehicles within five business days of the request.

(b) The Department shall charge an application fee of $100.00 per vehicle, which shall include the license fee and an initial survey. If a resurvey is required, a fee of $25.00 shall be charged for each resurvey required per license period.

(c) The vehicle license issued in accordance with this chapter shall be valid from July 1 through June 30 of the following year. All new vehicle licenses issued shall expire on June 30. The vehicle thereafter would be subject to the annual license period.

8:41-3.2 Inspections

(a) The Department shall conduct inspections on each vehicle approved under this chapter at least once every year. In addition, the Department shall conduct unannounced surveys and program inspections of compliance with this chapter.

(b) Unannounced surveys may be conducted by the Department at any time and at any place the vehicle is located, provided that patient care is not compromised. The scope of the survey shall be determined by the authorized representative of the Department conducting the survey, and may include, but not be limited to: an examination of patient records, equipment, personnel and staffing, vehicles and facility.

8:41-3.3 Vehicles

(a) Each program shall secure a sufficient number of vehicles in order to comply with the provisions of N.J.A.C. 8:33N with regard to back-up vehicles.

(b) No program shall allow the operation of any vehicle that is patently unsafe to drive, presents a hazard to personnel and/or bystanders, or has not passed New Jersey Division of Motor Vehicles (N.J.D.M.V.) inspection and does not display a valid inspection sticker.

(c) Each vehicle approved in accordance with this chapter shall be equipped with sufficient emergency warning devices, including red lights and a siren, so that it meets the definition of an emergency vehicle as defined by N.J.S.A. 39:1-1 et seq. and N.J.A.C. 13:24.

(d) Each vehicle approved in accordance with this chapter shall be registered and insured in accordance with applicable State law and rule.

(e) MICUs which provide transportation to patients shall meet the standards set forth for emergency ambulances in N.J.A.C. 8:40 as a condition of licensure as a MICU. These vehicles are subject to licensure only as MICU vehicles, in accordance with this chapter. In the event of a conflict between N.J.A.C. 8:40 and this chapter, the MICU shall meet the higher of the two standards.

8:41-3.4 Required vehicle markings

(a) Each vehicle licensed in accordance with this chapter shall bear the following markings:

1. The name of the program approved to provide the MICU service, and in the event the vehicle is operated by several hospitals, all participating hospitals named in the certificate of need shall be listed;

2. A "Star of Life®," which shall be prominently displayed on each side of the vehicle;

3. A unique vehicle identification number; and

4. The term "paramedics," "mobile intensive care unit," or "Advanced Life Support."

8:41-3.5 Required equipment

(a) Every vehicle licensed in accordance with this chapter as an MICU shall be equipped with the following items:

1. All communications equipment as required by this chapter;

2. A cardiac monitor that shall have a DC defibrillator that can provide both defibrillation and synchronized cardioversion, and shall have the capability of producing a paper recording of cardiac rhythms;

3. An external pacemaker;

4. Assorted needles, syringes and intravenous supplies to include:

i. Blood tubes for laboratory specimens;

ii. Intravenous (IV) tubing and catheters;

iii. Phlebotomy equipment; and

iv. Needle and syringe disposal containers;

5. Pediatric equipment to include:

i. Pediatric airway management materials including:

(1) Airways, endotracheal tubes and stylets;

(2) Pediatric and infant laryngoscope blades; and

(3) Pediatric and infant sized oxygen masks and bag-valve-masks;

ii. Pediatric-sized electrodes and paddles for the monitor/defibrillator;

iii. Pediatric and infant-sized IV catheters and/or winged infusion sets;

iv. Intraosseous infusion sets;

v. Pediatric-sized pneumatic anti-shock garment (PASG); and

vi. Pediatric and infant sized blood pressure cuffs;

6. Adult airway management equipment to include:

i. Oropharyngeal and nasopharyngeal airways of various sizes;

ii. Laryngoscope blades, handles, endotracheal tubes, and stylets; and

iii. Oxygen masks, cannulas and bag-vale-masks;

7. Oxygen in a United States Department of Transportation (U.S.D.O.T.) approved cylinder that has a current hydrostatic testing date on it, in accordance with U.S.D.O.T. Regulations;

i. Each oxygen system shall have a flowmeter. Each flowmeter shall have a gauge or dial with a range of at least zero to 15 liters per minute (lpm) in calibrated increments. The flowmeter on portable systems shall be non-gravity dependent. Flowmeters shall be accurate to within one lpm when at a setting equal to or less than five lpm, 1.5 lpm when at a setting between six and 10 lpm and within two lpm when at a setting equal to or greater than 11 lpm. Non-dial type flowmeters must take at least one full turn to go from zero to 15 lpm. Indicators on dial-type flowmeters must be securely seated at each flow rate position;

ii. All bag-valve-masks shall be free from leaks, and shall be clean and free of contamination. The bags shall recycle at a rate of 20 times a minute for an adult and 30 times a minute for pediatric and infant units, shall have an oxygen supply (reservoir) system and shall be capable of providing adequate resuscitation pressures. Any bag that has a "pop off valve" shall have a device to easily defeat the valve;

8. A portable suction unit that is capbable of providing adequate suction to clear a patients airway. In addiiton, each transport MICU shall be equipped with an on-board suction unit. All suction units shall meet the following standards:

i. All installed suction units on transporting MICUs shall be powered by the vehicle's electrical system and shall be securely mounted in a location to allow easy access to the patient on the stretcher, shall provide a flow rate of at least 30 liters per minute and a vacuum pressure of at least 300 mmHg within four seconds and a maximum vacuum pressure of at least 400 mmHg;

ii. Each portable suction unit shall be powered by an integral battery or by gas. Each portable suction unit shall meet the requirements of the vehicle suction unit for flow and vacuum pressure as described above. It shall meet the standard both initially and after 20 minutes of continuous operation;

iii. Each suction unit shall be equipped with a non-breakable collection bottle, at least three feet of non-collapsible suction tubing and an assortment of adult and pediatric-sized suction catheters;

9. A sterile obstetrical delivery/emergency childbirth kit that contains four towels, 12 sterile gauze compresses (four inches by four inches), four sterile umbilical cord clamps, one sterile bulb syringe (aspirator), one receiving blanket, four pairs of sterile surgeons gloves, one pair of sterile scissors or a sterile scalpel and one set of eye protection. If these items are in a sealed sterile pack, the packet shall have a list of contents affixed to it. Items needed for this requirement may also be readily available on the vehicle if not included in the package;

10. Trauma supplies to allow adequate treatment of trauma and burn patients, to include:

i. Adult sized pneumatic anti-shock garment (PASG);

ii. Material for bandaging;

iii. Sterile dressings;

iv. Occlusive dressings;

v. Burn sheets or burn dressings;

vi. Blood pressure cuffs; and

vii. Equipment to perform needle chest decompression;

11. All medications listed in N.J.A.C. 8:41-8 and no others;

12. Nasogastric tubes and irrigation syringes;

13. Personnel protective gear to include helmets, goggles and gloves, protective outer garments to include at least two sets of full protective outer garments (for example, "turn-out" coats and trousers), disposable exam gloves, and personal protective isolation garments;

14. A current copy of the U.S. Department of Transportation (D.O.T.) Emergency Response Guidebook (obtainable from the Superintendent of Documents, Washington, D.C. 20402, or U.S.D.O.T., National Highway Traffic Safety Administration, 7th St. SW, Washington, D.C. 20590) and a copy of the program's approved radio failure protocols that is to be kept in each licensed vehicle;

15. A spinal immobilization device (for example, K.E.D.) and assorted sizes of rigid cervical collars;

16. A long spine board;

17. Back-up medications and other equipment needed to provide for uninterrupted service; and

18. A set of binoculars.

8:41-3.6 Optional equipment

(a) Each program may carry additional equipment it deems necessary for the provision of prehospital ALS, provided that equipment does not permit staff to render care beyond that allowed under this chapter. These may include:

1. An Esophageal Gastric Tube Airway, and other commercial airways;

2. A time-cycled resuscitator, provided the device meets ventilatory requirements of the American Heart Association;

3. Pulse-oximeters; and

4. Positive pressure resuscitators ("demand valve" resuscitators). Each device shall provide 100 percent oxygen, have an instantaneous flow rate between 35 and 45 liters per minute, deliver an inspiratory pressure between 55 and 65 cm water and have a standard 15/22mm fitting.

8:41-3.7 Back-up vehicles

Back-up vehicles need not have the required equipment as listed in this subchapter at all times, provided that, when the vehicle is utilized as an MICU, all required equipment shall be in place and operational.

8:41-3.8 Vehicle out of service logs

Each vehicle approved under this chapter shall have a log kept on it, which specifies out of service time, the cause of the problem and its resolution. Additionally, each program shall develop and maintain a program of preventative maintenance for each licensed vehicle.

8:41-3.9 Safety of operation

The responsibility for safe operation of each vehicle licensed under this chapter shall rest with the advanced life support personnel staffing that unit. No provider shall operate any vehicle licensed under this chapter without due regard for the safety of the general public or without adhering to all applicable statutes.

8:41-3.10 Storage of equipment

All equipment carried by a licensed MICU shall be stored in a manner not presenting a hazard to any vehicle occupant in the event of an accident or sudden change in vehicle speed or direction.

8:41-3.11 Biomedical equipment maintenance

(a) Each program shall develop and maintain a program of maintenance for its biomedical equipment in accordance with institutional policy, including, but not limited to, a maintenance program for cardiac monitor/defibrillators and external pacemakers.

(b) Each item of biomedical equipment shall be checked in accordance with institutional policy by a qualified biomedical engineer or service technician to determine accuracy and safety. The program shall maintain a record of the service of its biomedical equipment.

8:41-3.12 Sanitation

(a) Each vehicle licensed under this chapter shall be kept in a neat, clean, orderly fashion so as to permit easy access to equipment and supplies.

(b) Each vehicle shall be free from blood or other bodily fluids and odors.

(c) All patient care equipment shall be kept in a clean, sanitary condition free from odors, bodily fluids or other contaminants.

(d) Non-disposable patient care equipment shall be decontaminated after each patient use in a manner consistent with the hospital's requirements for equipment decontamination. No airway, tube, catheter or other similar device shall be used on more than one patient unless sterilized in accordance with manufacturer's recommendations.

(e) No vehicle shall carry any medication, solution or other equipment beyond the expiration date posted on it.

(f) Each vehicle and cabinet or other storage place for medications shall be sufficiently climate controlled so that the medications and solutions are kept within the temperature range recommended by the manufacturer.

8:41-3.13 Director

(a) Every program approved under this chapter shall have a director who shall be responsible for all activities of the mobile intensive care program.

(b) No person shall be appointed as the director unless that person is either a certified paramedic or a currently licensed registered nurse with at least one year of critical care experience.

(c) Each program shall notify the Department in writing of any change of director within 14 days after the change.

8:41-3.14 Minimum staffing

No program shall operate a mobile intensive care unit unless that unit is staffed by two prehospital ALS providers as defined in this chapter.

8:41-3.15 Hours of operations

(a) Each MICU authorized under this chapter shall operate 24 hours a day, seven days a week, unless otherwise restricted by the program's certificate of need. In the event the program is unable to meet this requirement and coverage is interrupted, the program shall:

1. Assure that the service area is covered by another approved mobile intensive care program to the level of service that would normally be provided; and

2. Notify the Office of Emergency Medical Services by telephone on the next business day during regular business hours, followed by written confirmation if the vehicle is out of service greater than eight hours.

8:41-3.16 Addition of temporary MICU vehicles

(a) A program approved in accordance with this chapter may place a temporary MICU vehicle in service if public safety concerns necessitate additional coverage for a limited period of time. This shall include:

1. Events where a large number of people are expected to gather;

2. A temporary change in the accessibility of the service area (for example, bridge or road closures);

3. A mass casualty incident (MCI), disaster, as a part of an organized emergency preparedness action or drill; and/or

4. Other situations that are not covered by this section, but which have been approved in advance by the Office of Emergency Medical Services (OEMS) of the Department.

(b) No program shall operate a temporary MICU without obtaining prior approval from OEMS, excluding the situations listed (a)3 above. The procedure for obtaining approval shall be as follows:

1. The program shall make application to OEMS in writing. Each application shall include:

i. Details of the special event, including the reason for an additional MICU(s);

ii. Documentation that the program's primary service area coverage will not be affected; and

iii. If the site of the proposed vehicle is not within the program's primary service area, an agreement signed by the program that is the primary provider for MICU services at that location;

2. If circumstances arise that leave insufficient time for the program to apply in writing, the program may apply by telephone

during regular business hours, Monday through Friday (9:00 A.M. to 5:00 P.M.), provided that written application is made as soon as is practical; and

3. If additional units are placed into service due to the situations listed under (a)3 above, the program shall notify OEMS by phone on or before the next business day during regular business hours (Monday through Friday, 9:00 A.M. to 5:00 P.M.).

(c) OEMS will review all applications and, when appropriate, issue approvals in consideration of specific circumstances and in the interest of public health and safety. These approvals shall set forth the number of additional vehicles approved, hours of operation and the duration of the approval. Each program operating the additional units shall adhere to the terms and conditions of the approval.

(d) Nothing in this section shall be construed to permit the operation of part-time or seasonal vehicles. Such units are subject to the certificate of need process as set forth in the Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.).

SUBCHAPTER 4. TRAINING AND CERTIFICATION OF ADVANCED LIFE SUPPORT PERSONNEL

8:41-4.1 Paramedic student selection

(a) No person shall be enrolled as a paramedic student in any program, nor shall any person be eligible to be certified as a paramedic, unless that person:

1. Has reached his or her 18th birthday;
2. Has a high school diploma or its equivalent;
3. Is currently certified by the Commissioner as an Emergency Medical Technician—Ambulance (EMT-A) or Intermediate (EMT-I) and maintains certification as at least an EMT-A throughout the training;
4. Maintains current certification in cardiopulmonary resuscitation to the level of professional rescuer, in accordance with the standards of the American Heart Association, and maintains the certification throughout the training;
5. Is physically capable of performing all required skills of a paramedic student; and
6. Has not been convicted of any crime, or an offense involving moral turpitude or drugs.

i. An applicant may apply for a waiver of this requirement from the Commissioner or designee, in accordance with N.J.A.C. 8:41-2.9.

8:41-4.2 Didactic sites

(a) No person, group, program or agency, whether public or private, shall offer, or claim to offer, paramedic didactic or clinical training unless authorized by the Department to do so.

(b) Any New Jersey college accredited by the Department of Higher Education may seek to sponsor a didactic program through application to the Office of Emergency Medical Services of the Department. Applications shall include proposed lesson plans, affiliated clinical sites and other information as deemed necessary by the Department, including, but not limited to, instructional staff, physical plant and course content. Approval of new sites shall be based on system needs as determined by the Department. No classes shall be offered until approval is granted by the Department, subsequent to the Department's evaluation of the current supply of trained personnel, as it relates to need for such personnel.

(c) All paramedic didactic programs shall include, as a minimum, the curriculum as set forth in the United States Department of Transportation Emergency Medical Technician-Paramedic National Standard Curriculum, incorporated herein by reference. While additional material may be presented, all topics of the curriculum shall be covered.

(d) The Department, through the Office of Emergency Medical Services, shall conduct audits and inspections to insure compliance with the provisions of this subchapter. Authorized didactic sites shall submit reports to the Department as required, including, but not limited to, course schedules, students registered and attending on the first night of class and final grade reports of students enrolled.

8:41-4.3 Authorized clinical training sites

(a) Any hospital approved to provide mobile intensive care unit services may seek to offer a paramedic clinical training program. The hospital shall make application to the Department's Office of Emergency Medical Services. Applications shall include clinical resources, training objectives, didactic affiliations, the name of the medical director responsible for overseeing the training, and other such information as required by the Department of a specific applicant. No students may be sponsored for didactic training until Department approval is obtained.

(b) The Department, through the Office of Emergency Medical Services, shall conduct such audits and inspections as required to insure compliance with the provisions of this subchapter. Authorized clinical training sites shall submit student rosters to the Department as needed to monitor the programs for compliance with this chapter.

(c) All paramedic clinical sites shall conduct their programs in compliance with the clinical training objectives of the Office of Emergency Medical Services. All clinical training sites shall maintain accurate records of the students' progress, documenting satisfactory completion of all completed clinical objectives. These records shall be presented to the Department for inspection upon demand.

8:41-4.4 Emergency medical services (EMS) educator

Every clinical training program offered under this chapter shall employ a qualified individual who shall be an advanced life support provider, as defined by this chapter, to coordinate the training activities. The EMS educator shall also ensure that the records required by this subchapter are maintained. The EMS educator shall insure that the trainee performs and demonstrates competence in all skills authorized to be performed in accordance with this chapter, prior to endorsing the candidate for certification by exam.

8:41-4.5 Evaluations

The EMS educator shall provide each student at least four periodic written and verbal assessments. These evaluations shall be signed by both the EMS educator and the student.

8:41-4.6 Timespan allowed

(a) All clinical training requirements shall be completed within 18 calendar months of the completion of the didactic program. Candidates are eligible to request a three month extension to complete the clinical training requirements. The requests shall be made to the Department and shall:

1. Be made in writing by the EMS educator responsible for the student and received no later than 30 days before the expiration of the clinical training period;
2. Include the candidate's name, didactic training site, didactic completion date, and clinical sponsor;
3. Include an explanation of the need for the extension; and
4. Contain an endorsement of the request by the EMS educator and a statement reaffirming clinical sponsorship.

(b) Candidates shall be advised, through their EMS educator, of the outcome of their request within 30 days of receipt by the Department. Only one clinical training extension will be granted per candidate. Candidates who receive an extension shall enter the examination process as defined by this subchapter by the first certification examination offered after the extension expires.

(c) Any student failing to complete clinical training within the time span allowed by this chapter shall be required to complete a didactic course of study equivalent to the U.S.D.O.T. refresher curriculum for paramedic, the balance of the clinical time required and any additional time the EMS educator deems necessary to demonstrate competence in the required clinical training objectives. In no instance shall the total training period exceed 36 months from the beginning of the didactic training program.

(d) Paramedic students shall not transfer clinical sponsorship during the course of the training unless the change is endorsed by both the original sponsor and the intended sponsor.

8:41-4.7 Preceptor orientation

(a) The EMS educator shall insure that all personnel providing clinical preceptorship to students who are being trained in accordance with this chapter:

1. Are clinically competent to provide the necessary training; and
2. Have received formal orientation to the training program.

8:41-4.8 Certification examinations

(a) Certification examinations for paramedics shall be scheduled a minimum of four times per calendar year.

(b) No person, except as otherwise permitted by this chapter, shall be permitted to take the paramedic certification examination unless the person shall have first completed the approved training program specified in this chapter.

(c) Application for the certification examination shall be made on forms prescribed by the Department, which shall bear the endorsement of both the EMS educator and medical director of the clinical training site. All signatures shall be original.

(d) All applications shall be received by the Department by the announced closing date to be considered for the examination. If the application is received after the closing date, it shall be returned to the candidate with an explanation of his or her ineligibility for that examination.

(e) All examinations shall be conducted in accordance with the rules established by the Department, as well as any procedural requirements set forth by any testing agency utilized by the Department for the purpose of paramedic certification.

(f) Upon successful completion of the certification examination, candidates shall be certified by the Department for a period of two years. Expiration dates shall be either on June 30 or December 31, as determined by the Department with regard to the examination date.

(g) Only the Department shall be permitted to administer the examination or any parts thereof. Evaluators shall administer the examination in a manner consistent with the rules and policies of the Department and any agency authorized to administer the examination. Failure to do so shall be cause for revocation of evaluator status, as well as any other action permitted by this chapter.

8:41-4.9 Paramedic certification

(a) Any person who has successfully completed the examination process or has been granted full reciprocity by the Department shall be deemed certified as a mobile intensive care paramedic by the Commissioner for a period of two years. Expirations of all permanent certifications shall be on June 30 or December 31, dependent on the date of initial certification. All certifications shall remain valid and in force unless suspended, revoked or otherwise cancelled in accordance with this chapter.

(b) Each paramedic certified by the Department under this chapter shall provide to the Department his or her full name, permanent mailing address and other information as required by the Department and law. This information shall be maintained by the Department permanently and shall be used to meet the requirements of N.J.S.A. 26:2K-7 et seq. Any paramedic certified in accordance with this chapter shall notify the Department of any change of address or name and shall provide appropriate documentation as required by the Department.

8:41-4.10 Paramedic recertification

(a) Every paramedic certified in accordance with this chapter shall document successful completion of continuing education requirements as listed in this chapter, on a form to be submitted to the Department. These continuing education hours shall be accumulated over a two-year period. In the case of a paramedic, these credits shall be accumulated during the period of certification as issued by the Department.

(b) All paramedics shall maintain current certification in:

1. Advanced Cardiac Life Support (ACLS) to the standards of the American Heart Association; and
2. Cardiopulmonary Resuscitation (CPR) to the professional rescuer level to the standards of the American Heart Association.

(c) No person shall be recertified unless documentation of the required certifications, as specified in (b) above, accompanies the recertification application.

(d) Paramedics shall practice ALS only when in compliance with the certification requirements of this chapter.

(e) A minimum of 48 hours of advanced level continuing education shall be accrued by prehospital advanced life support personnel over the two year period specified by (a) above, in accordance with the following:

1. The continuing education hours shall cover a minimum of three of the six divisions of the United States Department of Transportation National Standard Curriculum for Paramedics;
2. A minimum of 36 hours shall cover divisions two through six. No more than 12 hours shall be applied to division one; and
3. The Department may evaluate standard courses (for example, New Jersey State Police HAZ-MAT courses) and college and professional (for credit) courses to determine applicability to paramedic recertification. The Department shall provide information on approvals to interested parties.

(f) In addition to required continuing education, paramedics shall demonstrate to their medical director proficiency in all skills approved for prehospital care, as specified by N.J.A.C. 8:41-7.2. Proficiency may be demonstrated based on actual observation, field performance, or other methods as deemed necessary by the medical director. The medical director shall complete the form required by this section and submit them to the Department attesting to the level of proficiency of each paramedic seeking recertification. Such forms shall reflect whether the skill level is satisfactory and shall bear the original signature of the medical director. The director or EMS educator shall keep records to allow the completion of such forms that may be required for recertification.

(g) Each paramedic shall perform a basic life support skills review on an annual basis. These reviews shall be under the direction of a New Jersey State Certified EMT-A instructor for those skills which are a component of the U.S.D.O.T. curriculum for Emergency Medical Technicians including, but not limited to, KED, HARE, MAST. In addition, the EMS educator shall designate qualified persons (for example, a Pre-hospital Trauma Life Support (PHTLS) instructor or EMT-A instructor with proficiency in the area) to oversee the review of trauma assessment skills, rapid takedown and standing long backboard skills and other advanced concepts that are considered to be basic life support skills. Each EMS educator shall maintain a record of the required BLS review on a form prescribed by the Department in this section.

(h) Each paramedic seeking recertification shall have the endorsement of an approved program, prior to application for recertification. The Director or EMS educator of the program endorsing the paramedic shall verify that all portions of these requirements have been met and that the paramedic is physically capable of performing his or her duties and shall forward all required documentation to the Department. The director or EMS educator shall sign the endorsement.

8:41-4.11 Mobile intensive care nurses

(a) No licensee shall utilize a nurse in the capacity of prehospital ALS provider unless:

1. The nurse is currently licensed as a registered nurse by the New Jersey Board of Nursing;
2. The nurse has completed at least one year in the provision of nursing care in hospital critical care units or emergency departments, as defined in N.J.A.C. 8:43G-9 and 8:43G-12;
3. The nurse is currently certified in advanced cardiac life support to the standards of the American Heart Association;
4. The nurse is currently certified as an Emergency Medical Technician—Ambulance (or greater) by the Commissioner;
5. The nurse is currently certified in cardiopulmonary resuscitation to the level of professional rescuer to the standards of the American Heart Association;
6. The nurse has successfully completed at least a 100-hour field internship on an approved mobile intensive care program's vehicle;
7. The nurse is sponsored by an approved mobile intensive care program; and

8. The nurse is physically capable of performing the duties of a mobile intensive care nurse.

(b) Once the mobile intensive care nurse candidate has successfully met the qualifications as required by this section the physician medical director shall endorse the nurse as a mobile intensive care nurse. This endorsement shall include a statement attesting to the competency to perform all skills allowed for prehospital advanced life support personnel as defined by this chapter. This endorsement shall be forwarded to the Department as soon as practical after completion of all requirements. If the candidate is not endorsed after training, the candidate shall be entitled to a hearing as defined in N.J.A.C. 8:41-2.

(c) Each mobile intensive care nurse endorsed to act as a prehospital ALS provider shall be required to renew the endorsement every two years. Each mobile intensive care nurse shall meet the requirements listed in N.J.A.C. 8:41-4.10 in order to have the endorsement renewed. A copy of verification of compliance with N.J.A.C. 8:41-4.10 shall accompany the medical director's endorsement.

(d) Mobile intensive care nurses shall practice on a MICU only when in compliance with the certification requirements of this chapter.

(e) Notwithstanding the provisions of N.J.A.C. 8:41-4.1, a mobile intensive care nurse endorsed in accordance with this chapter shall be eligible to sit for certification as a paramedic upon meeting other requirements needed to enter the examination process as required by the National Registry of EMTs.

(f) Provided that the requirements for recertification as a prehospital ALS provider are met in accordance with N.J.A.C. 8:41-4.10, the EMT-A certification of the mobile intensive care nurse shall be renewed for a period of two years from the date of the expiration of the previous EMT-A card.

8:41-4.12 Denial of recertification or renewal of endorsement

(a) If a program or medical director does not recommend recertification or a renewal of an endorsement of any prehospital ALS provider, an accompanying statement shall be forwarded to the Department documenting why such action is being taken. Such documentation shall include a plan for remediation, if applicable. The Department shall review this information and will notify the prehospital ALS provider of the recommendation of the program's medical director. Individuals denied recertification or renewal of endorsement shall be entitled to a hearing in accordance with N.J.A.C. 8:41-2. No certification or endorsement shall be suspended, revoked or denied, except for just cause.

(b) If a program determines that a prehospital advanced life support provider, as defined by this chapter, may not be eligible to be recertified or re-endorsed, the program shall notify the Department and the prehospital ALS provider by certified mail at least 60 days prior to the expiration of the certification or endorsement.

8:41-4.13 Recertification extensions

(a) Any advanced life support provider who has not been able to meet recertification or endorsement renewal requirements due to personal illness or injury may request a one-year extension of his or her certification or endorsement. Such request shall be made to the Department and shall contain:

1. The reasons for the extension;
2. Medical documentation from a licensed physician; and
3. A letter of endorsement from an approved MICU program.

(b) The length of the extension shall equal the period of disability, but shall not exceed one year.

(c) The Department shall notify the applicant of its decision within 30 days of receipt of the request.

(d) Causes other than medical reasons will be reviewed on a case by case basis by the Commissioner or his or her designee.

8:41-4.14 Paramedics with expired certifications

(a) A paramedic formerly certified by the Department whose certification has expired is eligible to enter the retraining process provided:

1. He or she is currently certified by the Commissioner as an EMT-A, EMT-D or EMT-I; and
2. He or she is currently certified in cardiopulmonary resuscitation to the standards of the American Heart Association (AHA), National Center, 7320 Greenville Ave., Dallas, TX 75231.

(b) A paramedic with an expired certification who seeks to obtain a valid certification shall obtain the sponsorship of an approved clinical training site, in accordance with the provisions of this chapter.

(c) Candidates for retraining shall forward an application to the Department through their EMS educator. This application shall contain such information as required by the Department, including but not limited to, name, address, demographic information and sponsoring hospital.

(d) Each candidate shall complete a didactic training program equivalent to the U.S.D.O.T. refresher curriculum for paramedics. Prior to the completion of the didactic training program, the candidate shall become certified in advanced cardiac life support to the standards of the American Heart Association and in prehospital trauma life support to the standards of the National Association of EMTs, and shall complete any other training required to enter the examination process as determined by the testing agency, such as the National Registry of EMTs.

(e) Following the completion of the requirements listed in (d) above, each candidate shall enter into a period of clinical training that shall consist of 200 hours. These hours shall be completed within one calendar year of entering into the program. No hours may be completed until the candidate is notified by the Department that he or she has been admitted into the program.

(f) The areas covered by the training shall be determined by the educator, based on the needs of the candidate, and shall be scheduled at the discretion of the EMS educator.

(g) In addition to the 200 hours of clinical training, the candidate shall submit documentation as required by the designated testing agency, including but not limited to, certification and medical director endorsement.

(h) During retraining, the candidate shall have the same status as a paramedic student, and shall not act independently to provide prehospital advanced life support.

(i) Once the candidate has met the requirements of this chapter, he or she shall be permitted to take the certification examination as provided for in this section.

(j) Once the candidate has successfully completed the examination process, he or she shall be issued a certification, bearing the candidate's previous certification number, valid for a period of two years.

(k) A paramedic who has his or her certification expire shall be issued an EMT-A certification card valid for one year from the date of the expiration of the paramedic certification.

8:41-4.15 Reciprocity

(a) Individuals who are currently certified by another jurisdiction as a paramedic, and who have completed a course of study equivalent to or greater than that required of New Jersey paramedics, which adheres to the U.S.D.O.T. curriculum for paramedics, shall be deemed eligible for reciprocity. If training hours are below what is required, the sponsoring site may provide any additional clinical experience needed to complete this requirement.

(b) A paramedic currently certified by another jurisdiction seeking New Jersey certification shall seek affiliation with an approved MICU program. The candidate and MICU program shall jointly apply for reciprocity for the candidate. All requests shall be made in writing, and shall be in a form and manner specified by the Department, including, but not limited to, certifications currently held and demographic and identifying information.

(c) The Department shall verify all requests for reciprocity in a timely manner. The Department shall obtain written verification as to the candidate's status from the certifying agency under which he or she is certified.

(d) Only currently certified paramedics in other jurisdictions shall be eligible for reciprocity, provided the certification period is less than two years from the date it was issued (for example, the certificate is not in the third year of a four-year certification period).

(e) Once all information is verified, and the Department determines the candidate is eligible for reciprocity, a temporary certification shall be issued. This certificate shall be valid for a one-year period or the duration of the current certification, whichever is the lesser amount of time, which shall be deemed a probationary period, in accordance with this chapter.

(f) Individuals who are not currently registered by the National Registry of EMTs as a paramedic shall enter the first New Jersey advanced level certification examination after the issuance of a temporary certification, and successfully complete the certifying examination process as specified in this section prior to the expiration of their temporary certification.

(g) Any person who has taken the test, but has not passed, and has his or her certification expired, may seek to have his or her temporary certification extended until the next available examination. Only one extension shall be granted.

(h) If a candidate fails to gain full certification at the expiration of the temporary certification, he or she shall be ineligible for certification in New Jersey, unless he or she successfully completes the training program as specified in this chapter for paramedics with expired certifications.

(i) Upon successfully completing the certification exam, or at the end of the probationary period (as applicable), the candidate shall be certified in accordance with this chapter.

(j) Any reciprocity candidate who is currently registered as a paramedic by the National Registry of EMTs shall be eligible for full certification, after at least six months of temporary certification, upon endorsement of the sponsoring MICU program.

8:41-4.16 Probationary periods

(a) Any prehospital ALS provider who is placed on probationary status by the Department shall be monitored for performance by the program's medical director and the Department.

(b) Probationary providers shall operate only when under the supervision of an approved prehospital life support provider or physician. Under no circumstances may a probationary provider act independently or in conjunction with another probationary provider on the same MICU vehicle.

(c) The EMS educator or director of the approved MICU program shall monitor the progress of the probationer, and shall forward to the Department monthly progress reports as required by the Department.

(d) The Department shall have the right to restrict or otherwise limit the scope of practice of the probationer. Failure to meet such conditions or any terms of the probationary period shall be deemed cause for revocation of certification or endorsement and/or other such action the Department deems appropriate.

8:41-4.17 Scope of practice; limitations

(a) No paramedic shall engage in any activity independent of an approved mobile intensive care program that would require him or her to perform as a prehospital ALS provider as defined by law or rule, unless otherwise authorized by law or this chapter.

(b) All prehospital ALS providers operating on a licensed mobile intensive care unit shall operate within the scope of practice as defined by this chapter. This requirement shall not apply to physicians licensed in New Jersey by the State Board of Medical Examiners.

8:41-4.18 Disciplinary action; suspensions, revocation and penalties for prehospital ALS providers

(a) The Department may suspend, revoke or refuse to issue or reissue the certification or cancel an endorsement of any prehospital ALS provider upon receipt of a complaint and subsequent investigation for the following:

1. Demonstrated incompetence or inability to provide adequate services as required by this chapter;

2. Deceptive or fraudulent procurement of certification or endorsement credentials;

3. Willful or negligent practice beyond that which is specifically authorized by this chapter;

4. Abuse or abandonment of a patient;

5. Rendering of services while under the influence of alcohol or drugs;

6. Operation of an emergency vehicle in a reckless manner or while under the influence of alcohol or drugs;

7. Unauthorized disclosure of medical or other confidential information;

8. Willful preparation or filing of false medical reports, or the inducement of others to do so;

9. Destruction of medical or other records required to be maintained by this chapter;

10. Refusal to respond to a call or to render emergency medical care because of a patient's race, sex, creed, national origin, sexual preference, age, disability, medical condition or ability to pay;

11. Failure to comply with any part of these rules;

12. Failure to comply with the patient reporting requirements of this chapter;

13. Failure to complete continuing education and performance standards as required by this chapter;

14. Conviction of a crime, including any crime involving moral turpitude, or conviction of any offense resulting from action as a prehospital ALS or BLS provider. Conviction shall mean a finding of guilt by a judge or jury, a guilty plea, a plea of nolo contendere or non-vult or entry into a pre-trial intervention program;

15. Misuse or misappropriation of drugs, medications or controlled equipment;

16. Willful obstruction of any official of the Department or other agency empowered to enforce the provisions of this chapter or New Jersey law;

17. The authority to engage in prehospital care has been suspended or revoked or had action taken by any other state, agency or authority for reasons consistent with this chapter; and

18. Any other action deemed by the Department to pose a threat to public health and safety.

(b) Suspension of certification or endorsement shall have the effect of prohibiting the prehospital ALS provider from operating in that capacity on any MICU licensed in the State. The suspension shall last for a specified period, and may be followed by a probationary period. No person shall serve on any MICU while suspended by the Commissioner.

(c) No person shall serve on any licensed MICU, once his or her certification or endorsement is revoked. No person shall be enrolled as a student, nor shall he or she seek endorsement as a MICN if his or her paramedic certification or MICN endorsement has been revoked, without specific authorization by the Commissioner.

(d) A prehospital ALS provider may be suspended by the Department during the course of an investigation of allegations, if the Department demonstrates that public safety and health require such an interim suspension. All persons who are suspended in such a manner shall be afforded the right to an immediate hearing in accordance with this chapter and New Jersey law.

(e) No provider shall have any action taken against his or her certification or endorsement, excluding an emergent situation as described by (d) above, unless that person shall have been afforded a hearing in accordance with this chapter.

(f) The Department may seek to impose a probationary period, a fine or both in lieu of any suspension or revocation. Action taken against an individual does not preclude any action that may be taken against a program for the same infraction. Any action taken under this section shall be separate from any civil, criminal or other judicial proceeding, including actions against licenses of health care professionals issued by other Departments or Boards.

(g) The Department shall notify all programs by mail of any disciplinary actions taken under this section.

8:41-4.19 Report of unlawful or prohibited conduct

Every prehospital ALS provider authorized to operate under this chapter shall report in a timely manner to the Department's Office of Emergency Medical Services (OEMS) any and all incidents or series of incidents which, upon objective evaluation, leads to the good faith belief that the conduct is in violation of any law or rule. The Department shall investigate all reports in a timely manner.

SUBCHAPTER 5. COMMUNICATIONS

8:41-5.1 Dispatch of mobile intensive care units

Each program operating mobile intensive care units, as defined by this chapter, shall be dispatched by a regional dispatch center approved by the Department, in accordance with this chapter.

8:41-5.2 Dispatch centers; criteria

(a) Approved dispatch centers shall be capable of providing:

1. Coordinated dispatch activity among various mobile intensive care units, basic life support units and first responders;

2. Dispatching of mobile intensive care units that is in compliance with the service area designations as determined by the certificate of need;

3. Adequate radio coverage to the mobile intensive care units the dispatch center serves;

4. Other emergency services that may be required, including coordination of mass casualty incidents and disasters; and

5. Record retention, including a log of all requests received for service, times as recorded by the dispatch center, the unit assigned to the request, requests not assigned to the primary unit for that area due to the vehicle being unavailable, and tape recording, either digital or analog, of required frequencies as determined by the dispatch center and the Department.

(b) Dispatch centers may be consortium-based or by county.

(c) Each mobile intensive care program shall furnish documentation to the Department that it has secured the services of an approved dispatch center prior to the issuance of an approval, in accordance with this chapter. The Department shall be informed of any proposed change in the dispatch arrangement prior to any such changes. All proposed dispatch agreements shall be subject to approval by the Department.

8:41-5.3 Communication equipment required

(a) Every mobile intensive care vehicle licensed under this chapter shall have communication equipment that will allow the prehospital advanced life support personnel to:

1. Directly contact the approved dispatch agency;

2. Directly contact any hospital emergency room via use of the HEAR system (155.340 mHz);

3. Directly contact the mobile intensive care units that operate in the area immediately bordering the vehicle's territory;

4. Directly contact the base hospital's medical command physician while away from the vehicle and to send telemetered electrocardiograms when required by the approved MED channels;

5. Interface with appropriate disaster control agencies in accordance with local and county emergency plans; and

6. Directly contact the dispatch agency while away from the vehicle.

(b) Each program and dispatch center approved under this chapter shall not operate on any frequency in violation of any law, regulation or rule, including those of the Federal Communication Commission.

(c) Each approved program operating under this chapter shall develop and maintain a communications plan. This plan shall be consistent with the JEMS Communication Plan or other plans promulgated by either the Federal Communications Commission or the Department. The Department shall review each plan, and if appropriate, will approve the plan in accordance with this subsection or with N.J.A.C. 8:41-2.9 (Waiver).

8:41-5.4 Biomedical telemetry; communications

(a) Each program approved by the Department shall insure that each mobile intensive care vehicle has operational biomedical telemetry and other such communications as may be required to meet the requirements of N.J.S.A. 26:2K-10 and this chapter.

(b) Each program approved in accordance with this chapter shall assure that there is a working communications base station at each approved medical command site that will permit the receiving of voice communications as well as telemetered electrocardiograms. Such base station shall be positioned in the emergency department and shall be readily accessible to the medical command physician.

(c) Each approved program shall have the capability of providing a recording of both transmitted and received voice communications, as well as any telemetered electrocardiograms. Tape recordings shall be maintained in accordance with the provisions of this chapter and shall be produced upon the demand of an authorized member of the Department.

(d) Each time the mobile intensive care unit calls the base station for medical command, a tape recording of the call shall be made. This shall be done regardless of whether the means of communication is radio (including HEAR), telephone or any other approved means.

(e) Each program shall be able to retrieve an auditable tape recording for at least 90 percent of the calls where medical command is contacted.

8:41-5.5 MED channels

(a) Each mobile intensive care unit and each base station shall be capable of utilizing any of the 10 MED Channels, as defined by 47 CFR 90.53, and shall engage in coordinated usage of these channels by use of a regional coordinating center. These regional coordinating centers shall be as currently designated by the Department, in accordance with the certificate of need application process.

(b) MED Channels 1 through 8 are to be utilized only for the purpose of medical command, as defined in N.J.A.C. 8:41-1.

(c) MED Channels 9 and 10 shall be utilized for frequency coordination and other administrative types of communication as may be needed and as assigned by the JEMS Communication Plan.

(d) No person, agency or program shall engage in any activity that could interfere with the legitimate medical command functions outlined by this chapter.

8:41-5.6 Alternative communications

(a) Any program seeking to provide medical command by means other than the MED Channels described in this chapter shall make application to the Department prior to utilizing any alternative device or means. No change shall be effected until approval is obtained from the Department nor shall any program cease to participate in regional coordination of MED channels.

(b) The Department shall review each application to determine compliance with this chapter and shall approve or deny the application.

(c) The Department may impose any conditions on the approval deemed necessary to insure the requirements of this chapter are met, including trial periods, restrictions and/or other actions.

(d) The program shall provide the Department with such reports, as required by any waiver(s) granted, to monitor the progress of alternative communications systems.

(e) Any alternative communication system shall meet the 90 percent requirement for the production of an auditable tape of the event, including a recording of both voice and telemetered ECG.

8:41-5.7 Performance standards

(a) All communications equipment authorized under this chapter for the purpose of medical command shall:

1. Provide for clear, concise voice communication between the base physician and the advanced life support personnel and shall produce an auditable tape of conversation and ECG at least 90 percent of the time; and

2. Provide adequate coverage, as in (a)1 above, to the service area of the mobile intensive care program.

(b) All back-up equipment used for obtaining medical command shall meet the standards of N.J.A.C. 8:41-5.4 in regard to the production of tapes and the ability to send telemetered ECG.

(c) Each program shall provide for the repair and maintenance of all communications equipment. In the event that medical communication or dispatch equipment fails, the program shall:

1. Immediately provide alternate communications equipment to allow contact with medical command or arrange for another authorized medical command site to provide medical command to the unit; and

2. Notify the Department if the outage lasts longer than eight hours.

8:41-5.8 Radio failure; protocols

(a) Radio failure exists only when:

1. Standard biotelemetry communications equipment fails;

2. Back-up biotelemetry equipment fails, including cellular telephones;

3. The MICU cannot access any approved medical command site by these means;

4. The advanced life support personnel cannot access any approved medical command site by the HEAR system; and

5. Telephone service is not available or is inoperative.

(b) Each program shall develop and maintain radio failure protocols that are to be followed in the event of radio failure. These protocols shall bear the approval signature of the program's medical director and shall be approved by the Department prior to implementation, in accordance with the requirements of this chapter and those of the U.S.D.O.T. and the American College of Emergency Physicians.

(c) In the event that radio failure protocols are utilized, the prehospital advanced life support provider who utilized the protocols shall prepare a report indicating the call on which the protocols were utilized, treatment rendered, a description of the radio problems, a list of alternate means attempted, problems encountered, and attempts to remedy the problem. This report shall be forwarded to the program's director within 24 hours of the incident.

(d) The director shall maintain a file of all radio failure reports, and shall present the file to an authorized representative of the Department upon demand.

SUBCHAPTER 6. MEDICAL CONTROL; ADMINISTRATION

8:41-6.1 Medical director required

(a) Every approved mobile intensive care program shall have a medical director who shall be responsible for all medical matters that affect the program.

(b) No person shall serve in the capacity of medical director unless he or she first:

1. Is licensed as a physician by the New Jersey Board of Medical Examiners;

2. Is currently certified in Advanced Cardiac Life Support to the standards of the American Heart Association;

3. Has successfully completed the Advanced Trauma Life Support course to the standards of the American College of Surgeons; and

4. Is experienced in provision of emergency care.

(c) Any licensed physician who is serving in the capacity of program medical director on the effective date of this rule shall continue in that capacity, regardless of compliance with (b)2 through 4 above.

(d) Individuals who are board certified by the American Board of Emergency Medicine need not be certified in Advanced Trauma Life Support or Advanced Cardiac Life Support.

(e) The medical director shall oversee the general medical direction provided to the prehospital advanced life support providers by base station physicians. The medical director shall be responsible for overseeing the quality control activities of the program as required by this chapter, as well as overseeing both medical control and medical command activities.

(f) The medical director is responsible for determining the competence of all prehospital advanced life support providers who are performing under the program's authority and shall submit such reports attesting to the individual's competency as required by the Department, in accordance with N.J.A.C. 8:41-4.

(g) Upon any change of the medical director, the program shall notify the Department as soon as practical after the change.

8:41-6.2 Medical command of advanced life support personnel

(a) The provision of prehospital advanced life support by advanced life support personnel on licensed mobile intensive care vehicles is deemed a delegated medical practice. The physician providing medical command provides the authority for such personnel to act.

(b) Except as provided for in the event of radio failure or standing orders authorized by this chapter, no prehospital advanced life support provider shall perform any skill or procedure, administer any pharmaceutical agent or engage in any other activity patently within the scope of practice of a prehospital advanced life support provider, unless that person has received the direct and specific order of a physician.

(c) All orders given to advanced life support personnel shall be specific with regard to treatments ordered or medications and dosage to be given and the sequence in which the treatment is to be performed. All prehospital advanced life support providers shall perform all treatments as ordered by the base station physician.

(d) Each prehospital advanced life support provider shall provide the base station physician with a detailed report of patient assessment, patient condition and any other information required by the physician.

(e) Communication with the prehospital advanced life support personnel shall be done directly by the physician controlling the call unless prevented by emergent patient care duties in the emergency department. In that case, a licensed registered nurse may relay the report and orders if:

1. The nurse is currently certified in advanced cardiac life support to the standards of the American Heart Association;

2. The nurse has been trained in proper operation of the base station; and

3. The nurse personally relays the report to the physician and any orders or direction to the prehospital advanced life support personnel. All orders shall be prefaced with the name of the base station physician ordering the treatment.

(f) No physician shall order a prehospital ALS provider to perform any treatment or administer any medication not specifically authorized by this chapter.

(g) The physician providing medical control shall review the medical record form and affix his or her signature to it, in accordance with established institutional policies, but not later than 30 days after providing the medical direction. The physician shall inform the medical director of any discrepancies in the medical record.

(h) In an instance where patient care is provided in accordance with approved radio failure protocols or authorized standing orders, as defined by this chapter, the authority for such treatment shall be deemed to emanate from the medical director.

(i) In every instance that a mobile intensive care unit has treated a patient, the medical command physician who provided the medical direction to the MICU shall ensure that the receiving facility is notified as soon as possible after providing medical command. The report shall be relayed to either a physician or licensed registered nurse at the facility, and shall contain:

1. The patient's chief complaint and presenting signs and symptoms;

2. Treatment ordered for the patient; and

3. The estimated time of arrival of the patient.

8:41-6.3 Base station physicians

(a) No person shall provide medical command to any prehospital advanced life support provider unless that person:

1. Is currently licensed as a physician by the New Jersey Board of Medical Examiners or is a permit holder as defined in N.J.A.C. 8:43G-16.2(f);

2. Is currently certified in Advanced Cardiac Life Support to the standards of the American Heart Association unless board certified as described in this subchapter; and

3. Has received instruction in the proper use of the base station and the provision of medical command to prehospital advanced life support providers.

(b) Each base station physician shall provide medical command to mobile intensive care units in a timely fashion, without undue delay.

(c) In the event that a mobile intensive care unit not affiliated with the program should seek medical command from the base station physician, the physician shall provide medical control as if the unit was one of the program's own.

8:41-6.4 Protocols

Each program approved by the Department in accordance with this chapter shall develop and maintain written medical protocols that cover most common emergencies. These treatment protocols shall be kept at the base station immediately accessible to all physicians and shall be reviewed at least yearly. These protocols shall serve as a guide to the physicians, but shall not be deemed to restrict the treatment ordered in the best judgment of the physicians and within the scope of the practice of a prehospital ALS provider.

SUBSECTION 7. PROCEDURES; TREATMENTS; MODALITIES

8:41-7.1 Basic life support functions

Nothing in this chapter shall be construed to prohibit any prehospital advanced life support providers from providing any care or treatment that is construed to be a basic life support function. This shall include all skills and procedures incorporated in the U.S. D.O.T. Curriculum for Emergency Medical Technician-Ambulance or Emergency Medical Technician-Defibrillator as adopted by the Department. These functions may be performed prior to and without the order of a physician.

8:41-7.2 Approved skills and procedures

(a) The following skills and procedures are approved to be performed by prehospital advanced life support personnel, paramedic students and MICN candidates operating under this chapter:

1. Venipuncture for the purpose of obtaining blood samples (excluding blood alcohol levels drawn solely for legal purposes);
2. Institution of intravenous therapy, either by direct infusion or by intravenous catheter plug;
3. Administration of any medication authorized by N.J.A.C. 8:41-8;
4. Endotracheal intubation (oral and nasal) and nasogastric tube insertion and aspiration;
5. Administration of oxygen therapy, including nebulizer treatments in accordance with N.J.A.C. 8:41-8, and the provision of ventilatory support, using approved equipment as specified in this chapter;
6. ECG monitoring, including taking of 12-lead ECG;
7. Cardiac defibrillation, synchronized cardioversion and transthoracic cardiac pacing;
8. Use of telemetry and proper radio procedures in the field, as defined by the Federal Communication Commission and good professional practice;
9. Intraosseous infusion; and
10. Any other procedure approved and promulgated by the Commissioner, provided that such procedure is published within six months of the approval date as part of these rules.

(b) In addition to the (procedures in (a) above, a program's medical director may elect to have the following procedures performed on that program's MICUs, subject to approval by the Department:

1. The insertion of esophageal airways;
2. Access of established central venous catheters; and
3. Access of AV fistulas or shunts.

8:41-7.3 Supervision of students, candidates and probationary personnel

(a) All students and candidates operating on a mobile intensive care vehicle licensed in accordance with this chapter may perform any of the skills permitted by this chapter, provided they are directly supervised by an approved preceptor in accordance with these rules (see N.J.A.C. 8:41-4.7). Student paramedics or MICN candidates shall not be utilized to meet the minimum staffing requirements specified in this chapter.

(b) Probationary prehospital advanced life support providers may perform any of the skills permitted by this chapter, provided they are under the direct supervision of a prehospital advanced life support provider authorized by this chapter.

8:41-7.4 Paramedics in the emergency department

(a) Currently certified paramedics who are operating on a licensed MICU vehicle may perform any of the approved skills authorized by N.J.A.C. 8:41-7, in the emergency department of any licensed hospital provided that:

1. The paramedic is performing under the direct order of a physician;
2. The paramedic records the treatment on the patient's chart and signs the chart in compliance with institutional policy; and
3. The skills provided do not exceed what is allowable for a paramedic to perform, in accordance with the provisions of this chapter.

(b) No hospital shall utilize a paramedic to perform duties routinely assigned to any other health care professionals, nor shall any hospital utilize any prehospital advanced life support provider in any manner regardless of capacity if such utilization would delay that provider's response to a dispatch.

(c) Notwithstanding any portion of these rules, a paramedic shall not be considered to meet any staffing requirement for in-hospital purposes as required by N.J.A.C. 8:43G.

8:41-7.5 Pronouncement of death

(a) All pronouncements of death shall be made in accordance with rules promulgated by the State Board of Medical Examiners and with the physician's medical judgment.

(b) No paramedic shall act as an independent agent for the purpose of making pronouncements of death.

(c) All patients who are presented to the mobile intensive care unit who appear dead shall be monitored for electrocardiac activity and given an examination, and then the advanced life support provider shall contact the base physician and relay all findings. These findings shall include a telemetered electrocardiogram sent to the physician unless the condition of the patient precludes the application of ECG leads.

(d) No standing orders for the pronouncement of death shall be authorized. In the event of radio failure or the inability to send telemetry, no pronouncement shall be made.

(e) The mobile intensive care unit shall return to service as soon as possible after the pronouncement.

8:41-7.6 Patient triaged to basic life support

(a) Patients with whom the prehospital advanced life support providers make physical or verbal contact shall be evaluated by the prehospital advanced life support staff to determine the nature of their illness and/or injury. This exam shall be detailed enough to provide:

1. At least one complete set of vital signs;
2. Documentation of chief complaint, past history and medications;
3. A clinical picture of the patient's status; and
4. Information enough to provide a brief narrative on the patient.

(b) For every patient who presents to the mobile intensive care unit staff, there shall be a medical record completed. This chart shall contain the same information that an advanced life support completed call would contain, including any basic life support treatment rendered by the unit or other responders.

(c) In the event the physician should order the patient released to BLS, the staff shall indicate that the physician had released the patient on the patient's medical record, and the physician shall affix his or her signature to that medical record.

(d) The program medical director shall review at least 10 percent of the calls triaged to BLS to ensure compliance with this chapter and to achieve quality assurance goals.

8:41-7.7 Blood alcohol levels for legal purposes

(a) No prehospital advanced life support provider operating on a licensed MICU shall draw a patient's blood for the purpose of determining blood alcohol levels to be solely used for legal purposes. No blood drawn by the MICU shall be provided to any law enforcement agency, except under the order of a court of competent jurisdiction.

(b) No prehospital ALS provider shall perform phlebotomy for the purpose of collecting a blood specimen to determine the alcohol

content solely for legal purposes in the emergency department, nor shall any prehospital ALS provider draw any blood sample to be utilized for law enforcement purposes.

SUBCHAPTER 8. ADMINISTRATION OF MEDICATIONS

8:41-8.1 Approved drug list for mobile intensive care units

(a) The following is an alphabetical list of generic therapeutic agents authorized for administration by prehospital advanced life support providers:

...

Flumazenil

...

Magnesium sulfate[-] (with Commissioner's approval only)

...

Nitroglycerin **(excluding intravenous administration)**

...

8:41-8.2 Applicability of laws and regulations

(a) [As an extension of the hospital, the mobile intensive care units shall be subject to applicable laws and regulations.] **Mobile intensive care programs and prehospital advanced life support providers shall be subject to all applicable laws, rules and regulations regarding the control and administration of medications, controlled dangerous substances, syringes, needles and medical waste.**

[(b) All policies and procedures regarding the control of drugs shall be subject to the provisions of the Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.) and amendments thereto. The policies and procedures shall be in compliance with all Federal and State Laws and regulations, including those of the New Jersey State Board of Pharmacy, concerning procurement, storage, dispensing, administration and disposition (N.J.A.C. 13:39-7.5)].

[(c)]**(b)** Policies and procedures regarding the storage, use, and disposition of hypodermic needles and syringes shall be in accordance with the New Jersey State Board of Pharmacy [rule N.J.A.C. 13:39-7.19(m)6] **rules, N.J.A.C. 8:43G, N.J.A.C. 8:65** and the Controlled Dangerous Substances Act and amendments thereto.

8:41-8.3 Medication controls, inventory, and recordkeeping required

(a) Each designated mobile intensive care program shall devise a plan for maintaining inventory control over medications, including all substances in Schedule II of the Controlled Dangerous Substances Act and amendments thereto, and syringes used in the program. The following information shall be recorded:

1.-7. (No change.)

8. Signature of the paramedic or mobile intensive care nurse administering the drug; [and]

9. Amount of medication wasted, if any[.]**; and**

10. The co-signature of the prehospital ALS provider witnessing the waste.

(b) A verifiable record system shall be maintained of the acquisition, storage, and disposal of hypodermic needles and syringes **in accordance with the rules of the New Jersey Board of Pharmacy, N.J.A.C. 8:43G and institutional policy**.

(c) [Records] **Medical records** on the administration of any therapeutic agent shall be maintained by the paramedic or mobile intensive care nurse on a written log, setting forth the date, time, drugs or therapeutic agents administered, directions for administering, quantity and strengths to be indicated where appropriate. All entries shall be typewritten or written in ink, legible, dated and signed by the paramedic or mobile intensive care nurse. All orders are to be countersigned and dated [within 24 hours] by the physician who directed the call **in accordance with institutional policy, but no later than 30 days after providing medical command, as specified in N.J.A.C. 8:41-6.2**.

(d) All medications**, syringes and needles** are to be kept in a locked storage box or compartment **when not under the direct control of a prehospital advanced life support provider as defined by this chapter**. All substances in [Schedule II] **Schedules I through III, inclusive,** of the Controlled Dangerous Substances Act, and amendments thereto, shall be kept under [double lock and key] **a double lock system that requires two separate keys for access, except when under the direct control of a prehospital care provider responsible for their custody**. Medications for external use are to be kept in a separate section from medications for internal use. Keys to the medications box or compartment shall be available only to authorized [persons] **prehospital advanced life support providers or as allowed by law**.

(e) Student paramedics and MICN candidates shall have access to any narcotic or drug listed in Schedule I through V, inclusive, only while in the presence of an authorized prehospital advanced life support provider. All student/candidate signatures shall be countersigned by an authorized prehospital advanced life support provider.

[(e)]**(f)** In the event that the **medication and syringe** inventories to a particular mobile intensive care unit cannot be verified or drugs are lost, contaminated or destroyed, a report of such incident is to be written and signed by the paramedics or mobile intensive care nurses involved and any witnesses present. **This report is in addition to any other reports required by law, rule or regulation. Copies of the report shall be sent for review to the director and medical director of the program.** Copies of the report [are to be sent for review to the coordinator and medical director of the program] **shall be forwarded to the Office of Emergency Medical Services (OEMS) in the event of loss of medications or controlled substances.**

(g) If any employee, student or other person affiliated with the approved MICU program is relieved of duty due to improper handling of any medication or CDS, the MICU program shall notify the Office of Emergency Medical Services (OEMS). The notification shall be made by telephone during regular business hours on or before the next business day, followed by written confirmation within 14 days of the action.

[(f)]**(h)** All voice or telemetered orders between the hospital and mobile intensive care units shall be monitored by recording tape and retained by the hospital for a period of at least [two] **three** years.

SUBCHAPTER 9. POLICIES; RECORDS; QUALITY ASSURANCE

8:41-9.1 Personnel records

(a) Each program operating a mobile intensive care unit shall maintain a personnel file on every advanced life support provider who operates on that unit. Such file shall contain, at a minimum:

1. The name and address of the provider;

2. Copies of the provider's current paramedic certification and/or a verification of a valid nursing license by the program director;

3, Copies of the individual's current certification in CPR and Advanced Cardiac Life Support as required by this chapter;

4. Documentation of continuing education hours and skills for the previous recertification period as required by this chapter provided the individual is recertified by the program; and

5. Any official correspondence received by the department with regard to the provider's status (for example, notice of completion of probationary period).

(b) The program shall maintain personnel files at the place of business as specified on the license in a readily accessible manner. Personnel files shall be produced upon demand of an authorized representative of the Department.

(c) No person shall file any record that is falsified, fraudulent or untrue. No person shall knowingly verify a falsified, fraudulent or untrue document that is submitted or maintained in compliance with this chapter.

8:41-9.2 Policy and procedure manual

(a) Every program operating a mobile intensive care unit in accordance with this chapter shall develop and maintain a policy and procedure manual. The policy and procedure manual shall reflect the methods of daily operation, and shall not be inconsistent with the provisions of this chapter.

(b) The policy and procedure manual shall contain policies that include, but are not limited to:

1. Staff functions in the emergency department;

2. Narcotic control, storage and procurement;

3. Drug, needle and syringe storage (both vehicle and station);

4. Pronouncement of death;
5. Aeromedical utilization;
6. Triage to specialty centers, including trauma triage policies;
7. Hospital diversion;
8. HAZMAT incidents;
9. Mass Casualty Incidents, which shall include a copy of the Emergency Operating Plan (EMS Annex);
10. Physician and nurse orientation to the base station curriculum;
11. A current copy of this chapter;
12. The quality assurance plan developed in accordance with this chapter;
13. Vehicle maintenance, including vehicle out of service procedures;
14. The required reporting of certain events, including child abuse or neglect; and
15. Any other information that is required by the Department to assist the program staff in the performance of their duties, given the unique situation of each program.

(c) This policy manual shall be immediately available to all members of the MICU staff, and shall be presented upon demand to an authorized representative of the Department.

8:41-9.3 Didactic records

(a) Each approved didactic site shall maintain such records on its students as required by the college and the Department. These records shall include, but not be limited to:

1. Identifying data on each student including, but not limited to, name, address, phone number, date of birth and social security number;
2. Records of progress, including grades on examinations and skill performance;
3. Anecdotal records, as needed; and
4. Clinical site affiliation.

(b) The didactic coordinator shall provide periodic reports to the clinical coordinator at the sponsoring site reporting the student's progress.

(c) The didactic program shall present students, records to an authorized representative of the Department upon demand.

8:41-9.4 Student/candidate clinical training records

(a) Each approved MICU clinical training program sponsoring paramedic students and/or MICN candidates shall maintain records of the training and progress of the students. These records shall include:

1. Copies of current certifications in CPR, EMT-A and ACLS and as required by this chapter;
2. Documentation of successful completion of didactic training;
3. Copy of the didactic training schedule;
4. Original documentation of completion of clinical training objectives, including sign-off sheets;
5. Clinical training schedules;
6. Anecdotal records, as needed;
7. Copies of the required evaluations; and
8. Copies of the endorsement to take the certification exam, if appropriate.

(b) Paragraphs (a)2, 3 and 8 above do not apply to MICN candidates.

(c) The program shall produce the files in (a) above upon demand of an authorized representative of the Department.

8:41-9.5 Medical records

(a) Every program operating a mobile intensive care unit in accordance with this chapter shall develop a medical record form to be utilized to document each instance when physical or verbal contact is made with a patient. This record shall be completed for each patient with whom the pre-hospital ALS providers make physical or verbal contact. At such time as the Department promulgates a standardized, Statewide report form, that form shall be used.

(b) Every program shall develop and maintain a means for recording cancelled or recalled calls, missed calls, and other activity that does not result in patient contact, but did result in a dispatch.

(c) Each medical record form shall contain the following:

1. The name of the patient (if known);
2. The home address of the patient;
3. The location of the call;
4. Statistical information to include sex, age and weight;
5. Information as to patient's chief complaint, prior medical history, medications and allergies, findings obtained during the physical exam, treatment rendered, time the treatment was rendered and any response to treatment;
6. ECG documentation attached by the provider;
7. Any other information the program deems necessary, including insurance information;
8. Tape recording number, if applicable;
9. Date, and times as follows:
   i. Time of dispatch;
   ii. Time the vehicle is en route;
   iii. Time vehicle arrives at the scene;
   iv. Time patient is enroute to the hospital; and
   v. Time patient arrives at the hospital;
10. Crew information including certification number(s);
11. Any treatment rendered to the patient prior to the arrival of the MICU;
12. Unit identifying information to include the vehicle number, BLS squad name and vehicle number, type of communications used for medical command and printed name of medical command physician;
13. The printed name and signature of the medical command physician;
14. The receiving hospital or facility;
15. The receiving hospital's disposition of the patient to include admitting or discharge diagnosis and type of admission (for example, critical care floor);
16. A section to record the medication dosage, route and time of administration (flow sheet); and
17. The signature of the preparer of the record.

(d) The prehospital ALS provider in attendance with the patient shall prepare the medical record.

(e) A copy of the medical record shall be given to the physician or licensed registered nurse accepting the patient at the receiving facility. No additions to the chart shall be made once it is given, unless such changes are initialed and dated by the person making the change, and the receiving facility is notified.

(f) A copy of the medical record that has been signed by the medical command physician shall be retained by the program at the place of business and shall be available for inspection. Reports shall be presented to an authorized representative of the Department upon demand.

(g) If a patient should present to the MICU staff and should refuse care, the prehospital ALS providers shall complete a medical record for that patient and shall attempt to obtain the signature of the patient (or guardian) on a refusal of care statement.

(h) The program shall keep a record of all calls answered by the unit and shall track the destination, diagnosis and disposition of each patient evaluated by the unit. The emergency department of a licensed hospital receiving a patient evaluated by an approved MICU shall provide the information needed to comply with this section.

8:41-9.6 Quarterly reports

(a) Each program shall file a report with the Department stating the activity of the unit for that quarter. These reports shall be made on a form and in the manner specified by the Department (see Appendix A, incorporated herein by reference) and shall be received in the Office of Emergency Medical Services (OEMS) on or before the due date. The reporting period and due dates are:

Period	Due
Jan. 1-Mar. 31	Apr. 30
Apr. 1-June 30	July 31
July 1-Sept. 30	Oct. 31
Oct. 1-Dec. 31	Jan. 31

(b) The Department shall keep the data on file and shall generate a yearly report reflecting the activities of the MICU programs. Yearly reports shall be made available to the programs and general public for inspection at OEMS.

8:41-9.7 Quality assurance; roles and responsibilities

(a) The program medical director shall review at least 10 percent of all calls that were evaluated by the MICU, excluding cancelled calls. The method of determining which 10 percent of the calls will be reviewed shall be at the discretion of the medical director. The review shall determine:

1. Consistency with accepted treatment and triage protocols;
2. Consistency of the record with the tape recording of the call-in by the MICU;
3. Appropriateness of orders received by the MICU from the physician; and
4. Completeness of the medical record.

(b) The program director shall ensure that all medical records produced by the program meet standards, with regard to:

1. Completeness of the medical record;
2. Adherence to policies regarding treatment and triage of patients;
3. Compliance with the requirements of this chapter;
4. Documentation of scene times in excess of twenty five minutes, deviations from established protocols, unsuccessful procedures, radio failure, and other unusual incidents; and
5. The conditions set forth in (a) above.

8:41-9.8 Quality assurance; compliance with standards

(a) Each program approved under this chapter shall develop and maintain a quality assurance plan in accordance with N.J.A.C. 8:43G-27.1 and 27.2.

(b) Each program shall identify an individual responsible for the coordination of all aspects of the quality assurance program.

(c) There shall be an ongoing process of monitoring patient care. Evaluation of patient care on the MICU shall be criteria-based, so that certain review actions are taken or triggered when specific quantified, predetermined levels of outcomes or potential problems are identified.

(d) The quality assurance individual shall be available to provide ongoing consultation to the program, including assistance with the development of specific indicators used to evaluate service outcomes on the MICU.

(e) The program shall follow up on its findings to assure that effective corrective action is taken, including, at a minimum, policy revisions, procedural changes, educational activities and follow-up on recommendations, or shall establish that additional actions are no longer indicated or needed.

(f) The quality assurance program shall identify and establish indicators of quality care specific to the MICU that are monitored and evaluated which encompass:

1. Medical calls;
2. Trauma calls;
3. Pediatric calls;
4. Cardiac/respiratory arrest;
5. Patients triaged to BLS;
6. Use of radio failure protocols;
7. Use of standing orders;
8. On-scene times;
9. Use of special procedures;
10. Triage to specialty care facilities; and
11. Other areas the medical director finds necessary to track in this manner.

(g) The quality assurance review must encompass at least 10 percent of all calls the units handle, excluding cancelled calls.

(h) The program shall keep written records of medical director reviews and shall produce them on demand to an authorized member of the Department. Medical director reviews shall include the comments of the medical director.

8:41-9.9 Additional reports

(a) Nothing in this chapter shall be deemed to prevent a program from gathering other information it deems necessary, providing such information is not otherwise restricted by law or rule. Other information gathered may include that which is necessary to process billing claims and insurance information. A receiving emergency department of a licensed hospital shall make such billing information available to the MICU staff.

(b) Each program shall submit a quarterly report of fatal motor vehicle accidents that were covered by the program. This report may be incorporated with the quarterly report required by this chapter.

SUBCHAPTER 10. STANDING ORDERS

8:41-10.1 Standing orders for cardiac arrest

(a) The following cardiac dysrhythmias and treatment protocols shall be considered standing orders in cardiac arrest:

1. For ventricular fibrillation or ventricular tachycardia (without pulse):
   i. Defibrillate 200 Joules;
   ii. Defibrillate 300 Joules;
   iii. Defibrillate 360 Joules;
   iv. Establish IV access with Dextrose 5 percent in water or normal saline; keep vein open;
   v. Intubate, if possible; and
   vi. Administer Epinephrine 1.0 mg, either intravenously or endotracheally.
2. For asystole:
   i. If rhythm is unclear and possibly ventricular fibrillation, defibrillate as for VF in (a)1 above;
   ii. Continue CPR;
   iii. Establish IV access with Dextrose 5 percent in water or normal saline; keep vein open;
   iv. Intubate if possible; and
   v. Administer Epinephrine 1.0 mg, either intravenously or endotracheally.
3. For Electromechanical Dissociation (EMD):
   i. Continue CPR;
   ii. Establish IV access with Dextrose 5 percent in water or normal saline; keep vein open;
   iii. Intubate, if possible; and
   iv. Administer Epinephrine 1.0 mg, either intravenously or endotracheally.

(b) General guidelines are as follows:

1. Check pulse and rhythm after each shock. If Ventricular Fibrillation recurs after transiently converting to another rhythm, use whatever energy level was previously successful on your patient and defibrillate again.
2. Paramedics shall initiate radio communication with their base station physician as soon as the above treatments have been completed. At no time should initial communication with medical control physician be delayed due to difficulty in intubating the patient and/or initiating an intravenous line.
3. The program medical director shall determine if Dextrose 5 percent in water or normal saline will be used.
4. Each case utilizing these standing orders shall be documented on the run form and reviewed by both the mobile intensive care program coordinator and the medical director.
5. Initial standing orders shall not replace communication with a base station physician and should not be considered as instructions for total treatment of the patient.

8:41-10.2 Standing orders for multiple trauma patients

(a) The following treatment protocols shall be considered standing orders, to be used when treating multiple trauma patients.

1. Provide Basic Life Support as necessary;
2. Provide airway management with cervical spine precautions;
3. Assist ventilation, providing highflow O_2 at 100 percent by non rebreather mask and/or performing intubation utilizing cervical spine precautions when indicated;
4. Apply pneumatic anti-shock garment and inflate if applicable;
5. Transport as soon as possible;
6. Enroute to the hospital establish two large bore intravenous lines of Ringer's lactate with a 14 or 16 gauge angiocath. (For pediatric patients under 12, consider smaller gauge angiocath.)

Attempt to draw blood. In adult patients obtain two full red top tubes. If patient is less than five years old, use two pediatric red top tubes.

7. Paramedics shall initiate radio communication with their base physician as soon as the above treatments have been completed. Transportation shall not be delayed due to difficulty in intubating the patient and/or initiating an intravenous line, except at the specific direction of the medical control physician; and

8. Each case utilizing these standing orders shall be documented on the run form and monitored by the mobile intensive care coordinator and the medical director for appropriateness.

(b) Each individual MICU program may adopt the protocols in (a) above, or any part of these protocols, as standing orders for multiple trauma patients. However, there shall be no additions to these protocols.

8:41-10.3 Standing orders for endotracheal intubation

(a) The protocols contained in this section shall be considered standing orders for endotracheal intubation.

(b) Endotracheal intubation may be performed prior to contacting medical control if the patient presents:

1. In respiratory arrest;

2. In respiratory failure with associated inadequate spontaneous ventilatory volume; and/or

3. Unconscious with absent protective gag reflex.

(c) Advanced interventions should only be attempted after all basic life support interventions have been instituted. The patient may be intubated either by the orotracheal or nasotracheal route; however, nasotracheal intubation shall be withheld in children less than 12 years old.

(d) It is imperative that the MICU staff initiate contact with their base station physician as soon as possible after the above treatment has been rendered. These procedures should not delay the transportation of a patient in the event of a difficult intubation; nor should contact with the base physician be delayed by a difficult intubation.

(e) Each case utilizing these standing orders shall be documented on the run form and shall be monitored by the program medical director and coordinator for appropriateness.

8:41-10.4 Standing orders for the establishment of intravenous therapy

(a) The protocols contained in this section shall be considered standing orders for the initiation of intravenous therapy prior to contacting the base physician, without existing radio failure.

(b) In cases where an emergent or potentially emergent condition exists and current advanced life support treatment protocols require the initiation of intravenous therapy, mobile intensive care unit staff may begin an intravenous line at a keep vein open rate prior to contacting a base physician.

(c) Mobile intensive care unit staff shall contact the base physician as soon as possible after the initiation of the intravenous line. Contact with the base physician shall not be delayed by, or as a result of, unsuccessful intravenous attempts in the field.

(d) The time of the initiation of intravenous therapy and the time of base station contact shall be recorded on the patient run form.

(e) It is the policy of OEMS that the initiation of intravenous therapy by MICU staff, without base station contact, shall not be considered the total management of the prehospital patient. Base station physician contact shall be initiated in all advanced life support calls, unless a radio failure situation exists. In the incidence of radio failure, every attempt shall be made to contact the base physician, and shall be documented on the patient run report. A radio failure report shall be sent to OEMS, within 48 hours.

APPENDIX A
NEW JERSEY DEPARTMENT OF HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES

MICU Quarterly Report Quarter Ending_____

(Quarterly reports are due by the 30th of April, July, October, January)

Program Name

ADDRESS Telephone Number ( ) -

Person Completing Report Cost Per Completed ALS Call

Coordinator Medical Director

SECTION ONE—SYSTEM WIDE MICU INFORMATION

1. MICU dispatches _____
2. MICU calls cancelled (patient not seen) _____
3. MICU requested and unable to respond _____
4. Patients evaluated by MICU (total) _____
5. Patients triaged to BLS (total) _____
6. Patients triaged to BLS and admitted to critical care (total) _____
7. Patients refusing ALS _____
8. Patients treated by MICU as completed ALS calls _____

Age Ranges

9. 0 to 1 year _____
10. 2 to 8 year _____
11. 9 to 20 year _____
12. 21 to 45 year _____
13. 46 to 65 year _____
14. > 65 year _____
15. ALS Field pronouncements (by Medical control physician) _____
16. Total ALS patients admitted to a hospital _____
17. Total ALS patients treated and released from emergency department _____
18. ALS patients transported by volunteer ambulances _____
19. ALS patients transported by licensed ambulances _____
20. ALS patients transported by aeromedical service _____
21. ALS patients transported by transport MICU _____
22. ALS patients transported by other means (explain each situation below) _____
23. ALS patients treated and left at the scene _____
24. Transport delayed due to lack of available BLS transport vehicle _____

MATCHING TOTALS

15, 16 17 must = Item 8
9, 10, 11, 12, 13, 14 must = Item 8
18, 19, 20, 21, 22, 23 must = Item 8

Comments:

MICU QUARTERLY REPORT—Continued

PROGRAM_____

QUARTER ENDING_____

SECTION TWO—INDIVIDUAL VEHICLE SITE DISPATCH INFORMATION

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

25. MICU dispatches _____
26. MICU calls cancelled (patient not seen) _____
27. MICU requested and unable to respond _____
28. Patients treated by MICU as completed ALS calls _____
29. Number of out-of-service hours (explain) _____

Comments:

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

30. MICU dispatches _____
31. MICU calls cancelled (patient not seen) _____
32. MICU requested and unable to respond _____
33. Patients treated by MICU as completed ALS calls _____
34. Number of out-of-service hours (explain) _____

Comments:

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

35. MICU dispatches _____
36. MICU calls cancelled (patient not seen) _____
37. MICU requested and unable to respond _____
38. Patients treated by MICU as completed ALS calls _____
39. Number of out-of-service hours (explain) _____

Comments:

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

40. MICU dispatches _____
41. MICU calls cancelled (patient not seen) _____
42. MICU requested and unable to respond _____
43. Patients treated by MICU as completed ALS calls _____
44. Number of out-of-service hours (explain) _____

Comments:

MICU QUARTERLY REPORT—Continued

PROGRAM_____

QUARTER ENDING_____

SECTION TWO CONTINUED—INDIVIDUAL VEHICLE SITE DISPATCH INFORMATION

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

45. MICU dispatches _____
46. MICU calls cancelled (patient not seen) _____
47. MICU requested and unable to respond _____
48. Patients treated by MICU as completed ALS calls _____
49. Number of out-of-service hours (explain) _____

Comments:

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

50. MICU dispatches _____
51. MICU calls cancelled (patient not seen) _____
52. MICU requested and unable to respond _____
53. Patients treated by MICU as completed ALS calls _____
54. Number of out-of-service hours (explain) _____

Comments:

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

55. MICU dispatches _____
56. MICU calls cancelled (patient not seen) _____
57. MICU requested and unable to respond _____
58. Patients treated by MICU as completed ALS calls _____
59. Number of out-of-service hours (explain) _____

Comments:

VEHICLE SITE_____ VEHICLE RECOGNITION NUMBER/NAME_____

60. MICU dispatches _____
61. MICU calls cancelled (patient not seen) _____
62. MICU requested and unable to respond _____
63. Patients treated by MICU as completed ALS calls _____
64. Number of out-of-service hours (explain) _____

Comments:

MICU QUARTERLY REPORT—Continued

PROGRAM_____

QUARTER ENDING_____

SECTION THREE—PATIENT CLASSIFICATION

Place each ALS patient in only one of the categories below

Cardiac

65. General Cardiac _____
66. Cardiopulmonary arrest (resuscitation attempted) _____
67. Cardiac Cases Total _____

Trauma

68. Blunt trauma _____
69. Burns/Electric Shock _____
70. Head injury _____
71. Penetrating injury _____
72. Spinal cord injury _____
73. Trauma codes _____
74. Other (explain) _____
75. Trauma Total _____

Mechanism of injury _____

76. MVA _____
77. Stab/gunshot _____
78. Falls _____
79. Assault _____
80. Other (explain) _____
81. Trauma patient admitted to Level I trauma center _____
82. Trauma patient admitted to Level II trauma center _____

General Medical

83. Alcohol/Drug abuse _____
84. Anaphylaxis _____
85. CVA/Vascular _____
86. Dehydration/Sepsis _____
87. Diabetic _____
88. Drowning/Near drowning _____
89. Gastrointestinal problems _____
90. Heat/Cold exposure _____
91. OB/GYN problems _____
92. Poisoning _____
93. Pronouncements not resuscitated _____
94. Psychiatric problems _____
95. Respiratory problems _____
96. Seizures _____
97. Syncope _____
98. Unconscious (etiology unknown) _____
99. Weakness/Malaise _____
100. Other (explain) _____
101. Medical Total _____

MATCHING TOTALS

67, 75, 101 must = Item 8
76, 77, 78, 79, 80 must = Item 75
68, 69, 70, 71, 72, 73 74 must = Item 75

Comments:

MICU QUARTERLY REPORT—Continued

PROGRAM_____

QUARTER ENDING_____

SECTION FOUR—PROCEDURES

102. AV fistula/shunt access	_____	110. MAST inflation	_____
103. Central venous access	_____	111. Nasogastric tube insertion	_____
104. Chest decompression	_____	112. Patients cardioverted	_____
105. Esophageal obturator airway insertion	_____	113. Patients defibrillated	_____
106. Ext. cardiac pacing	_____	114. Patients participated in a prehospital research project	_____
107. Intraosseous infusion	_____	115. Tracheal intubation	_____
108. Intravenous catheter plug	_____	116. 12 lead EKG	_____
109. IV therapy initiated (number of patients)	_____		

Comments:

SECTION FIVE—PRIMARY COMMUNICATIONS WITH MEDICAL CONTROL

Enter each patient only once

117. UHF (telemetry)	_____	121. Radio failure	_____
118. VHF (HEAR)	_____	122. Other communications (explain)	_____
119. Cellular Phone	_____		
120. Telephone	_____	MATCHING TOTALS Section Five totals must = Item 8	

Comments:

SECTION SIX—PAYMENT SOURCE

Enter each patient only once

123. Medicare	_____	127. Other commercial insurance	_____
124. Medicaid	_____	128. No fault	_____
125. Blue Cross/Blue Shield	_____	129. Workman's Compensation	_____
126. Self pay	_____	130. Other (list)	_____
		MATCHING TOTALS Section Six totals must = Item 8	

Comments:

MICU QUARTERLY REPORT—Continued

PROGRAM_____

QUARTER ENDING_____

SECTION SEVEN—DESTINATIONS

Record the number of ALS patients taken to each hospital

131. Hospital name and code #	Number of patients	Hospital name and code #	Number of patients

MATCHING TOTALS
Item 131 Total must = Item 8

Comments:

MICU QUARTERLY REPORT—Continued

PROGRAM_____

QUARTER ENDING_____

SECTION EIGHT—ORIGINATION OF CALL

List incorporated municipalities and municipality codes.
Do not use subdivision names.

Record in 133 the number of dispatches (by municipality) for your program vehicles. In 134 record the number of completed ALS calls originating in each town.

132. Town	Municipality Code	133. Dispatches	134. Completed ALS calls

MATCHING TOTALS

Total of 133 must = Item 1
Total of 134 must = Item 8

Comments:

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Hospital Policy Manual

Proposed Readoption and Recodification with Amendments: N.J.A.C. 8:43I recodified as N.J.A.C. 8:33A

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 1992-406.

Submit comments by October 21, 1992 to:
John J. Gontarski, Chief
Health Systems Review
New Jersey Department of Health
Room 604
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq., as amended) requires the Department to assure that New Jersey's hospital and related health care services are of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost. To implement this public policy, Chapter 136 gave the Department of Health broad responsibilities in regulating the health care system through authorization of the Certificate of Need program.

The Department initially adopted the Policy Manual for Planning and Certificate of Need Reviews of Health Care Facilities and Services within the State of New Jersey (the Hospital Policy Manual, N.J.A.C. 8:43E) on April 21, 1977. The Department proposed the first major revisions to the existing rules in April 1985, and these revisions were published as proposed amendments to the Hospital Policy Manual for public comment purposes in the New Jersey Register on May 20, 1985. These proposed amendments were never approved for final adoption, however, as the Department undertook a study of proposed Federal limitations on reimbursement of hospital capital expenditures. This study led to the development and adoption of interim rules to govern a single hospital capital construction batch. The Capital Policy Rules (N.J.A.C. 8:43G) were approved by the HCAB in August 1986 and contained many elements of the Hospital Policy Manual. Subsequently, applications were accepted and processed for the single hospital capital construction batch. Once this capital batch process was completed, the Capital Policy Rules were repealed and the new Hospital Policy Manual (N.J.A.C. 8:43I) was proposed and adopted.

The Hospital Policy Manual has been amended only once since it became effective on March 21, 1988. Amendments were adopted on June 18, 1990 to expand the minimum and optimal occupancy rate standards within the licensed obstetrical bed category. These changes to the occupancy rate standards allowed for different occupancies in LDRP and traditional postpartum beds and for obstetric units above and below 20 beds.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:43I will expire March 21, 1993. The Department has reviewed these rules and found them reasonable, necessary and proper for the purposes for which they were originally promulgated. The chapter has been recodified to place it more appropriately within the Administrative Code, with other rules which address the Certificate of Need process.

The amendments to the Hospital Policy Manual now being proposed are a result of the enactment of the Health Care Cost Reduction Act, P.L. 1991, c.187, which became effective on July 31, 1991. Chapter 187 called for the adoption of a new State Health Plan, N.J.A.C. 8:100. Subchapter 14 of the plan, Acute Care Hospital Services, specified certain changes in the review process of acute care hospital certificates of need. Such changes now necessitate the revision of the Hospital Policy Manual in order to maintain its consistency with the State Health Plan.

These proposed amendments to the Hospital Policy Manual will achieve the following:

Change from 18 months to two years the period for which closure or inoperation of a hospital's beds, facilities or services may result in their removal from a hospital's inventory (see N.J.A.C. 8:33A-1.2(l));

Removal of the definition of "local health planning agency" and replacement with "Local Advisory Board", consistent with the Health Care Cost Reduction Act (P.L. 1991, c.187) and the recently adopted Certificate of Need Policy Manual (N.J.A.C. 8:33) (see N.J.A.C. 8:33A-1.3);

Revise the definition of "equity", "major moveable equipment" and "total project cost" consistent with the recently adopted Certificate of Need Policy Manual (N.J.A.C. 8:33) (see N.J.A.C. 8:33A-1.3);

Specify the minimum size of any newly proposed obstetrical service, and allow for the maintenance of any existing units which are currently below that size (see N.J.A.C. 8:33A-1.6);

Replace the reference to the Statewide Health Coordinating Council with State Health Planning Board (SHPB) and Health Care Administration Board (HCAB) consistent with the Health Care Cost Reduction Act (P.L. 1991, c.187) (see N.J.A.C. 8:33A-1.10(a)3);

Provide additional consideration for the continuation of operation of hospitals with less than 200 beds, where they have applied for a Certificate of Need for a necessary capital renovation project (see N.J.A.C. 8:33A-1.13(a)2);

Specify minimum occupancy rates required to be achieved by hospitals approved for necessary capital renovation projects and provide exceptions to such requirements (see N.J.A.C. 8:33A-1.13(a));

Change from 50 to 40 the percentage of residents of a service area utilizing a hospital used to determine geographic isolation of a hospital, consistent with the Hospital Inpatient Services subchapter of the State Health Plan at N.J.A.C. 8:100-14.7(d)1i (see N.J.A.C. 8:33A-1.13(b)1ii);

Add "inpatient surgical procedures" to the list of data components to be included in the data submitted with a Certificate of Need application (see N.J.A.C. 8:33A-1.15(b)6);

Add the opportunity to supply volume projections and market share statistics which are not published by the Department, upon consultation with the Department (see N.J.A.C. 8:33A-1.15(c)3);

Revise language regarding equity contributions and financing consistent with the recently adopted Certificate of Need Policy Manual (N.J.A.C. 8:33) (see N.J.A.C. 8:33A-1.16(a) and (d));

Add language to include consideration of the level of indigent care specified as a condition of a previously approved Certificate of Need when reviewing a Certificate of Need application for transfer of services from an acute care hospital (see N.J.A.C. 8:33A-1.17(c)1-2);

Eliminate certain cost data requirements for the submission of applications for the acquisition or replacement of a major moveable equipment (see N.J.A.C. 8:33A-1.18(b)2 and 3);

Eliminate the requirement for applicants to demonstrate competitive pricing with other providers when applying for expansion of outpatient clinic services (see N.J.A.C. 8:33A-1.20(b));

Provide for an exception to the area bed need requirement where a hospital proposing to relocate will reduce excess beds (see N.J.A.C. 8:33A-1.22(a)1i);

Include child day care centers and other non-direct patient care services in the category of costs which are excluded from reimbursement (see N.J.A.C. 8:33A-1.23);

Provide for the ability of the Commissioner to amend a facility's license to reduce licensed bed capacity to reflect actual utilization of that facility (see N.J.A.C. 8:33A-1.27);

Require hospitals submitting Certificate of Need applications to have a physical plant survey on file with the Department (see N.J.A.C. 8:33A-1.28); and

Establish prioritization criteria for capital project review and inclusion of the Statewide hospital capital cap in accordance with the Health Care Cost Reduction Act (see N.J.A.C. 8:33A-1.29).

A number of changes were made which intend to clarify or more precisely define terms or phraseology used in the chapter, consistent with recent legislation and with the Department's plan for more coordinated and accessible delivery of health services. These types of changes were made at: N.J.A.C. 8:33A-1.1(d)1-3, 5; 1.1(f)-(h); 1.2(j)2; 1.2(l); 1.3; 1.5(a)2; 1.10(a) and (b); 1.12(b)4; 1.13(a)ii4; 1.13(b); 1.16(e); 1.17(c)1; and 1.18(b) and (c).

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 . . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department of Health has, through the Hospital Policy Manual, implemented public policy that has been directed towards both improving the health of residents and increasing the accessibility, acceptability, continuity, and quality of services provided to them. Through these rules, hospitals and related health care facilities submitting Certificate of Need applications must meet established standards and criteria addressing all of these concerns. Through adoption of the proposed amendments, the Department will update these standards to reflect changes both in the health care system and in public policy as they are expressed in the Acute Care Hospital Services subchapter of the State Health Plan. As such, these proposed amendments also implement the statutory requirements of P.L. 1991, c.187.

Economic Impact

These amendments are proposed to implement the provisions of the State Health Plan, as expressed in the Acute Care Hospital Services chapter (see N.J.A.C. 8:100-14, Hospital Inpatient Services, 24 N.J.R. 1164(a), 24 N.J.R. 2561(a)) which provide for the protection and promotion of the health of the residents of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services. Inasmuch as these are the goals of the State Health Plan and, by extension, the Hospital Policy Manual, it is not anticipated that the proposed amendments will impose any additional economic burden on hospitals, consumers, payers, or on any Department of State government. Rather, the amendments are intended to provide for the efficient utilization of inpatient beds, thus reducing unnecessary capital and operational expenditures.

Approximately eight percent of all reimbursement to hospitals goes to pay for capital projects. As the crisis in health care costs deepens, it is essential that these capital costs be controlled and that a careful planning and priority setting process be implemented to decide where and how this capital can be most wisely allocated. The Hospital Policy Manual is the principal body of rules used in reviewing certificate of need applications for hospital capital projects. It provides the Department with an essential means to objectively assess and evaluate the need for proposed new capital projects as well as their impact on overall hospital expenditures.

These rules, and the proposed amendments, implement the provisions of the State Health Plan, as expressed in the Acute Care Hospital Services chapter (citation), which provide for the protection and promotion of the health of the residents of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services. Inasmuch as these are the goals of the State Health Plan and, by extension, the Hospital Policy Manual, it is not anticipated that the proposed amendments will impose any additional economic burden on hospitals, consumers, payers, or on any Department of State government. Rather, these rules, and the proposed amendments, are intended to provide for the efficient utilization of inpatient beds, thus reducing unnecessary capital and operating expenditures.

Regulatory Flexibility Statement

The Hospital Policy Manual, and the proposed amendments, affect only acute general hospitals which typically employ well over 100 employees. Therefore, these facilities do not fall into the category of small businesses, as defined in N.J.S.A. 52:14B-16 et seq., The New Jersey Regulatory Flexibility Act, and a Regulatory Flexibility Analysis is not required.

The rules are necessary to preserve the public health by ensuring that capital expenditures are made only for needed health care facilities and resources.

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

CHAPTER [8:43I] **8:33A**
CERTIFICATE OF NEED: HOSPITAL POLICY MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

[8:43I]**8:33A**-1.1 Purpose

(a) The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq. as amended) **and the Health Care Cost Reduction Act, P.L. 1991, c.187,** established as public policy of the State of New Jersey "that hospital 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." (N.J.S.A. 26:2H-1)

(b) To implement this policy, P.L. 1971, [Ch.]**c.**136 (N.J.S.A. 26:2H-1 et seq.) **and P.L. 1991, c.187** [has] **have** given the State Department of Health "the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services, and all public and private institutions, whether State, county, municipal, incorporated and not incorporated, serving principally as boarding, nursing or maternity homes or other homes for the sheltered care of adult persons or as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity, or physical condition(s)." [(N.J.S.A. 26:2H-1 as amended)]

(c) No health care facility shall be constructed or expanded, and no new health care services shall be instituted except upon application for and receipt of a Certificate of Need. (N.J.S.A. 26:2H-7 as amended **and P.L. 1991, c.187**)

(d) The Department of Health has a major responsibility for the promotion of quality health services rendered in an efficient and economical manner and available to all residents of the State. To ensure significant progress toward the achievement of this policy goal, planning and Certificate of Need activities will be directed toward the provision of facilities and services which:

1. Improve the health of residents of a [health] **hospital** service area;
2. Increase the accessibility (including overcoming **economic,** geographic, architectural and transportation barriers), acceptability, continuity and quality of health services provided them;
3. Restrain **unnecessary** increases in the cost of providing the health services;
4. Prevent unnecessary duplication of health resources and encourage the development of cost effective alternative delivery modes [(P.L. 93-641, Section 1513(a)),]; and
5. Reduce financial barriers to care.

(e) (No change.)

(f) The general policies presented in this chapter apply to all **acute care** facility and service planning within the State. In addition to these general policies, specific planning and review standards and guidelines are presented in this chapter for broad categories of health care facilities and services, as well as for specialized types of health care which shall be made available on a regionalized basis.

(g) This chapter is to be distinguished from the ["Guidelines and Criteria for Submission of Applications for Certificate of Need"] **"Certificate of Need Application and Review Process"** [published] **promulgated** by the New Jersey State Department of Health (N.J.A.C. 8:33[-1 et seq.]) which identifies the procedures, rules, and regulations which carry out the Certificate of Need program pursuant to N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), ["Public Law 92-603 (Section 1122 of the Social Security Act)] **and P.L. 1991, c.187, the Health Care Cost Reduction Act.**

(h) This chapter presents substantive criteria for the planning of health care facilities and services as provided by **acute care** hospitals within the State. These policies, standards and guidelines shall be applied in the review of proposed actions requiring Certificate of Need authorization.

[8:43I]**8:33A** General policies

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

(c) Each Certificate of Need shall comply with the State Health Plan and all appropriate health planning and rate setting [regulations] **rules** adopted by the Department of Health (with approval of the Health Care Administrative Board) and should also be in compliance with the adopted plan(s) of the [local health planning agency] **Local Advisory Board (LAB), developed in accordance with the Health Care Cost Reduction Act,** in which the action is proposed.

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

(g) The Department of Health encourages planning by hospitals which promotes:

1. Actions consistent with the New Jersey State Health Plan and State Department of Health policies and [regulations] **rules**;

2. Actions consistent with the goals and objectives of the plan of the [local health planning agency] **LAB** within the service area in which the action is proposed.

3.-5. (No change.)

6. Reductions in environmental and occupational **accidents,** illness and disease.

(h) (No change.)

(i) In making determinations on applications for Certificate of Need approval, there shall be taken into consideration the availability of facilities or services which may serve as alternatives or substitutes, the need for special equipment and services in the area, the possible economies and improvement in services to be anticipated from the operation of joint central services, the adequacy of financial resources and sources of present and future revenues, the availability of sufficient manpower in the several professional disciplines, and such other factors as may be established by regulation. (see N.J.S.A. 26:2H-8 **as amended by the Health Care Cost Reduction Act).**

(j) The Department of Health shall give preference to applicants which:

1. (No change.)

2. [Document the accessibility of] **Make** services **available** to persons who are unable to pay; and

3. Propose mergers, consolidations, or other joint arrangements, or closure of underutilized and unneeded [inpatient] services and document quantifiable cost savings in future years resulting from such actions.

(k) (No change.)

(l) If a hospital has closed, ceased or not maintained operation of any of its beds, facilities, or services for [a period of eighteen months or more] **any consecutive two year period,** these beds [will]**, facilities or services may** be removed from the inventory of the facility and a certificate of need shall be required to reopen such beds, facilities, or services.

(m) All hospitals [must] **shall** report **to the Department annually** any transfer of funds from the general hospital to affiliated or subsidiary corporations [on an annual basis to the Department].

[8:43I]**8:33A**-1.3 Definitions

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

. . .

"Construction" means the erection, building, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including [its] **fixed** equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

. . .

"Equity" means a voluntary non-operating **liquid** asset contribution which will reduce the total size of the debt. **Equity may include cash, donations, and net projected cash from fundraising.**

. . .

["Local health planning agency means an agency which performs planning pertaining to health care facilities and services which are located in or serving a specific geographical area designated by the Commissioner] **"Local Advisory Board" means an independent, private non-profit corporation which is not a health care facility, a subsidiary thereof, or an affiliated corporation of a health care facility, that is designated by the Commissioner of the Department of Health to serve as the regional health planning agency for a designated region in the State.**

"Major moveable equipment" means equipment [which generally is not attached to the physical plant of a facility and has, for depreciation purposes, a predetermined life]**, including installation and renovation, which is the subject of a health planning rule or which is proposed by the Commissioner to be the subject of a health planning rule. For purposes of this chapter, major moveable equipment includes all equipment which has received pre-marketing approval from the U.S. Food and Drug Administration, unless the Health Care Administration Board explicitly excludes a specific piece of equipment or a specific technology from the classification of major moveable equipment. Examples of major moveable equipment are identified at Exhibit 3 of the appendix to N.J.A.C. 8:33.**

"Medically underserved groups" **means segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population, as adjusted to account for their need for such services. This** means all population groups including racial, ethnic, and sexual minorities, migrant workers, the handicapped, Medicaid recipients, individuals and families with incomes below 80 percent of the median income for either the state or the Standard Metropolitan Statistical Area in which they reside, and other identifiable segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services.

"Modernization/**renovation**" means the alteration, expansion, major repair (to the extent permitted by rules), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment or existing buildings.

"Outpatient surgery" means a [very] minor surgical procedure appropriately performed in private practice settings, or in hospital outpatient departments, on patients who do not require a licensed free standing ambulatory surgery facility or same-day surgery (SDS) status in a hospital. Anesthesia is generally of a local type. In a hospital setting, outpatient surgery is counted as an outpatient visit.

. . .

"Total project cost" means all costs associated with the proposed project, including all capital costs, carrying and financing costs, **net** interest on borrowings during construction, and [lease/rental agreements] **debt service reserve fund.** Total project cost excludes any contingency amounts.

[8:43I]**8:33A**-1.4 (No change in text.)

[8:43I]**8:33A**-1.5 Standards regarding minimum size; acute general hospitals

(a) The minimum size for an acute general hospital shall be 200 beds. This standard shall not apply to:

1. (No change.)

2. Facilities of less than 200 beds proposing to expand to at least 200 beds, where the need for expansion is [justified] **consistent with the State Health Plan;**

3. (No change.)

4. Facilities with less than 200 beds that are granted exceptions according to the criteria identified at N.J.A.C. [8:43I]**8:33A**-1.13(a)2 and 1.13(b)1-3.

[8:43I]**8:33A**-1.6 Minimum size of obstetrics units

(a) The minimum size of an obstetric service shall be 20 beds[, unless waivers are granted pursuant to N.J.A.C. 8:33C-1.1 et seq. "Certificate of Need Designation of Perinatal Services", which applies to Level 1 units only in those instances dictated by severe geographic isolation of a population, demonstrated medical necessity, or cost effectiveness. In no case shall the minimum for obstetric beds fall below 10 beds]. **Exceptions will be considered where:**

1. The distance to an alternate obstetric unit exceeds 15 miles; or

2. At the proposed lower capacity, occupancy will exceed minimum occupancy standards identified at N.J.A.C. 8:33A-1.11,

and the applicant demonstrates that an appropriate level of care will be provided in a cost-effective manner.

(b) In no case shall the minimum size of an obstetric unit fall below 10 beds.

Recodify existing 8:43I-1.8 and 1.9 as **8:33A-1.8 and 1.9** (No change in text.)

[8:43I]**8:33A**-1.10 Bed need

(a) Any application for establishment of or expansion of licensed beds must demonstrate need for these beds in the proposed service area based upon needs assessment [methodology identified in] **methodologies represented in:**

1. Adopted [Department of Health] **health** planning [regulations] **rules** governing regionalization of the service(s); or

2. The State Health Plan, and amendments thereto; or

3. Planning documents as developed by the Department and the [Statewide Health Coordinating Council] **State Health Planning Board (SHPB) and the Health Care Administration Board (HCAB).**

(b) Where the applicant is proposing beds to support specialized services for which there are no methodologies referenced in the documents cited at [N.J.A.C. 8:43I-1.10](a) **above**, the need for beds shall be documented by an analysis of empirical evidence which demonstrates that beds for a new service are cost effective, beneficial to patients, [accessible, of high quality] **will measureably improve accessibility and quality of care,** and could not be provided in a less costly setting. In addition, an applicant shall provide evidence establishing the need for beds by documenting [estimates of]:.

1.-4. (No change.)

[8:43I]**8:33A**-1.11 Standards regarding occupancy rates

(a) (No change.)

(b) The level of excess beds within a hospital shall be that number of licensed beds, which, when deleted from a service, will allow a hospital to achieve minimum occupancy levels as identified in (a) above, for a period two years beyond the projected completion date of the project, defined as the "target year". Utilization levels for the target year shall be based on a projection method defined at N.J.A.C. [8:43I]**8:33A**-1.15(b), applied forward to the target year.

(c) (No change.)

[8:43I]**8:33A**-1.12 Standards regarding addition or replacement of beds

(a) Certificate of Need applications may be approved for the replacement or addition of licensed bed capacity where the applicant has demonstrated compliance with **the most recently adopted State Health Plan and** all of the following:

1. In the previous 18 months, the applicant hospital must exceed both minimum occupancy rates for all existing services as well as optimal occupancy rates for the service(s) being proposed for expansion and demonstrate that it will achieve an occupancy rate for the service(s) being expanded of no less than 10 percentage points higher than the minimum occupancy rates established for that service identified at N.J.A.C. [8:43I]**8:33A**-1.11(a) for the year which is two years beyond project completion.

2. For projects proposing the replacement of existing acute care beds, the applicant hospital must exceed minimal occupancy rates identified at N.J.A.C. [8:43I]**8:33A**-1.11(a) in all existing services, and demonstrate that it will achieve an occupancy rate in service(s) being replaced of no less than 10 percentage points higher than the minimum occupancy rates identified at N.J.A.C. [8:43I]**8:33A**-1.11(a) for two years beyond project completion.

3. The hospital must demonstrate an appropriate average length of stay in the service for which beds are being renovated or expanded.

4. For bed additions, where there are acute care hospitals within the applicant's service area which, during the 18 months preceeding the filing of the Certificate of Need application failed to meet the minimum occupancy levels identified at N.J.A.C. [8:43I]**8:33A**-1.11 within the service type(s) for which expansion is being requested, the applicant must provide written evidence that the Board of Directors have undertaken good faith efforts to develop mergers, joint ventures, or other shared service arrangements with the underutilized facility(ies). The applicant must document these efforts, identify the status of these negotiations at the time the application is filed, describe the impact of agreements made between the boards of hospitals on the proposed project, and, where agreements have not been reached, describe in detail the obstacles preventing the formalization of agreements. Moreover, where an applicant has failed to enter into good faith efforts to achieve agreements of the type referred to in this chapter, a detailed explanation authorized by the board of the applicant institution must accompany the application.

(b) Exceptions to (a)1 and (a)2 above may be considered where:

1.-3. (No change.)

4. The applicant demonstrates to the satisfaction of the Department of Health that a reduction in beds in order to meet minimum occupancy standards will [produce no] **not measurably reduce** capital or operating costs [savings].

[8:43I]**8:33A**-1.13 Community need standards

(a) A hospital may be approved for necessary capital renovation projects except where it fails to demonstrate that it meets the following standards:

1. Utilization Standards:

i. [Overall] **Minimum** occupancy rates [of greater than 75 percent] **in each licensed bed category as specified at N.J.A.C. 8:33A-1.11(a)** at the conclusion of the project[.]**; and**

ii. Trends in volume (admissions, ALOS, and/or patient days) which indicate occupancy will continue to be above [75 percent of total] **minimum occupancy of** remaining licensed beds **in each licensed bed category** for a period of at least two years beyond completion of the project.

2. Efficient size: A hospital must maintain at least 200 beds at the conclusion of the project while maintaining an overall occupancy rate of at least 75 percent. Where it fails to meet this standard, capital projects may only be approved where the hospital is efficiently operated, geographically isolated, [or] merged into a multi-hospital system in its area**, or there is a demonstrated need for continued operation.** These criteria are further defined in [N.J.A.C. 8:43I-1.13](b) **below.**

3. (No change.)

4. Excess bed areas: Where the total number of excess beds as determined under N.J.A.C. [8:43I]**8:33A**-1.11(b) in [an area] **a county** exceeds 75 percent of the licensed bed capacity of an applicant hospital at the time of application no approval may be granted unless the applicant qualifies under one or more of the exception conditions outlined in (b) below. As an example, in County A, the Department determined that there is an excess of 300 beds. Hospital A with 200 beds does not meet the standard, as 75 percent of 200 is 150, and the excess of 300 is greater than 150. Hospital B, with 440 beds, meets the standard as 75 percent of 440 is 330, which exceeds the county bed excess. The intent is to examine need for the institution as a whole in areas of substantial bed excess prior to investment of major new capital obligation.

(b) [The following criteria will be utilized in determining exceptions] **Exceptions** to [N.J.A.C. 8:43I-1.13](a)2 through 4 **above will be granted to applicants meeting any of the following:**

1. The hospital is geographically isolated, when each of the following apply:

i. (No change.)

ii. Where at least [50]**40** percent of the residents of the service area utilize the hospital; or

2.-3. (No change.)

4. An exception to N.J.A.C. [8:43I]**8:33A**-1.13 may be considered by the Commissioner where the project scope is limited to correction of conditions constituting an imminent hazard to the health and safety of patients and staff, as determined by the Department.

(c) (No change.)

[8:43I]**8:33A**-1.14 Project component need

(a) In addition to demonstrating continued community need, as defined in N.J.A.C. [8:43I]**8:33A**-1.13, all hospitals must demonstrate the need for each component part of the proposed project. A component means any element of the overall project that is associated with the modernization or renovation, expansion, or new

construction of an identifiable physical plant area, such as a nursing unit, ancillary department, administrative area, or any structural element of the facility.

(b) (No change.)

(c) Where a component is the subject of an approved planning regulation **or the approved State Health Plan,** that component must satisfy all applicable criteria of the specific regulation(s).

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

(f) Any component(s) of a certificate of need project not demonstrated to be needed as determined by the Department, based on the criteria in this chapter, may be denied. [(See N.J.A.C. 8:33-3.6(g).)]

[8:43I]**8:33A**-1.15 Volume projections

(a) (No change.)

(b) Historical hospital volume data must incorporate the last complete three calendar years preceding the date of filing the Certificate of Need application, as well as year-to-date data for the current year, and at a minimum include the following data components:

1.-5. (No change.)

6. Inpatient surgical procedures;

Recodify 6.-9. as **7.-10.** (No change in text.)

(c) Each application [must] **shall** provide an estimate of projected volume in all categories as listed in (b) above for each year inclusive from the time of application to that year which is two complete calendar years beyond estimated project completion. This estimate must be based on historical data [defined] **delineated** in (b) above, using at a minimum, a straight-line projection and one or more of the following methodologies:

1.-2. (No change.)

3. Official county-based-volume projections and market share statistics published by **or acceptable to** the Department, if available;

4. (No change.)

(d) (No change.)

[8:43I]**8:33A**-1.16 Standards regarding equity contributions and financing

(a) Financing of hospital construction, modernization/renovation, or [major moveable] equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including **all capital costs,** all financing and carrying charges**, net interest on borrowing during construction, and debt service reserve fund**. [Where a hospital demonstrates financial hardship to the satisfaction of the Department, this equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals.]

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

(d) All applicants [must] **shall** demonstrate the financial feasibility of their projects. An appropriate financial feasibility study [must] **shall** be submitted for projects in excess of [the hospital construction/modernization project batching threshold identified at N.J.A.C. 8:33-1.5(d)] **$15 million** at the time of application. The study must test the feasibility of the project under reimbursement rules in effect at the time of the application. A project will be determined financially feasible where the applicant can demonstrate a net positive income for the calendar or fiscal years which are two and five years beyond project completion. **Financial projections shall be provided for the first five full years after project completion.**

(e) Capital costs associated with approved Certificate of Need applications will not be guaranteed [full] future reimbursement.

[8:43I]**8:33A**-1.17 Standards regarding the transfer of services from an acute care hospital

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

(c) The facility or corporation receiving the new service must comply with the following criteria and conditions:

1. Any service transferred in whole must provide indigent care at the same level as provided for that same service in the two calendar years preceding the **submission of the** application or at a level commensurate with other hospitals in the area over the preceding two calendar years, **or at a level specified as a condition of the certificate of need at the time of issuance,** whichever is greater.

2. Any service transferred in part must, together with the applicant hospital, provide in the aggregate the same level of indigent care as provided for that same service in the two years preceding the application or at a level commensurate with other hospitals in the area over the preceding two years, **or at a level specified as a condition of the certificate of need at the time of issuance,** whichever is greater.

3.-4. (No change.)

[8:43I]**8:33A**-1.18 Standards regarding acquisition or replacement of major moveable equipment

(a) Where a certificate of need is required for the acquisition or replacement of major moveable equipment, it will not be awarded unless the applicant has demonstrated compliance with all applicable Departmental [regulations] **rules** for the proposed service. [For equipment categories not governed by existing Departmental regulations, the following criteria shall apply:

1. Projects involving addition of new equipment shall demonstrate need through:

i. Documenting improved patient care as a result of such equipment; and

ii. Documenting adequate patient volume for cost-effectiveness and, if appropriate, operational cost savings.

iii. Where appropriate, documenting cooperative arrangements with area hospitals and other providers that will avoid duplication of services and ensure access to residents of the service area; and

iv. Documenting access to new equipment by persons who are unable to pay.

2. Projects involving the replacement of existing major movable equipment shall demonstrate need through:

i. Documenting historical operating volumes to warrant continued use of such equipment; and

ii. Documenting that the existing equipment has surpassed its estimated useful life expectancy; and

iii. Documenting operational inefficiencies of existing equipment through excessive downtime; and

iv. Documenting access to existing equipment by persons who are unable to pay.

v. Documenting compliance with Department regulations in effect at the time the application is accepted for processing.]

(b) Where a Certificate of Need is required for the acquisition or replacement of major movable equipment it will not be awarded unless the applicant has:

1. (No change.)

[2. Documented efficient operation of the area in which the proposed equipment is utilized through maintaining documentation (through most recently available financial reports submitted to the Department) that the costs for patients on whom the equipment is predominantly utilized are not above statewide standards.]

[3.]**2.** Where method of acquisition is through **an operating** lease arrangement, it must be demonstrated that the proposed lease arrangement is more cost-effective than purchase, giving consideration to maintenance costs, warranties, and other related costs, as well as to the imputed value of a 15 percent equity contribution.

[(c) Exceptions to (b)2 above can be made where the applicant submits an acceptable plan which demonstrates that efficiencies will result in costs which are consistent with statewide standards or will enable the hospital to maintain an overall and specific cost center incentive position.]

[(d)](**c**) Equity contributions to the financing of the project must meet minimum requirements identified at N.J.A.C. [8:43I] **8:33A**-1.16(a). In projects proposing both acquisition of major moveable equipment and modernization/renovation, equity contributions must be pro-rated [equally] between equipment costs and costs of the remainder of the project.

[8:43I]**8:33A**-1.19 (No change in text.)

[8:43I]**8:33A**-1.20 Outpatient clinics

[(a)] Applicants for any bed-related Certificate of Need must demonstrate the availability of follow-up care for all discharged

patients and all residents of the service area either through direct provision of such services by the hospital or its physicians, or through formal written linkages with other health care providers in the area.

[(b) An applicant for expanded outpatient clinic services shall demonstrate competitive pricing with all other providers of similar services in the area, and shall demonstrate that there will not be a negative economic impact on the health care system.]

[8:43I]**8:33A**-1.21 (No change in text.)

[8:43I]**8:33A**-1.22 Standards regarding location of hospitals

(a) Any Certificate of Need application proposing the relocation, major new construction at an existing hospital by a new corporate entity, or new construction of an acute care hospital must meet all criteria in this chapter and must specifically address the following:

1. No Certificate of Need shall be awarded to a hospital proposing to relocate, unless it demonstrates compliance with the following criteria:

i. There must be a bed need in the area of proposed location for all services to be relocated**, or a reduction of an appropriate level of excess beds within the relocated facility will be implemented upon relocation**;

ii.-v. (No change.)

2. Applicants proposing construction of a new hospital [must] **shall** demonstrate compliance with all of the following:

i.-ii. (No change.)

iii. All hospitals located within a 25-mile radius of the proposed location shall have occupancy levels which exceed optimal levels as defined in N.J.A.C. [8:43I]**8:33A**-1.11 for the previous two calendar years;

iv. (No change.)

[8:43I]**8:33A**-1.23 Standards regarding costs of parking garages, [and] medical arts buildings**, child day care centers or other non-direct patient care services/ construction**

(a) No Certificate of Need is required for a parking garage or a medical arts building**, child day care center or other non-direct patient care services/construction.**

(b) The costs of purchase, construction, renovation, expansion and operation of the proposed parking garage shall be fully underwritten by charges to users, as the costs will not be financed, directly or indirectly, in whole or in part, by charges to patients. An exception may be made for components of cost which are reasonable and necessary and conform to the reimbursement definitions and procedures for employee benefits related to patient care set forth at N.J.A.C. [8:31B-4.64(h)] **8:31B**.

(c) The costs of the purchase, construction, renovation, expansion and operation of a proposed medical arts building **or other non-direct patient care services** shall be wholly underwritten by charges to users. An exception can be made when documentation is provided and the Department determines that it is cost effective to locate hospital services in the building.

(d) The costs of purchase, construction, renovation, expansion and operation of a proposed child day care center shall be fully underwritten by charges to users, with no costs financed, directly or indirectly, in whole or in part, by charges to patients. An exception may be made for components of cost which are reasonable and necessary and conform to the reimbursement definitions and procedures for employee benefits related to patient care set forth in N.J.A.C. 8:31B.

[8:43I]**8:33A**-1.24 Standards regarding accessibility

The applicant must demonstrate compliance with all accessibility criteria as identified in N.J.A.C. 8:33[-2.1 "Certificate of Need Application and Review Process."]

[8:43I]**8:33A**-1.25 Standards regarding transfers of ownership of hospitals

(a) Where a Certificate of Need is required for a transfer of ownership of a licensed New Jersey hospital through merger, acquisition, or other joint arrangement, the following must be demonstrated in the application:

1. (No change.)

2. A reduction of all excess bed capacity, as determined under standard N.J.A.C. [8:43I]**8:33A**-1.11, will result for all participating hospitals through decertification or conversion of acute care beds; and

3. Duplication of services will be eliminated where appropriate[.]**; and**

4. Compliance with all other appropriate criteria contained in [N.J.A.C. 8:43I] **this chapter**.

[8:43I]**8:33A**-1.26 Standards regarding relocation or closure of services

A Certificate of Need may be awarded for the relocation or closure of a service except where the applicant fails to demonstrate compliance with [N.J.A.C. 8:33-2.1(a)5, Access Criteria for submission of certificate of need applications] **Specific Criteria for Review contained in N.J.A.C. 8:33,** and other applicable requirements of these rules.

[8:43I]**8:33A-1.27 Decertification of unused beds**

(a) Pursuant to the Health Care Cost Reduction Act (N.J.S.A. 26:2H-38d), the Commissioner may amend a facility's license to reduce that facility's licensed bed capacity to reflect actual utilization at the facility. This authority may be exercised if the Commissioner determines that 10 or more licensed beds in the health care facility have not been used for at least the last two succeeding years. For purposes of this rule, the Commissioner may review hospital utilization from January 1, 1990.

(b) In determining if licensed beds have been unused, the Commissioner may employ the minimum occupancy rates identified at N.J.A.C. 8:33A-1.11(a), and reduce licensed beds to a number which would permit conformance with these minimum occupancy rates.

8:33A-1.28 Hospital physical plant survey

(a) Certificate of Need applications shall not be accepted by the Department from any hospital which is subject to these rules, unless such hospital has filed a complete physical plant survey or update with the Department at least 60 days prior to filing the application.

(b) Each hospital that is approved (either through the Certificate of Need process or through construction plans review) for any modernization, renovation, construction or expansion project shall provide an update of the hospital physical plant survey to the Division of Health Facilities Evaluation and Licensing. This update shall be provided in a format prescribed by the Division of Health Facilities Evaluation and Licensing and shall be submitted within 60 days of project completion.

8:33A-1.29 Hospital capital cap and review process

(a) Certificate of Need applications for hospital capital construction projects that would be financed by the New Jersey Health Care Facilities Financing Authority shall be subject to the Statewide cap of $225,000,000 per year. Review of these projects shall follow N.J.A.C. 8:33-4.9(e) of the "Certificate of Need Application and Review Process."

(b) The following criteria shall be used in identifying priority projects in the review of certificates of need subject to the Statewide cap. Those certificate of need projects proposing a capital expenditure where the following factors are demonstrated within the application shall be identified as having priority for approval:

1. Community need: A hospital will be deemed to have exhibited priority community need when it has the following characteristics:

i. Occupancy in excess of 90 percent in all services during the last calendar year preceding the application. Services proposed for closure in the application may be excepted;

ii. The county in which the hospital is located has been determined to have a bed need; and

iii. The county's and hospital's rates of inpatient admission and length of stay have been demonstrated to be appropriate and not likely to decline as a result of changing medical practice or reimbursement policy;

2. Project need:

i. The project is substantially directed to correcting Life Safety Code A or B level deficiencies, or other conditions posing imminent peril to health and safety of patients and staff; and

ii. The hospital has not implemented a major modernization or construction program in the affected areas of the project for a period in excess of 10 years. In addition, the overall average age of the physical plant exceeds 10 years based on the Department's calculations using generally accepted accounting principles; and

3. Project goals: The certificate of need application has been submitted in order to address a priority or a specific recommendation that is identified in the State Health Plan, and is determined by the Department to be essential to acheiving that goal. These in specific include hospital closure or merger applications that demonstrate significant cost savings to the health care system, or projects implementing ambulatory care initiatives that improve health care delivery patterns and reduce system expenditures.

(c) Projects shall demonstrate at least one of the prioritization criteria in (b) above. The strength of the demonstration and the number of prioritization factors demonstrated will be considered in the ranking of projects. The projects will also be prioritized for affordability. Indicators of affordability are the total project cost, cost per adjusted admission, and the institution's ability to obtain low cost financing.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

WATER SUPPLY ELEMENT

Notice of Request for Informal Input
Well Construction Regulations
Interested Party Review

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 58:4A-4.1 et seq., 58:11-23 et seq. and 58:12A-1 et seq.
DEPE Docket Number: 39-92-08.

Take notice that the New Jersey Department of Environmental Protection and Energy is contemplating the adoption of comprehensive rules for the permitting of well drilling activities; the licensing of well drillers; establishing of technical requirements, standards and procedures for the installation and construction of all wells; and setting forth the technical requirements and standards for the decommissioning or sealing of all wells.

The proposed new rules would be the first comprehensive regulations governing well construction and will clarify existing rules for the decommissioning or sealing of wells.

The Department is seeking public comment from interested parties on the comprehensive rules prior to formal proposal and adoption. The full text of the document is available for review and comment by writing to:

Department of Environmental Protection and Energy
Water Supply Element
Bureau of Water Allocation
CN 426
Trenton, NJ 08625

Submit written comments by December 18, 1992 to:

Richard J. McManus
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, NJ 08625-0402

(b)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Notice of Public Hearing
Readoption of Underground Storage Tank Rules
Proposed Readoption: N.J.A.C. 7:14B

Take notice that on September 8, 1992 the New Jersey Department of Environmental Protection and Energy (NJDEPE) proposed the readoption of N.J.A.C. 7:14B, the rules implementing N.J.S.A. 58:10A-21 et seq., the Underground Storage of Hazardous Substance Act, in the New Jersey Register at 24 N.J.R. 2975(a). The proposed readoption is the Department's response to the scheduled expiration of N.J.A.C. 7:14B on December 21, 1992 pursuant to the provisions of Executive Order No. 66(1978). The Department proposes to readopt these rules without change.

A public hearing has been scheduled to allow for direct public involvement and comment on this proposal. The **public hearing** will be held in Trenton in the hearing room on the first floor of the New Jersey Department of Environmental Protection and Energy Offices, 401 East State Street, Trenton, New Jersey. The hearing is scheduled for Wednesday, September 30, 1992 and will begin at 9:00 A.M.

The Department will accept written comments on the proposed readoption until October 8, 1992. Comments should be addressed to:

New Jersey Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

(c)

DIVISION OF SOLID WASTE MANAGEMENT

Transportation

Proposed Amendments: N.J.A.C. 7:26-2.11, 2.13 and 6.2; 14:3-10.15
Proposed New Rules: N.J.A.C. 7:26-2B.9, 2B.10 and 6.8; 14:11-7.10

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1E-6, 13:1E-23, and 48:13-1 et seq.
DEPE Docket Number: 37-92-08.
Proposal Number: PRN 1992-423.

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

Tuesday, October 20, 1992 at 1:00 P.M.
NJDEPE Public Hearing Room
401 East State Street
First Floor East Wing
Trenton, New Jersey

Submit written comments by October 21, 1992 to:

Richard J. McManus, Director
NJDEPE Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) adopted the Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6.5 et seq.) on December 6, 1982. These rules, as amended, designate specific solid waste facilities for disposal of solid waste generated in specific municipalities for each solid waste district. Upon initial promulgation, questions arose concerning the origin of the solid waste processed through transfer stations. On June 7, 1983, the DEP issued a policy concerning solid waste flows into and out of transfer stations. This policy stated that transfer stations may accept solid waste from various origins as long as the solid waste, or a similar amount and type, is ultimately disposed of at the facility designated in the Interdistrict and Intradistrict Waste Flow Rules to service the geographic area from which the solid waste was generated.

The policy further stated that under no circumstances would a transfer station be considered as the origin of the solid waste leaving it.

Confusion continues to exist in the regulated community regarding the handling of solid waste between pick up in the municipality and the delivery of the waste to the district designated facility and the handling of solid waste from outside the State. Therefore, the Department of Environmental Protection and Energy (DEPE), the successor agency to the DEP and BPU, is proposing these amendments and new rules which will formally codify historical policy positions taken in this area and further expand those positions to meet current demands of both enforcement agencies and the solid waste industry. As identified in N.J.A.C. 7:26-6, solid waste in New Jersey continues to be directed from identified municipalities to specified district designated facilities whether the facility is a transfer station, landfill or resource recovery facility, prior to out-of-State disposal. As stated in earlier rule proposals, the basis for the directions, in part, is to know where waste is being transported and ultimately disposed and to maintain records regarding the amount of waste being generated in each district. This fundamental information serves as the basis for county and Statewide solid waste planning in New Jersey and is critical for facility siting and project sizing. In addition, the waste flow rules ensure that a reliable source of solid waste will be available for delivery to a new facility which is pivotal in securing project financing and in satisfying the economic commitments associated with operating solid waste facilities.

Despite the basic importance of waste flow, the Department must also balance countervailing interests of meeting statutorily mandated recycling goals and waste reduction. The Department continues to recognize that there are permitted private transfer stations and materials recovery facilities that collect solid waste and remove recyclables from the waste stream that have been in existence since before the establishment of the waste flow rules and which are not specifically directed a waste flow pursuant to N.J.A.C. 7:26-6. The Department, through these proposed amendments and new rules, is attempting to balance the existing structure of the waste flow rules and the enforceability of same with the benefits of continued operation of certain transfer stations and materials recovery facilities which serve a valid public purpose in performing recycling functions consistent with Statewide goals and objectives. Therefore, these amendments and new rules establish procedures for the handling of solid waste after pick up in a municipality and prior to taking it to the district designated facility and the handling of out-of-State solid waste processed at New Jersey transfer stations and materials recovery facilities.

The proposed new rule formalizes and clarifies the 1983 policy concerning waste flows into and out of both transfer stations and materials recovery facilities which are not specifically provided with waste flow to their facility in the department's Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6). It also establishes recordkeeping and reporting requirements to ensure compliance with this rule. Specifically, the rule proposes that any transfer station or materials recovery facility that accepts greater than 31,200 tons of solid waste annually must install a scale, and that daily records must be maintained which designate the origin of waste, the amount and type of waste from each point of origin, the amount of recyclables removed from the waste stream and the destination of the waste to be disposed of. Monthly reports including this information must be submitted to the Department. The requirement that transfer stations and materials recovery facilities account for all waste each month gives the Department and districts with designated facilities certainty in tracking waste and in ensuring the integrity of the waste flow rules which, in turn, are intended to ensure that the solid waste facilities receive quantities of solid waste sufficient for financially viable operation.

Finally, the rules require that residual wastes be returned to the state or county of origin proportionate to the amount and type of waste processed from that point of origin. Since removal of recyclables from a solid waste stream does not alter the makeup of the solid waste type, the solid waste remaining after processing at a transfer station is the same type as prior to processing. The act of processing solid waste, therefore, does not change the origin of the waste. The transfer station, therefore, is not the generator of the waste stream.

The proposed rules also provide an alternative for transfer stations and materials recovery facilities to provide monetary payment to more remote disposal facilities, instead of solid waste, in an amount proportionate to the amount of waste which was collected from the geographic area serviced by the disposal facility. This provision, allowing transfer stations and materials recovery facilities to send an in-lieu of payment to disposal facilities rather than waste, will provide greater flexibility to transfer stations and materials recovery facilities, reduce transportation costs and protect the financial interests of disposal facilities and their ratepayers by providing for payments which allow for the same level of fixed costs recovery as would have otherwise occurred. Materials recovery activity will be encouraged because the need to transport residual waste back to a remote disposal facility will be eliminated so long as appropriate payment is made by the transfer station or materials recovery facility. Finally, in order to provide disposal facilities with flexibility in the application of the in-lieu of payment provision where its use would not be beneficial, exemption and waiver provisions have been included where a designated disposal facility petitions the Department and can demonstrate compelling economic or environmental grounds to justify the granting of the exemption or waiver.

Finally, an amendment seeks to clarify existing operational requirements provisions at N.J.A.C. 7:26-2.11(b)15 with respect to the designed handling, storage, processing and disposal capacity of all solid waste facilities. More specifically, the amendment clarifies the existing rules by indicating that the ton per day operational maximum of a facility's solid waste facility permit or other permit certificate is inclusive of all solid waste received at the facility, as well as all tonnages of source separated recyclables received at the facility.

Social Impact

The proposed amendments and new rules will result in a positive social impact. The public will benefit as a result of the extended regulatory oversight of solid waste flows entering and leaving transfer stations and materials recovery facilities. Recycling activities will be encouraged through the opportunity to eliminate transportation of residual waste from transfer stations and materials recovery facilities to specific disposal facilities. Increased recordkeeping will assure that wastes will be disposed of in the county or state of origin, thereby preserving the integrity of individual district solid waste management plans.

Economic Impact

The proposed amendments and new rules will clarify departmental policy that has existed since 1983. The requirement to utilize scales at transfer stations receiving greater than 31,200 tons of mixed solid waste annually is already contained in the Scales Act (P.L.1983, c.93). Therefore, this component of the proposed rule will not have a significant economic impact upon the solid waste industry. The proposal to reduce transportation costs through in-lieu of payments will reduce costs to transfer stations and materials recovery facilities. In this regard, studies have estimated that the cost of long-haul trucking of solid waste is approximately $1.25 per mile when considering such factors as labor cost, depreciation of equipment, fuel, maintenance costs and insurance. It is anticipated that in-lieu of payment provisions will be utilized in order to reduce the number of miles traveled from transfer stations and materials recovery facilities to a final disposal facility, resulting in lower costs. Economies will be realized proportional to the reduction in total miles traveled. Recordkeeping and reporting may add some marginal costs to the operations.

Environmental Impact

The proposed modification does not represent a change in the policy or locations for the disposal of solid waste within New Jersey as currently specified by the waste flow rules. However, a positive environmental impact will result due to more stringent recordkeeping requirements and increased ability to trace mixed loads of solid waste.

Regulatory Flexibility Analysis

The proposed amendments and new rules will apply to all transfer stations and materials recovery facilities in the State. It is estimated that most of the transfer stations and materials recovery facilities affected by this rulemaking are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Transfer stations and materials recovery facilities which are small businesses will have additional recordkeeping and reporting requirements as described in the Summary above, but these requirements should not necessitate any additional professional services. The Department estimates that approximately 25 registered transfer stations and materials recovery facilities remain in operation in the State which do not have specific waste flows assigned to them and which will be impacted by the proposed amendments and new rules. It is possible that each could qualify as a small business. Each already must comply with the recordkeeping and report-

ing provisions of N.J.A.C. 7:26-2.13. The expanded recordkeeping under this rulemaking should not impose substantial new requirements.

With respect to the other non-recordkeeping and non-reporting provisions of the proposed amendments and new rules, it is anticipated that transfer stations and materials recovery facilities that are small businesses will not be adversely impacted. The basic framework of the proposal is consistent with DEPE policy which has been in place and uniformly applied for over nine years as reflected in the Summary above. As a result, most if not all of the existing operating private transfer stations and materials recovery facilities which do not have specific waste flows assigned to them have already been following the basic procedures of the amendments and new rules. The in-lieu payment aspects of the amendments and rules differ in this regard and are new. However, as the Summary above points out above, the purpose of the in-lieu payment provision is to provide flexibility to transfer stations and materials recovery facilities to avoid the requirement of transporting residual waste back to remote disposal facilities provided appropriate payments are made. This should result in lower transportation costs for small businesses. Further, it is anticipated that compliance with these amendments and new rules will not bear initial capital costs nor significant additional annual budget expenses on the part of small businesses. Some additional initial expense will be imposed upon small businesses which utilize the in-lieu payment provisions in the preparation of an initial tariff submission pursuant to N.J.A.C. 14:11-7.10. This cost should be minor in nature and would be easily offset by savings associated with not being forced to transport residual waste back to remote disposal facilities. Further, exemption and waiver provisions have been included to allow transfer stations and materials recovery facilities to opt out of participating in the in-lieu payment provisions following DEPE approval of a petition to the Department which demonstrates compelling economic or environmental grounds to justify the waiver or exemption.

In accordance with the New Jersey Regulatory Flexibility Act, the Department has determined that these proposed amendments and new rules will impose additional reporting, recordkeeping and compliance requirements on small businesses, but that these requirements will not significantly affect these enterprises. For this reason, the proposed amendments and new rules do not establish reduced requirements for small businesses.

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

7:26-2.11 General operational requirements

(a) The operational requirements identified in this section are general requirements for all solid waste facilities. Additional requirements for sanitary landfills are set forth in N.J.A.C. 7:26-2A.8. Additional operational requirements for thermal destruction facilities are set forth in N.J.A.C. 7:26-2B.8. **Additional requirements for transfer stations and materials recovery facilities are set forth in N.J.A.C. 7:26-2B.9.**

(b) The general operational requirements for all solid waste disposal facilities are as follows:

1.-12. (No change.)

13. The operator shall maintain a record of the quantity of each authorized waste type accepted for disposal, in accordance with N.J.A.C. 7:26-2.13 and 3.2. In the event that the facility is exempt from the use of scales to physically weigh the waste, volume to weight conversions shall be made by means of formulae furnished by the department. **Transfer stations and materials recovery facilities shall use the formula in N.J.A.C. 7:26-2B.**

14. (No change.)

15. The quantity of waste received by the facility operator shall not exceed the system's designed handling, storage, processing or disposal capacity as identified in that facility's SWF permit or other permit certificate. **The designed handling, storage, processing and disposal capacity approved within any solid waste facility permit, other permit certificate or approval conditions as a ton per day operational maximum shall be inclusive of all solid waste received at the facility as well as all tonnages of source separated recyclables received and any materials removed for recycling during a facility's daily processing operation;**

16.-18. (No change.)

7:26-2.13 Solid waste facility; records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The record shall include:

1.-5. (No change.)

6. The place of origin of the waste identified by municipality, county and State or in the case of the waste from a transfer station **or materials recovery facility,** the facility ID number of the transfer station shall **also** be **listed** [substituted for the municipality].

7. (No change.)

8. In addition to the information required in (a)1 through 7 above, transfer stations and materials recovery facilities which are not specifically provided with waste flow to their facility pursuant to N.J.A.C. 7:26-6, and which accept solid waste from districts or states other than where the facility is located, shall maintain the following additional information in the daily record:

i. The tonnages and types of solid waste received by municipality and by district or by out-of-State source. This amount shall be the total received prior to removal of materials for recycling. The types shall be listed by each ID type;

ii. The tonnages and types of solid waste returned to the state or county (including municipality) of origin. The transfer station and materials recovery facility is not considered the origin of the solid waste it receives;

iii. The tonnages and types of source separated recyclable materials and recyclable materials separated from the solid waste received by origin (by county and municipality); and

iv. The tonnages, types and destinations of recyclable materials which leave the transfer station or materials recovery facility to end markets, manufacturers or recycling centers for further processing pursuant to the following:

(1) Recyclable materials may only be transported to the above noted destinations, pursuant to the requirements of N.J.A.C. 7:26A;

(2) End markets, manufacturers and recycling centers shall mean the same as the definitions found at N.J.A.C. 7:26A-1.3;

(3) Destinations for recyclable material shall only be listed by type of facility (that is, end-market, manufacturer or recycling center) and not by specific location or name; and

(4) Class B recyclable materials transported to an in-state recycling center for further processing shall be transported only to those recycling centers approved by the Department pursuant to N.J.A.C. 7:26A.

(b) The daily record shall be maintained **at the operating facility** on forms provided by the [department] **Department** or duplication of same, or on systems acceptable to the [department] **Department**, shall be kept for five years, and shall be available for inspection by representatives of the [department] **Department, county lead agency certified by the Department pursuant to N.J.S.A. 26:3A2 for any county from which solid waste is received,** or the local health department at any time during normal working hours.

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator **and by the facility weighmaster or operator** on a waste origin/disposal (O and D) form (or duplication of same). **Where processing takes place at a transfer station or materials recovery facility prior to delivery to a district designated facility pursuant to N.J.A.C. 7:26-6, and the waste remaining after processing cannot be categorized by type, the remaining residue shall be designated within the O and D form and daily record as "ID 27 residue" pursuant to (g)1vi below.**

1.-5. (No change.)

(d) (No change.)

(e) Monthly summaries of wastes received shall be submitted by the owner/operator of each facility to the Division of **Solid** Waste Management, **the county within which the facility is located and any solid waste authority operating within the county within which the facility is located** on forms provided by the [department] **Department** (or duplication of same), no later than 20 days after the last day of each month.

1. All solid waste facilities shall include the following within the monthly summary:

i. The tonnages and types of solid waste received by origin from each county (including municipality) and out-of-State source;

ii. The tonnages and types of solid waste returned to the county or state of origin by facility of receipt;

iii. The tonnages, types and origin (by county and municipality) of source separated recyclable materials or recyclable materials removed from the waste stream. In cases where recyclable materials are separated from mixed solid waste at the transfer station or materials recovery facility, and hence the origin (by county and municipality) cannot be identified at the time of receipt, the transfer station shall allocate the amount of recyclable materials proportionally to each municipality on the basis of the total amount of solid waste received for the calendar month;

iv. The identification of end markets, manufacturers or recycling centers used for the materials designated as recyclable materials and the amount of materials sent to the end-markets, manufacturers or recycling centers. The requirements for transportation to, and identification of, end-markets, manufacturers and recycling centers shall be the same as (a)8iv above;

v. The tonnage and types of recyclable materials being stored at the transfer station or materials recovery facility at the end of the reporting month;

vi. Payments made to a designated district facility in lieu of disposing of solid waste pursuant to N.J.A.C. 7:26-2B.9(a)iii. The summary shall include the name of the district to which the payment was made, the amount of solid waste not delivered and the amount of the payment;

vii. The tonnage and types of solid waste sent to the designated facility in the county in which the transfer station or materials recovery facility is located where an in-lieu of payment has been made; and

viii. In cases where the waste type cannot be established following processing at a transfer station or materials recovery facility, the remaining residue shall be designated within the monthly summary as "ID 27 residue" pursuant to 2.13(g)1vi below.

2. Discrepancies between the amount and/or type of solid waste received at a transfer station or materials recovery facility and the amount and/or type of solid waste returned to the district designated facility or transported out-of-State which are not substantiated in the monthly summary pursuant to (e)1 above shall be deemed a violation of N.J.S.A. 13:1E-1 et seq., N.J.S.A. 48:13A-1 et seq., this chapter and in violation of the registration to operate a solid waste facility issued pursuant thereto and shall subject the facility to the provisions and penalties of N.J.S.A. 13:1E-9 and 48:13A-12 and all other applicable laws. Any discrepancy listed in (e)2i, ii, iii or iv below is a violation of N.J.S.A. 13:1E-1 et seq., N.J.S.A. 48:13A-1 et seq., this chapter, and the registration to operate a solid waste facility issued pursuant thereto, and shall subject the facility to penalties under N.J.S.A. 13:1E-9, 48:13A-12, and all other applicable laws and regulations:

i. A discrepancy between the following amounts:

(1) The amount or type of source-separated recyclables received at the facility for the month plus the amount or type of recyclables removed from solid waste received by the facility for the month as reported under (e)1iii above; and

(2) The change since the preceding month in the amount of each type of recyclable materials stored at the facility as reported under (e)1v above plus the amount or type of recyclable materials sent to end-markets at the end of the month as reported under N.J.A.C. 7:26-2.13(e)1iv.

ii. A discrepancy between the following amounts:

(1) The amount and type of solid waste received at the facility for the month as reported under (e)1i above; and

(2) The amount and type of solid waste returned to the county or state of origin as reported under (e)1ii above plus the amount and type of solid waste for which in-lieu payments have been made as reported under (e)1vi above.

iii. A discrepancy between the following amounts:

(1) The amount and type of solid waste received at the facility for which in-lieu payments have been made as reported under (e)1vi above; and

(2) The amount and type of solid waste sent to the designated facility in the county in which the transfer station or materials recovery facility is located as reported under (e)1vii above.

iv. A discrepancy between any of the amounts listed in (e)2i through iii above, and the corresponding amounts reported in the monthly summary under (e)1 above.

(f) [Upon approval of the department, those facilities qualifying for exemption under N.J.A.C. 7:26-4.8 may compute quantities of waste received by using an alternative, acceptable method.] **Any certified county or local health agency certified by the Department pursuant to N.J.S.A. 26:3A2 or a local health department authorized to perform solid waste enforcement which seeks to obtain customer lists for enforcement purposes, shall comply with the procedures at N.J.A.C. 14:3-10.15(b)4.**

(g) Waste identification and definition of solids include the following:

1. Solid wastes; waste ID number and definitions;

i.-v. (No change.)

vi. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, and asbestos and asbestos containing waste managed in accordance with 40 CFR 61 and N.J.A.C. 7:26-2A.8(1). **ID 27 includes residue from a transfer station or materials recovery facility for which the ID type cannot be established after processing.**

(h)-(i) (No change.)

(j) Solid waste shall be identified at the point of generation. For waste received at a transfer station or materials recovery facility, the transfer station is not the point of generation. Solid waste which is received by a transfer station or materials recovery facility shall retain the ID type identified in the O and D form. The type of solid waste shall not change due to the removal of recyclable materials or the processing of solid waste except as provided in (g)1vi above.

7:26-2B.9 Additional operational requirements for transfer stations and materials recovery facilities not specifically provided with a waste flow to their facility pursuant to N.J.A.C. 7:26-6.

(a) This section sets forth additional operational requirements for transfer stations and materials recovery facilities not specifically provided with a waste flow to their facility pursuant to N.J.A.C. 7:26-6.

(b) Transfer stations and materials recovery facilities may accept solid waste from any in-State solid waste district, out-of-State source, or any combination thereof provided:

1. The transfer station or materials recovery facility has been formally included within the district solid waste management plan of the district(s) within which it is located and has received all necessary State and local approvals. Transfer stations and materials recovery facilities do not need to be incorporated within the solid waste management plan of each district from which solid waste or recyclables are collected; only the district within which its facility is located;

2. The recordkeeping and O and D form requirements of N.J.A.C. 7:26-2.13 are met;

3. For solid waste from in-State:

i. Solid waste received at the facility is returned to the district where the waste was originally generated or the same amount and type of solid waste is brought to the district where the waste was originally generated no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility;

ii. Where material is removed for recycling from the solid waste received, the same type or amount of solid waste less the amount of materials removed for recycling shall be returned to the district in which the material was originally generated no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; or

iii. On the 30th day of the next calendar month following receipt at the transfer station or materials recovery facility, an in-lieu payment is made to the district designated disposal facility in an amount suitable to compensate for the tonnage which would otherwise have gone to the facility. The payment shall be made pursuant to the designated facility's tariff for special in-lieu payments pursuant to N.J.A.C. 14:11-7.10 for the amount and type of waste which was generated in that district and not returned. In such instances, said waste shall be disposed of at the designated facility in the district in which the transfer station or materials recovery facility is located. Records maintained pursuant to N.J.A.C. 7:26-2.13 shall so indicate the disposal and the in-lieu payments made.

(1) Upon application supported by compelling economic or environmental grounds, including, but not limited to, accelerated depletion of disposal capacity, a designated disposal facility may petition the Department for an exemption from being the recipient disposal facility of solid waste disposed of in accordance with (a)3iii above from transfer stations and materials recovery facilities located within that county.

4. For solid waste from out-of-State:

i. Solid waste received at the facility or the same amount and ID type of solid waste is transported out-of-State no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; or

ii. If material is removed from recycling from the solid waste received, the same ID type or amount of solid waste less the amount of materials removed for recycling shall be transported out-of-State no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; and

5. The receiving facility's tariff and permit requirements are met.

(c) Transfer stations and materials recovery facilities which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13 and 3.2. Transfer stations and materials recovery facilities which do not have scales must report data on a cubic yard basis.

(d) The transfer station or materials recovery facility shall determine the ID type of the solid waste as provided at N.J.A.C. 7:26-2.13. As provided therein, the transfer station is not the generator of solid waste received from other counties.

7:26-2B.10 Additional operational requirements for transfer stations and materials recovery facilities provided with waste flow to their facility pursuant to N.J.A.C. 7:26-6

(a) This section sets forth additional operational requirements for transfer stations and materials recovery facilities provided with waste flow to their facility pursuant to N.J.A.C. 7:26-6.

(b) All district designated facilities shall accept solid waste from transfer stations or materials recovery facilities or payments in-lieu of the solid waste provided the requirements of N.J.A.C. 7:26-2.13 are met.

(c) Pursuant to N.J.A.C. 14:11-7.10, all transfer stations and materials recovery facilities subject to this section shall establish a tariff rate for in-lieu payments made pursuant to N.J.A.C. 7:26-2B.9.

(d) Transfer stations and materials recovery facilities subject to this section which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13 and 3.2. Transfer stations and materials recovery facilities which do not have scales must report data on a cubic yard basis.

7:26-6.2 Purpose

The New Jersey Department of Environmental Protection **and Energy** has reviewed and approved the adopted solid waste management plans for all 22 of the solid waste management districts in New Jersey. Based on these plans, it is evident that [at least for the short term,] interdistrict solutions to planning issues **through regional cooperation** are required. Further, the [Board of Public Utilities] **Department** has determined that the public interest requires the designation of **in-State** specific disposal facilities to serve as the ultimate destination facility of certain waste streams. This subchapter shall set forth the designations by the Department[,] of intradistrict and interdistrict waste flows, [and by the Board of Public Utilities, of specific waste flows,] designated specific facilities to serve specifc geographic areas. **This subchapter shall also set forth the policy for the flow of solid waste prior to receipt at the ultimate designated facility.**

7:26-6.8 Transporting solid waste between solid waste districts and out-of-State

(a) Notwithstanding the designation of specific disposal facilities for ultimate disposal of certain waste streams, it shall not be a violation of N.J.A.C. 7:26-6 or any franchise approvals issued pursuant to N.J.S.A. 48:13A-5 for solid waste generated in a district to be transported out of that district or for out-of-district waste to enter a solid waste district provided the requirements of N.J.A.C. 7:26-2.11, 2.13, and 2B.9 are met.

(b) Facilities designated by solid waste districts for the ultimate in-State disposal of solid waste shall accept out-of-district waste from transfer stations or materials recovery facilities provided the requirements of N.J.A.C. 7:26-2.13 are met.

14:3-10.15 Filing of annual reports and customer lists

(a) (No change.)

(b) Every utility engaged in solid waste collection shall file no later than March 31 of each year, with the [Secretary of the Board] **Department of Environmental Protection and Energy,** a complete list, made under oath, of all residential, commercial, industrial and institutional customers.

1.-3. (No change.)

4. Pursuant to N.J.S.A. 47:1A-2 of the Right to Know Law, N.J.S.A. 47:1A-1 et seq., the customer lists filed with the [Secretary] **Department** pursuant to this section shall not be deemed to be public records and the public, including solid waste or other utilities, shall not have the right to inspect, copy or obtain a copy of same. Upon receipt of customer lists, the [Secretary of the Board] **Department** shall keep the lists under lock and take appropriate measures to maintain the lists in confidence. Access to such lists shall be limited to agents, employees and attorneys of the [Board] **Department** and, in the discretion of the [Board, government agencies] **Department, certified local health agency certified by the Department pursuant to the N.J.S.A. 26:3A2 or local boards of health** responsible for enforcement of laws related to the collection and disposal of solid waste. All such governmental agencies shall be subject to the confidentiality requirements contained in this paragraph.[, including but not limited to county improvement authorities and municipal and county utility authorities]. **In order to obtain a customer list, a certified local health agency or local board of health must submit a written request to the Department showing that the agency has a good faith reason to believe that for any two months in a four month period, a materials recovery facility or transfer station has violated the in-lieu payment provision of N.J.A.C. 7:26-2B.9 or the waste flow directions of N.J.A.C. 7:26-6 as it relates to the requesting agency's county. Despite a finding of good faith, the Department in its discretion may deny a request for release of a customer list if the Department determines to take enforcement action or if the Department determines for any other reason that granting the request would not be in the public interest.**

5.-6. (No change.)

14:11-7.10 In-lieu payment rates for solid waste

(a) All solid waste facilities identified in N.J.A.C. 7:26-6 as disposal facilities to which a waste flow has been directed must file with the Department within 30 days of the effective date of this rule, an initial tariff for special in-lieu payment applicable to transfer stations and materials recovery facilities. Said tariff must be calculated to enable the disposal facility to recover all costs of debt service, administrative cost, depreciation and anticipated equity return which represents the costs the disposal facility would have recovered if the waste had been received excluding the cost of disposing of such waste.

(b) Upon application supported by compelling economic or environmental grounds, including, but not limited to, accelerated

depletion of remaining disposal capacity, a designated disposal facility may petition the Department for a waiver of the requirement set forth at (a) above to file in initial tariff for special in-lieu payment.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Interdistrict and Intradistrict Solid Waste Flow for Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, HMDC, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union, and Warren Districts; Procedure for Modification of Waste Flows

Proposed Amendment: N.J.A.C. 7:26-6.5
Proposed Repeal and New Rule: N.J.A.C. 7:26-6.6

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

Authority: N.J.S.A. 13:1E-6 and 48:13A-1 et seq.

DEPE Docket Number: 38-92-08.

Proposal Number: PRN 1992-424.

A **public hearing** concerning this proposal will be held on:
Tuesday, October 13, 1992 at 1:00 P.M.
NJDEPE Public Hearing Room
401 East State Street
First Floor, East Wing
Trenton, New Jersey

Submit written comments by October 21, 1992 to:
Richard J. McManus, Director
NJDEPE Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (DEPE) is proposing to amend the Interdistrict and Intradistrict Solid Waste Flow Rules, N.J.A.C. 7:26-6.5, to update the waste flows to facilities that have been receiving solid waste pursuant to emergency redirection orders (ERO) or to simplify the existing waste flow rules. These amendments are being promulgated as retroactive in nature to insure the continued viability of these waste flows throughout their duration. The DEPE is also proposing to amend the procedure by which waste flow modifications are made. The proposed repeal and new rule at N.J.A.C. 7:26-6.6 will clarify the fact that waste flows may be modified by rulemaking through the amendment of N.J.A.C. 7:26-6.5 by the Department. An amendment to the respective solid waste management plan(s) must be completed by the affected county(ies) or the Department within 360 days following promulgation of the amendment to N.J.A.C. 7:26-6.5. The new rule will also reflect the fact that pursuant to Reorganization Plan No. 002 and Executive Order No. 38, all authority and responsibility formerly vested in the Board of Public Utilities for the economic regulation of solid waste utilities have been transferred to the DEPE.

A description of the amendments to N.J.A.C. 7:26-6.5 follows, by county affected:

Atlantic County

On March 21, 1990, the Board of Public Utilities (BPU) and the Department of Environmental Protection (DEP) issued an ERO effective August 8, 1990 which directed all solid waste types 10, 13, 23, 25, and 27 generated from within Atlantic County to the Atlantic County Transfer Station, facility number 0108M, located in Egg Harbor Township, Atlantic County, prior to out-of-state disposal. The ERO was necessary to provide for the disposal of waste formerly landfilled at facilities located within the Pinelands. Pursuant to the Pinelands Comprehensive Management Plan, all landfills located within the Pinelands were required to close as of August 8, 1990. The proposed waste flow rule contained herein reflects the provisions of an approved District Solid Waste Management Plan Amendment for Atlantic County certified on April 30, 1990.

Bergen County

On April 26, 1991, the BPU and the DEP issued an ERO effective May 1, 1991 which directed the delivery of 250,000 tons per year of processible solid waste types 10 and 23 generated from within Bergen County and processed at the Sal-Car Transfer Station, facility number 0227B, located in Hillsdale Boro, Bergen County, the DiBella Transfer Station, facility number 0247B, located in Park Ridge Boro, Bergen County, the National Transfer Station, facility number 0231A, located in Lodi Boro, Bergen County, the Garofalo Transfer Station, facility number 0221A, located in Garfield City, Bergen County, and the United Carting Transfer Station, facility number 0218A, located in Fairview Boro, Bergen County, to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County. On May 18, 1992 the DEPE issued an additional ERO effective May 19, 1992 which directed other remaining solid waste types 10, 13, 23, 25 and 27 processed by the above referenced private transfer stations to approved out-of-State disposal facilities. On July 31, 1992, the Department issued a letter setting forth an agreement between BCUA, Essex County, Chambers Waste Systems of New Jersey, Inc. (the hauler contracted to bring the Bergen County waste to Essex County) and American Ref-Fuel Company of Essex County, the operator of the Essex County RRF to amend the interdistrict agreement between the two counties, reflected in the terms of a Memorandum of Understanding (MOU), effective May 1, 1991, to allow Essex County to request additional waste for the RRF from the BCUA by an amount of type 10 and 23 waste not to exceed 1,600 tons per week in 1992, 2,000 tons per week from January 4, 1993 through February 28, 1993 and 1,700 tons per week from March 1, 1993 through July 31, 1993 on an as needed basis. All remaining solid waste types 10, 13, 23, 25, and 27, with the exception of type 10 waste generated from North Arlington in Bergen County, are directed to the BCUA Transfer Station, facility number 0232C, located in North Arlington, Bergen County, for processing prior to out-of-State disposal. Type 10 solid waste generated within North Arlington shall be disposed of at the HMDC 1-E Landfill, facility number 0239D, located in North Arlington, Bergen County. Upon closure of the HMDC 1-E Landfill, all type 10 solid waste generated within North Arlington shall be redirected to the BCUA Transfer Station located in North Arlington for processing prior to out-of-State disposal. The ERO was necessary to ensure sufficient waste flow to the Essex County Resource Recovery Facility.

Burlington County

The proposed waste flow rule recognizes the existing waste flow already in effect for the district by directing all solid waste generated from within all Burlington County municipalities to the Burlington County Landfill, facility number 0318A, located in Florence and Mansfield Townships, Burlington County. Specifically, all reference to landfills no longer operating within Burlington County has been deleted.

Camden County

On January 3, 1992, the DEPE issued an ERO reallocating waste generated from within Camden County by directing all processible waste from nine municipalities to the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County, and all bypass and nonprocessible waste from the South Camden Resource Recovery Facility to the Pennsauken Landfill, facility numbers 0427DE01, and 0427AE01, located in Pennsauken Township, Camden County. The ERO was necessary to provide additional processible waste to the South Camden Resource Recovery Facility and to reduce the reliance on out-of-State disposal. The proposed waste flow rule contained herein reflects the provisions of an approved District Solid Waste Management Plan Amendment for Camden County certified on May 19, 1992.

Cape May County

The proposed waste flow rule recognizes the existing waste flow already in effect for the district by directing all solid waste generated from within all Cape May County municipalities to the Cape May County Landfill, facility number 0511C, located in Woodbine Township, Cape May County. Specifically, all reference to landfills no longer operating within Cape May County has been deleted.

Cumberland County

The proposed waste flow rule recognizes the existing waste flow already in effect for the district by directing all solid waste generated from within all Cumberland County municipalities to the Cumberland County Landfill, facility number 0603B, located in Deerfield Township,

Cumberland County. Specifically, all reference to landfills no longer operating within Cumberland County has been deleted.

Essex County

Due to a shortfall of processible waste at the Essex County Resource Recovery Facility, on April 26, 1991 the BPU and the DEP issued the last in a series of ERO's directing out-of-county waste to the facility. Specifically, this ERO directs the delivery of 250,000 tons per year of Bergen County solid waste types 10 and 23 from qualifying private transfer stations located in Bergen County to the RRF. Despite the provision of the 250,000 tons from Bergen County, the Essex RRF has continued to experience shortfalls in capacity. On July 31, 1992, the Department issued a letter setting forth an agreement between BCUA, Essex County, Chambers Waste Systems of New Jersey, Inc. (the hauler contracted to bring the Bergen County waste to Essex County), and American Ref-Fuel Company of Essex County (the operator of the Essex County RRF) to amend the interdistrict agreement between the two counties, reflected in the terms of a Memorandum of Understanding (MOU), effective May 1, 1991, to allow Essex County to request additional waste for the RRF from the BCUA by an amount of type 10 and 23 waste not to exceed 1,600 tons per week in 1992, 2,000 tons per week from January 4, 1993 through February 28, 1993, and 1,700 tons per week from March 1, 1993 through July 31, 1993 on an as-needed basis.

Hackensack Meadowlands Development Commission

The proposed waste flow rule seeks to simplify the existing waste flow already in effect between the Hackensack Meadowlands Development Commission (HMDC) district and Hudson County. Specifically, all reference to landfills no longer operating within HMDC has been deleted pursuant to an approved District Solid Waste Management Plan Amendment for Hudson County certified on January 24, 1991. The proposed waste flow rule also seeks to delete the former waste flows from Bergen County (with the exception of solid waste type 10 from North Arlington), and Essex, Passaic and Union Counties because they are no longer applicable.

Hudson County

On February 1, 1991, the DEP and the BPU issued an ERO for Hudson County and the Hackensack Meadowlands Development Commission whereby solid waste types 13, 23, 25, and 27 generated from within Hudson County were redirected from disposal at the HMDC 1-E Landfill, facility number 0907W, located in North Arlington, Bergen County, to the HMDC Baler, facility number 0239C, located in North Arlington, Bergen County, for handling prior to out-of-State disposal. Also, all solid waste type 10 generated from within Hudson County shall continue to be disposed of at the HMDC 1-E Landfill. Finally, upon closure of HMDC 1-E Landfill, all waste disposed of at that facility shall be redirected to the HMDC Baler for handling prior to out-of-State disposal. The proposed waste flow rule contained herein reflects the provisions of an approved District Solid Waste Management Plan Amendment for Hudson County certified on January 24, 1991.

Hunterdon County

On June 1, 1988, the BPU and the DEP issued an ERO to direct up to 100 tons per day of processible solid waste from the Hunterdon County Transfer Station, facility number 1006B, located in Clinton Township, Hunterdon County, to the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County, through December 31, 2001. This ERO was necessary to ensure sufficient waste flow to the RRF. The proposed waste flow rule contained herein reflects the provisions of an approved District Solid Waste Management Plan Amendment for Hunterdon County certified on October 26, 1988.

Mercer County

On October 26, 1988, the BPU and the DEP issued an ERO effective November 1, 1988 which directed solid waste types 10, 13, 23, 25, and 27 generated from within Mercer County to the Mercer County Transfer Station, facility number 1102D, located in Ewing Township, Mercer County. The ERO was necessary to ensure that all solid waste generated in Mercer County would be transferred through one facility prior to final disposal at the G.R.O.W.S. Landfill in Bucks County, Pennsylvania. The proposed waste flow rule contained herein reflects the provisions of an approved District Solid Waste Management Plan Amendment for Mercer County certified on August 29, 1986.

Middlesex County

On June 12, 1987, the DEP and the BPU issued an Order for Termination of Landfill Operations of the Edgeboro Landfill, facility 1204A, located in East Brunswick Township, Middlesex County. The order allowed the Edgeboro Landfill to continue operations after its design capacity was reached on June 18, 1987, informed the Counties of Morris, Somerset, and Union that disposal privileges at the Edgeboro Landfill would cease on or before January 1, 1988, and established waste flows for municipalities located within Middlesex County. On July 10, 1990, an ERO was issued redirecting solid waste types 13 and 27 generated from within the Middlesex County municipalities of Edison, Highland Park, and Metuchen to the Edgeboro Landfill, facility number 1204A, located in East Brunswick, Middlesex County. The redirection of solid waste type 13 was effective July 19, 1990 and the redirection of solid waste type 27 was effective August 6, 1990. On December 18, 1990, a redirection notice was issued, effective January 2, 1991, redirecting solid waste types 10, 13, 23, 25, and 27 generated from within the Middlesex County municipalities of Edison, Highland Park, and Metuchen to the Edgeboro Landfill. This final redirection completed the phase-in of waste flow to the Edgeboro Landfill from all of the municipalities in Middlesex County. The proposed waste flow rule contained herein reflects the provisions of approved District Solid Waste Management Plan Amendments for Middlesex County certified on November 20, 1987 and September 20, 1989, respectively.

Monmouth County

The proposed waste flow rule recognizes the existing waste flow already in effect for the district by directing all solid waste generated from within all Monmouth County municipalities to the Monmouth County Reclamation Center Landfill and Shredder Facility, facility numbers 1336F and 1336D, located in Tinton Falls Borough, Monmouth County. Specifically, all reference to landfills no longer operating within Monmouth County has been deleted.

Morris County

On December 29, 1987, the BPU and the DEP issued an ERO effective January 2, 1988 which directed all solid waste types 10, 13, 23, 25, and 27 generated from within Morris County to one of two Morris County Transfer Stations located in Mount Olive and Parsippany-Troy Hills Townships, Morris County, facility numbers 1427F and 1492J, respectively, prior to out-of-State disposal. The ERO was necessary to provide for the disposal of waste formerly landfilled at the Edgeboro Landfill, facility number 1204A, located in East Brunswick, Middlesex County. To preserve the remaining capacity at the Edgeboro Landfill, all non-Middlesex County waste was redirected from that facility effective January 2, 1988. The proposed waste flow rule contained herein reflects the provisions of an approved District Solid Waste Management Plan Amendment for Morris County certified on July 28, 1987.

Ocean County

The proposed waste flow rule recognizes the existing waste flow already in effect for the district by directing all solid waste generated from within all Ocean County municipalities to the Ocean County Landfill Corporation Landfill, facility number 1518B, located in Manchester Township, Ocean County. Specifically, all reference to landfills no longer operating within Ocean County has been deleted.

Passaic County

On November 30, 1987, the BPU and the DEP issued an ERO effective December 1, 1987 directing solid waste generated from within Passaic County to two Pen Pac, Inc. Transfer Stations, facility number 1608H, located on Fulton Street, Paterson, Passaic County, and facility number 1608E, located on Iowa Avenue, Paterson, Passaic County, prior to out-of-State disposal. On January 19, 1989, the BPU and the DEP issued an ERO effective January 23, 1989 directing solid waste generated from within Passaic County to three Pen Pac, Inc. Transfer Stations. These included the Fulton Street and Iowa Avenue facilities as well as the newly operational Totowa Transfer Station, facility number 1612B, located in Totowa, Passaic County. The two ERO's were necessary to ensure that all solid waste generated in Passaic County would be transferred through specific facilities prior to out-of-State disposal. The proposed waste flow rule contained herein reflects the provisions of an approved District Solid Waste Management Plan Amendment for Passaic County certified on August 23, 1990.

Salem County

The proposed waste flow rule recognizes the existing waste flow already in effect for the district by directing all solid waste generated from within Salem County municipalities to the Salem County Landfill, facility number 1701B, located in Alloway Township, Salem County. Specifically, all reference to landfills no longer operating within Salem County has been deleted.

Somerset County

On December 23, 1987, the BPU and the DEP issued an ERO effective January 2, 1988 which directed all solid waste types 10, 13, 23, 25, and 27 generated from within Somerset County to either the Bridgewater Resources Transfer Station, facility number 1806A, located in Bridgewater Township, Somerset County, or the Somerset County Intermediate Recycling Center Transfer Station, facility number 1808K, located in Franklin Township, Somerset County, prior to out-of-State disposal. The ERO was necessary to provide for the disposal of waste formerly landfilled at the Edgeboro Landfill, facility number 1204A, located in East Brunswick, Middlesex County. To preserve the remaining capacity at the Edgeboro Landfill, all non-Middlesex County waste was redirected from that facility effective January 2, 1988. Also, on June 30, 1989 the BPU and the DEP issued an ERO to direct up to 250 tons per day of processible solid waste from the Bridgewater Resources Transfer Station to the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County. This ERO was necessary to supplement the waste flow to the RRF. Pursuant to the Somerset/Warren interdistrict agreement of July 11, 1990, the amount of processible solid waste directed to the Warren County RRF was modified to 1,400 tons per week through the year 2001. From January 1, 2002 through November 30, 2008, the amount of processible Somerset County generated solid waste directed to the Warren County RRF shall increase to 1,977 tons per week. The proposed waste flow rule contained herein reflects the provisions of approved District Solid Waste Management Plan Amendments for Somerset County certified on April 3, 1987 and February 6, 1991, respectively.

Union County

On December 29, 1987, the BPU and the DEP issued an ERO effective January 2, 1988 which directed all solid waste types 10, 13, 23, 25, and 27 generated from within Union County to either the Ellesor Transfer Station, facility number 2004D, located in the City of Elizabeth, Union County, the Automated Modular Systems Transfer Station, facility number 2009I, located in the City of Linden, Union County, or the Summit Transfer Station, facility number 2018A, located in the City of Summit, Union County, prior to out-of-State disposal. The ERO was necessary to provide for the disposal of waste formerly landfilled at the Edgeboro Landfill, facility number 1204A, located in East Brunswick, Middlesex County. To preserve the remaining capacity at the Edgeboro Landfill, all non-Middlesex County waste was redirected from that facility effective January 2, 1988. A subsequent ERO was issued by the BPU and the DEP on August 5, 1988 to make refinements to the December 27, 1987 ERO. The proposed waste flow rule also identifies the location of the Union County Resource Recovery Facility and the out-of-State disposal site for all ash and bypass waste from the facility which are absent from the existing waste flow rule. The proposed waste flow rule contained herein reflects the provisions of approved District Solid Waste Management Plan Amendments for Union County certified on July 21, 1987, March 22, 1990, and July 24, 1992, respectively.

Warren County

On June 1, 1988, the BPU and the DEP issued an ERO which directed all waste types 10, 13, 23, 25, and 27 generated from within Warren County and up to 100 tons per day of processible solid waste generated within Hunterdon County (through December 31, 2001) to the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County. This ERO was necessary to ensure sufficient waste flow to the RRF upon commencement of operations. Also, on June 30, 1989 the BPU and the DEP issued an ERO to direct up to 250 tons per day of processible solid waste from the Bridgewater Resources Transfer Station, facility number 1806A, located in Bridgewater Township, Somerset County, to the Warren County Resource Recovery Facility. This ERO was necessary to supplement the waste flow to the RRF. Pursuant to the Somerset/Warren interdistrict agreement of July 11, 1990, the amount of processible solid waste directed to the Warren County RRF was modified to 1400 tons per week through the year 2001. From January 1, 2002 through November 30, 2008, the amount of processible Somerset County generated solid waste directed to the Warren County RRF shall increase to 1,977 tons per week. The proposed waste flow rule contained herein reflects the provisions of approved District Solid Waste Management Plan Amendments for Warren County certified on October 13, 1988 and January 17, 1991, respectively.

Summary of Social, Economic and Environmental Impacts

To facilitate an assessment of the social, economic and environmental impacts for each of the 19 counties and the HMDC district which are the subject of this proposed solid waste flow rule, these groupings were identified. The first grouping of Burlington, Cape May, Cumberland, Monmouth, Ocean and Salem Counties and the HMDC District encompass those counties and district for which the rule updates for purposes of clarity the existing solid waste flow rules by deleting reference to landfills which have ceased operations. The second grouping of Camden, Essex, Middlesex and Warren comprises those counties which have commenced operations of state-of-the-art solid waste disposal facilities and which never were subject to complete formal rulemaking pursuant to N.J.A.C. 7:26-6.6. The final grouping of Atlantic, Bergen, Hudson, Hunterdon, Mercer, Morris, Passaic, Somerset and Union include those counties which rely on out-of-State disposal facilities to satisfy part or all of their solid waste disposal needs. These counties were previously directed to out-of-State disposal facilities under emergency waste flow orders issued pursuant to N.J.A.C. 7:26-6.7. The following assessments of social, economic and environmental impact of the proposed rulemaking are presented by each of the three groupings noted above. Also, a separate assessment of the social, economic and environmental impacts of proposed new rule N.J.A.C. 7:26-6.6 follows.

The impacts from the portion of the rule affecting the Counties of Burlington, Cape May, Cumberland, Monmouth, Ocean and Salem and the HMDC District are as follows:

Social Impact

The adoption of the waste flow rule proposed herein will have a positive social impact upon the generators and transporters of solid waste within these counties and district. The proposed rule updates the existing rule by deleting references to landfills which have ceased operations thereby eliminating confusion for generators and transporters seeking to identify the designated county disposal site. In each case the proposed rule corrects outdated information and updates the rules to reflect waste flows that have been in place for the past several years.

Economic Impact

The rule amendment contained herein will have a positive economic impact. The rule adoption does not alter the designated disposal sites for each of these counties and district. It eliminates confusion caused by out-of-date solid waste flow rules. Waste flow control is a critical component of New Jersey's solid waste management program. It ensures the satisfying of economic commitments associated with solid waste facilities since the industry is regulated as a utility and disposal rates are specifically set in consideration of projections of the amount of waste which will be delivered. Waste flow control is also necessary for financing solid waste facilities since a guarantee of delivery provides assurances to financial institutions that funding obligations will be met.

Environmental Impact

The adoption of the waste flow rule proposed herein will have a positive environmental impact. The rule will continue to direct solid waste to existing environmentally sound permitted disposal facilities within these counties and district. The landfill facilities operated in each of these counties are permitted and employ current environmental safeguards such as liners, leachate collection systems, ground water monitoring wells, drainage controls, methane gas monitoring systems, and site access controls. The HMDC 1-E landfill located primarily in Bergen County operates under the provisions of a Settlement Agreement between Hudson County, the DEPE and the HMDC and is also carefully monitored to ensure environmentally acceptable operations. The proposed rule provides for the most environmentally sound disposal of solid waste consistent with current regulatory standards at these licensed and regularly inspected facilities.

The impacts from the portion of the rule effecting the counties of Camden, Essex, Middlesex, and Warren are as follows:

Social Impact

The rule amendment contained herein will have a positive social impact for solid waste generators and transporters within these counties.

Each of these counties has commenced operations of a state-of-the-art solid waste disposal facility. For Camden, Essex, and Warren Counties, the facility is a resource recovery incinerator. For Middlesex County, the facility is a landfill. The operation of each of these facilities allows each county to be largely self-reliant in solid waste disposal which, due to the tenuous reliance on out-of-State disposal, has a clear positive social impact. The operation of these facilities will ensure that reliable disposal facilities are available to the residents of these counties.

Economic Impact

The adoption of the waste flow rule proposed herein will have a positive economic impact. The rule seeks to formally include within the solid waste flow rules emergency redirection orders for each of these counties. As such, the designated disposal site for each county will remain unaffected. Waste flow control will ensure that the financial obligations for each of these facilities will be met. Also, waste flow control will seek to stabilize tipping fees at these facilities since such fees are based on projections of the amount of waste to be delivered.

Environmental Impact

The rule amendment contained herein will have a positive environmental impact. The amendment will formally adopt emergency redirection orders which direct the solid waste from each of these counties to state-of-the-art solid waste facilities. The Edgeboro Landfill located in Middlesex County is a landfill employing environmental safeguards such as liners, leachate collection systems, groundwater monitoring wells, drainage controls, methane gas monitoring systems, and site access controls. The resource recovery incinerators in Camden, Essex, and Warren Counties employ environmental safeguards including the latest air pollution control equipment to address particulate and acid gases which emanate from the combustion process. These facilities also employ continuous emission monitoring equipment to enable the evaluation of compliance with applicable permits on a 24 hour per day basis. In addition, these facilities are inspected by DEPE personnel on a routine basis to ensure compliance with all aspects of relevant permits.

The impacts from the portion of the rule affecting the Counties of Atlantic, Bergen, Hudson, Hunterdon, Mercer, Morris, Passaic, Somerset and Union are as follows:

Social Impact

The social impact of directing all or a portion of the solid waste generated in these counties to out-of-State facilities will be positive. In the past, each of these counties relied upon in-State facilities for disposal of waste generated within their borders. However, as in-State disposal capacity was depleted, all or a portion of the waste generated in these counties was not able to be disposed of in-State and utilization of alternate out-of-State disposal capacity was necessary to ensure proper disposal. While reliance on out-of-State facilities may expose the counties to disruptions in waste disposal due to the decisions by governments of other states, out-of-State disposal contracts were secured by each of these counties to ensure uninterrupted disposal at least for the short-term.

Economic Impact

Due to the utilization of out-of-State disposal facilities for all or a portion of the waste generated in these counties, increased disposal costs have resulted. However, since the majority of these counties have been utilizing out-of-State disposal facilities since 1988 (with the exception of Hunterdon County in 1983, Mercer County in 1984 and Atlantic County in 1990) the adoption of this proposed rule should not result in any increased disposal costs. The adoption of the proposed rule will ensure waste stream control to the out-of-State disposal facilities on a short-term basis until such time as long-term in-county or regional in-State facilities are brought into operation. This control should stabilize disposal costs by ensuring that the delivery of specific waste amounts as called for in out-of-State disposal contracts are met.

Environmental Impact

The residents in these counties should experience an overall positive environmental impact from the redirection of all or a portion of waste generated in these counties to out-of-State disposal facilities. While minor environmental impacts such as truck traffic and noise may result from processing the solid waste at transfer station facilities, a net positive environmental impact should result from the disposal of waste from these New Jersey counties at permitted, state-of-the-art out-of-State disposal facilities on a short-term basis pending the construction of new in-State capacity.

The impacts from proposed new rule N.J.A.C. 7:26-6.6 are as follows:

Social Impact

The adoption of the amended procedure for modification of waste flow rules will have the positive social impact of clarifying the Department's ability to modify existing waste flow rules as need arises, within the context of the guidelines set forth in the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. In addition, outdated references to the role of the former Board of Public Utilities will be eliminated.

Economic Impact

The revised procedure for the modification of direction of waste flow will have neither a positive nor a negative economic impact. The new rule retains the two critical elements originally contained in N.J.A.C. 7:26, that is, the requirement for modification of waste flow by rulemaking, and the requirement for amendment of the relevant county plan to reflect the waste flow modification. These two elements of the rule formed the basis for the original economic impact of the rule on the regulated community. The new rule simply clarifies that the latter of these two elements, that is, the requirement for amendment of the relevant county plan, may be accomplished by the Department if no action is taken by the county within 360 days of the rulemaking element. Therefore, because the new rule retains the two elements which originally resulted in cost to the regulated community, there is neither an increase nor a decrease to the economic impact of the new rule. Furthermore, the new rule concerns only the procedures for modifying waste flows by rulemaking and makes no actual waste flow modifications which might result in costs to the regulated community. Whenever such modifications are made, the economic impacts of such modifications will be separately and specifically addressed in each rulemaking procedure.

Environmental Impact

The procedural amendment to N.J.A.C. 7:26-6.6 reflected in the new rule will have a positive environmental impact because it formally recognizes the Department's authority, implicit in the enabling statutes and enunciated in *A.A. Mastrangelo, Inc. v. Environmental Protection,* 90 *N.J.* 666 (1982), to direct the flow of solid waste in an environmentally sound manner in concert with the economic considerations which may bear on any particular situation.

Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 7:26-6.5 will apply to many solid waste transporters in the State. It is estimated that most of the transporters impacted by this amendment are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with this amendment, these small businesses will deposit the waste collected from the respective municipalities and counties at the presently designated in-county disposal sites. In so doing, the small businesses will be required to satisfy reporting and recordkeeping criteria that apply to all solid waste transporters by virtue of the rule at N.J.A.C. 7:26-2.13. This rule requires that every solid waste transporter complete and submit an origin and destination (O & D) form to every solid waste facility at which the transporter deposits solid waste. The O & D form must specify the origins, amounts and types of all solid waste transported, an identification of the waste generator, transporter and the receiving facility, and the date and time of waste delivery. The proposed amendments to N.J.A.C. 7:26-6.5 and new rule N.J.A.C. 7:26-6.6 neither alter the requirement for submittal of O & D forms by transporters, nor change any of the information required on the O & D form. Accordingly, the impacts on small businesses which arise from recordkeeping and reporting requirements in N.J.A.C. 7:26-6 will be no greater or no less than it has been since the adoption of N.J.A.C. 7:26-2.13. Transporters will simply be changing the specific information on the O & D forms to reflect changes in the solid waste receiving facilities brought about by the proposed amendments to N.J.A.C. 7:26. The small businesses will therefore not require any additional professional services for recordkeeping, reporting, or other compliance requirements since the same reporting, recordkeeping, and registration requirements already apply to their disposal activities. In essence, the entire rulemaking package which follows proposes to adopt within N.J.A.C. 7:26-6 the waste plans which are currently in place under the provisions of various emergency redirection orders. It is anticipated that compliance with this amendment will not require initial capital costs nor any additional annual budget expenses on the part of small businesses. Therefore, in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq., DEPE has determined that this amendment will not impose additional reporting, recordkeeping or other compliance requirements on small businesses. Furthermore, the DEPE has determined that proposed new rule N.J.A.C. 7:26-6.6 will not impose reporting, recordkeeping or other compliance

requirements on small businesses. Instead, it is a clarification of the methodology for regulating waste flow, either by amendment of district solid waste management plans or by amendment of N.J.A.C. 7:26-6.5.

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

7:26-6.5 District waste flow planning requirements and disposal facility designations

[Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designating specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, described in this section.]

(a) Waste flows within, into and out of the Atlantic County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all Atlantic County municipalities shall be directed to the Atlantic County Transfer Station, facility number 0108M, located in Egg Harbor Township, Atlantic County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective August 8, 1990).

[1. All waste types 10, 13, 23, 25, and 27 generated from within the Atlantic County municipality of Buena shall be disposed of at the Buena Borough Sanitary Landfill, facility number 0104A, located in Buena Borough, Atlantic County, New Jersey.

i. Upon closure of the Buena Borough Sanitary Landfill, facility number 0104A, wastes going to this facility shall be disposed of at the Buena Vista Township Sanitary Landfill, facility number 0105C located in Buena Vista Township, Atlantic County, New Jersey.

2. All waste types 10, 13, and 23 generated from within the Atlantic County municipality of Buena Vista shall be disposed of at the Buena Vista Township Sanitary Landfill, facility number 0105C, located in Buena Vista Township, Atlantic County, New Jersey.

i. All waste types 25 and 27 generated from within Buena Vista Township shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey.

3. All waste types 10, 13, and 23 generated from within the Atlantic County municipality of Egg Harbor City shall be disposed of at the Egg Harbor City Sanitary Landfill, facility number 0107A, located in Egg Harbor City, Atlantic County, New Jersey.

i. All waste types 25 and 27 generated from within Egg Harbor City shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B.

ii. Upon closure of the Egg Harbor City Sanitary Landfill, facility number 0107A, wastes going to this facility shall be disposed of at the Galloway-Oak Avenue landfill, facility number 0111B, located in Galloway Township, Atlantic County, New Jersey.

4. All waste types 10, 13, 23, 25 and 27 generated from within the Atlantic County municipalities of Absecon, Atlantic City, Brigantine, Egg Harbor Township, Linwood, Longport, Margate, Northfield, Pleasantville, Somers Point, and Ventnor shall be disposed of at the Lee's Gravel pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey. Upon closure of the Lee's Gravel Pit landfill, facility number 0108B, wastes going to this facility shall be disposed of at the proposed regional County landfill.

5. All waste type 10 generated from within the Atlantic County municipalities of Corbin City and Estell Manor shall be disposed of at the Estell Manor Sanitary Landfill, facility number 0109A, located in Estell Manor City, Atlantic County, New Jersey.

i. All waste types 13, 23, 25, and 27 generated from within Corbin City and Estell Manor shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey.

6. All waste types 10, 13, 23, and 27 generated from within the Atlantic County municipality of Folsom shall be disposed of at the Folsom Borough Sanitary Landfill, facility number 0110A, located in Folsom Borough.

i. All waste type 25 generated from within Folsom Borough shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B.

ii. Upon closure of the Folsom Borough Sanitary Landfill, facility number 0110A, wastes going to this facility shall be disposed of at the Hammonton Municipal Landfill, facility number 0113A, located in Hammonton Town, Atlantic County, New Jersey.

7. All waste types 10, 13, and 23 generated from within the Atlantic County municipality of Galloway shall be disposed of at the Galloway Township-Oak Avenue landfill, facility number 0111B, or the Galloway Township-Hershel landfill, facility number 0111D, both located in Galloway Township, Atlantic County, New Jersey, pending a possible decision to assign wastes to specific solid waste facilities.

i. All waste types 25 and 27 generated from within Galloway Township shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey.

8. All waste types 10, 13, 23, and 25 generated from within the Atlantic County municipality of Hamilton shall be disposed of at the Hamilton Township Sanitary Landfill-Somers Point Road, facility number 0112B, located in Hamilton Township, Atlantic County, New Jersey.

i. All waste type 27 generated from within Hamilton Township shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey.

ii. The Atlantic County Plan adopted by the Board of Chosen Freeholders provides for the Hamilton Township Sanitary Landfill-Somers Point Road, facility number 0112B, to either expand and upgrade or close. The County shall amend its Plan no later than January 1, 1983 providing for either option concerning the Hamilton site.]

[iii.]**i.** Up to 12 tons per day of waste types 10 and 27 generated at the Atlantic County Community College and the Atlantic County Vocational Technical School, and from other commercial, industrial, and governmental generators as may later be determined by agreement between Atlantic County and relevant generators and haulers, shall be disposed of at the Atlantic County Resource Recovery Facility, facility number 0112C, located in Hamilton Township, Atlantic County, New Jersey.

[9. All waste types 10, 13, 23, 25, and 27 generated from within the Atlantic County municipality of Hammonton shall be disposed of at the Hammonton Municipal Landfill, facility number 0113A, located in Hammonton Town, Atlantic County, New Jersey.

10. All waste types, 10, 13, 23, 25, and 27 generated from within the Atlantic County municipality of Mullica shall be disposed of at the Mullica Township Landfill, facility number 0117A, located in Mullica Township, Atlantic County, New Jersey.

i. Upon closure of the Mullica Township Landfill, facility number 0117A, wastes going to this facility shall be disposed of at the Hammonton Municipal Landfill, facility number 0113A, located in Hammonton Town, Atlantic County, New Jersey.

11. All waste types 10, 13, 23, and 27 generated from within the Atlantic County municipality of Port Republic shall be disposed of at the Port Republic City Landfill, facility number 0120A, located in Port Republic City, Atlantic County, New Jersey.

i. All waste type 25 generated from within Port Republic City shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey.

ii. Upon closure of the Port Republic City Landfill, facility number 0120A, wastes going to this facility shall be disposed of at the Galloway Township-Oak Avenue landfill, facility number 0111B, located in Galloway Township, Atlantic County, New Jersey.

12. All waste types 10 and 13 generated from within the Atlantic County municipality of Weymouth shall be disposed of at the Weymouth Township Sanitary Landfill, facility number 0123A, located in Weymouth Township, Atlantic County, New Jersey.

i. All waste types 23, 25, and 27 generated from within Weymouth Township shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey.

ii. Upon closure of the Weymouth Township Sanitary Landfill, facility number 0123A, wastes going to this facility shall be disposed of at the Estell Manor Sanitary Landfill, facility number 0109A, located in Estell Manor City, Atlantic County, New Jersey.

13. All waste types 10, 13, 23, 25, and 27 generated from within the Cape May County municipality of Ocean City shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County until the Cape May County regional landfill becomes operational. This due to a lack of landfill capacity currently available in Cape May County.

i. All waste types 10, 13, 23, 25, and 27 generated from within the Burlington County municipalities of Bass River and Washington shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey due to the transportation difficulties associated with bridge weight limitations in hauling wastes to Burlington County solid waste facilities.]

(b) Waste flows within, into and out of the Bergen County District:

1. Two hundred and fifty thousand (250,000) tons per year of processible solid waste types 10 and 23 generated from within Bergen county and processed at the Sal-Car Transfer Station, facility number 02267b, located in Hillsdale Boro, Bergen County, the DiBella Transfer Station, facility number 0247B, located in Park Ridge Boro, Bergen County, the National Transfer Station, facility number 0231A, located in Lodi Boro, Bergen County, the Garofalo Transfer Station, facility number 0221A, located in Garfield City, Bergen County, and the United Carting Transfer Station, facility number 0218A, located in Fairview Boro, Bergen County, shall be transported directly to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey. (Effective May 1, 1991).

i. All residual ash generated from the operation of the Essex County RRF shall be disposed of by the Bergen County Utilities Authority (BCUA) consistent with the agreement between the BCUA and Essex County and in compliance with the Essex County RRF facility permit at permitted and approved out-of-State landfill facilities. (Effective May 1, 1991).

ii. Bypass waste and nonprocessible waste generated from the operation of the Essex County RRF shall be disposed of consistent with the agreement between the BCUA and Essex County and in accordance with the provisions of the approved Essex County District Solid Waste Management Plan. (Effective May 1, 1991).

2. At the request of Essex County, processible solid waste types 10 and 23 generated within Bergen County in an amount not to exceed 1,600 tons per week in 1992, 2,000 tons per week from January 4, 1993 through February 28, 1993, and 1,700 tons per week from March 1, 1993 through July 31, 1993 shall be transported to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, New Jersey, on an as needed basis from one of the transfer stations set forth in (b)1 above or (b)4 below.

3. Except as may be required by the terms of (b)2 above, to the extent that the five private transfer stations set forth in (b)1 above process tonnages in excess of the 250,000 tons noted above, all excess processible solid waste types 10, 13, 23, 25 and 27 shall be directed from each individual transfer station to an approved out-of-State disposal facility as provided in the Bergen County Plan. (Effective May 19, 1992).

4. All remaining solid waste types 10, 13, 23, 25 and 27 generated within Bergen County and not processed by the five transfer stations identified in (b)1 above shall continue to be directed to the Bergen County Utilities Authority Transfer Station, facility number 0232C, located in North Arlington, Bergen County, prior to transportation to an approved out-of-State disposal facility as provided in the Bergen County Plan. (Effective May 1, 1991).

5. All solid waste type 10 generated from within North Arlington shall be disposed of at the HMDC 1-E landfill, facility number 0239D, located in North Arlington, Bergen County. Upon closure of the HMDC 1-E Landfill, all solid waste type 10 generated from within North Arlington shall be redirected to the Bergen County Utilities Authority Transfer Station, facility number 0232C, located in North Arlington, Bergen County, prior to transportation to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

[1. All waste types 10, 13, 23, 25, and 27 generated from within all of Bergen County's municipalities, with the exceptions of North Arlington and Westwood, shall be disposed of at the Kingsland Park Sanitary Landfill Extension, facility number 0232C, located at Lyndhurst, Bergen County, New Jersey.

i. Upon the development and operation of the Bergen County Utilities Authority's resource recovery facility (originally scheduled for operation in 1983, but soon to be rescheduled to a later date), all processable solid waste generated from within Bergen County, with the exception of North Arlington, shall be disposed of at said resource recovery facility.

ii. Residues and non-processable solid wastes shall be disposed of at a landfill(s) designated in the first two-year update of the District Plan.

2. All waste types 10, 13, 25, and 27 generated from within the Bergen County municipality of North Arlington shall be disposed of at the HMDC Baler/Balefill, facility number 0239C/0232D, located in North Arlington.

3. Waste types 10, 13, and 23 generated from within the Bergen County municipality of Westwood shall be disposed of at the Westwood Landfill, facility number 0267A located in Westwood.

i. Waste types 25 and 27 generated from within Westwood shall be disposed of at the Kingsland Park Sanitary Landfill Extension, facility number 0232C, located in Lyndhurst, Bergen County.

ii. When disposal operations cease at the Westwood Landfill, Westwood will utilize the Kingsland Park Sanitary Landfill Extension, facility number 0232C.

4. In addition to the above mentioned waste flows, other modifications, directives and/or resolutions approved and issued by the Department and/or the HMDC may affect the Bergen County waste flow (see (i) below, waste flows within, into and out of the Hackensack Meadowlands District).]

(c) Waste flows within, into and out of the Burlington County District:

1. All solid waste types 10, 13, 23, 25 and 27 generated from within all Burlington County municipalities, with the exception of (c)1i noted below, shall be disposed of at the Burlington County Landfill, facility number 0318A, located in Florence and Mansfield Townships, Burlington County, New Jersey.

[1. All waste types 10, 13, 23, 25, and 27 generated from within the Burlington County municipalities of Bass River and Washington shall be disposed of at the Pinelands Park Landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey, due to the transportation difficulties associated with the bridge weight limitations in hauling the wastes to Burlington County solid waste facilities.

i. If a county landfill is not operational and the Pinelands Park landfill should become unavailable, Burlington County wastes directed to Pinelands Park shall be disposed of at the Landfill and Development Company landfill, facility number 0323A until such time that a county landfill becomes available.

2. Except as provided in (c)2i and ii below, all waste types 10, 13, 23, 25, and 27 generated from within the Burlington County municipalities of Beverly City, Bordentown City, Bordentown Township, Burlington Township, Chesterfield, Delanco, Edgewater Park, Fieldsboro, Florence, Mansfield, New Hanover, North Hanover, Pemberton Township, Pemberton Borough, Springfield, Willingboro, and Wrightstown shall be disposed of at the Parklands Reclamation Project landfill facility number 0304A, located in Bordentown Township, Burlington County, New Jersey.

i. If a county landfill is not operational and Parklands Reclamation Project landfill should become unavailable, the wastes directed to the Parklands Reclamation Project landfill pursuant to (c)2 above shall be disposed of at the Landfill and Development Company landfill, facility number 0323A until such time that a county landfill becomes available.]

[ii.]**i.** All waste types 10, 23, and 27 generated at the Fort Dix Army Base and the McGuire Air Force Base, located within New

Hanover and North Hanover Townships, shall be disposed of at the Fort Dix Heat Recovery Incinerator, facility number 0325A, located in New Hanover Township, Burlington County. All non-processible and non-hazardous residual waste shall be disposed of at the [Parklands Reclamation Project landfill, facility number 0304A, located in Bordentown Township, Burlington County, New Jersey. Upon operation of the county landfill, all non-processable and non-hazardous residual waste shall be redirected to the county landfill] **Burlington County Landfill.**

[iii. If the county landfill is not operational and the Fort Dix Heat Recovery Incinerator should become unavailable, waste directed to the Fort Dix Heat Recovery Incinerator pursuant to ii, above shall be disposed of at the Parklands Reclamation Project landfill until such time that the county landfill becomes operational.

3. All waste types 10, 13, 23, and 27, generated from within the Burlington County municipality of Burlington City shall be disposed of at the Burlington City landfill, facility number 0305A, located in Burlington City, Burlington County, New Jersey.

i. All waste type 25 generatd from within Burlington County shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

ii. Upon closure of the Burlington City Landfill, wastes going to this facility shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

iii. If a county landfill is not operational and Parklands Reclamation Project landfill should become unavailable, wastes directed to the Parklands Reclamation Project landfill from Burlington City shall be disposed of at the Landfill and Development Company landfill, facility number 0323A until such time that a county landfill becomes available.

4. All waste type 10 generated from within the Burlington County municipality of Evesham Township shall be disposed of at the Evesham Township Landfill, facility number 0313A, located in Evesham Township, Burlington County, New Jersey until December 31, 1984. Thereafter, type 10 waste shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

i. All waste types 13, 23 and 27 generated from within Evesham Township shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

ii. All waste type 25 generated from within Evesham Township shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

iii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed to the Landfill and Development Company landfill pursuant to (c)4i, above shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A until such time that a county landfill becomes available.

5. All waste types 10, 13, 23, and 27 generated from within the Burlington County municipality of Lumberton shall be disposed of at the Lumberton Township Sanitary Landfill, facility number 0317A, located in Lumberton Township, Burlington County, New Jersey.

i. All waste type 25 generated from within Lumberton Township shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

ii. Upon closure of the Lumberton Township Sanitary Landfill, facility number 0317A, wastes going to this facility shall be disposed of at the Landfill and Development Company Landfill, facility number 0323A.

iii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed to the Landfill and Development Company landfill pursuant to (c)5ii, above shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, until such time that a county landfill becomes available.

6. All waste types 10, 13, 23, and 27 generated from within the Burlington County municipalities of Eastampton, Hainesport, Maple Shade, Medford, Medford Lakes, Mount Holly, Mount Laurel, Shamong, Southampton, Westampton, and Woodland shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey.

i. All waste type 25 generated from within the Burlington County municipalities of Eastampton, Hainesport, Maple Shade, Medford, Medford Lakes, Mount Holly, Mount Laurel, Shamong, Southampton, Westampton, and Woodland shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

ii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed pursuant to (c)6. above shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, until such time that a county landfill becomes available.

7. All wastes types 10, 13, and 23 generated from within the Burlington County municipality of Tabernacle shall be disposed of at the Tabernacle Sanitary landfill, facility number 0335A, located in Tabernacle Township, Burlington County, New Jersey.

i. Type 25 waste generated from within Tabernacle Township shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A.

ii. Type 27 wastes generated from within Tabernacle shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

iii. Upon closure of the Tabernacle Sanitary Landfill, facility number 0334A, wastes going to this facility shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

iv. If a county landfill is not operational and the Landfill and Development Company Landfill should become unavailable, wastes directed to the Landfill and Development Company landfill from Tabernacle Township shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, until such time that a county landfill becomes available.

8. All waste types 10, 13, 23, and 27 generated from within the Burlington County municipalities of Cinnaminson, Delran, Moorestown, Palmyra, Riverside and Riverton shall be disposed of at the Pennsauken Township landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey until May 7, 1984 as provided for in the Interdistrict Waste Flow agreement between Burlington and Camden Counties subject to the terms and conditions set forth therein. Thereafter, all waste types 10, 13, 23, and 27 shall be disposed of at the Landfill and Development Company landfill, facility number 0323A.

i. Waste type 25 generated from within the Burlington County municipalities of Cinnaminson, Delran, Moorestown, Palmyra, Riverside and Riverton shall be disposed of at the Parklands Reclamation Project landfill, facility number 0304A, located in Bordentown Township, Burlington County, New Jersey.

ii. If a county landfill is not operational and the Landfill and Development Company landfill should become unavailable, wastes directed to the Landfill and Development Company landfill pursuant to (c)8 above shall be disposed of at the Parklands Reclamation Project landfill until such time that a county landfill becomes available.

9. All waste types 10, 13, 23, and 27 generated from within the Camden County municipalities of Audubon, Lindenwold, Voorhees and that portion of Cherry Hill Township which is collected east of Kings Highway to the municipal line of Mt. Laurel and the Borough of Haddonfield, estimated to be a portion of 20,500 tons per year, shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey until May 7, 1984 as provided for in the Interdistrict Waste Flow agreement between Burlington and Camden Counties and subject to the terms and conditions set forth therein.

10. All waste type 13 generated from within the Camden County municipality of Camden City shall be disposed of at the Landfill and Development Company landfill, facility number 0323A, located in Mount Holly Township, Burlington County, New Jersey, until May

7, 1984 as provided for in the Interdistrict Agreement between Burlington and Camden Counties and subject to the terms and conditions set forth therein.

11. Burlington County shall accept certain wastes from Pennsylvania hauling companies pursuant to agreements between Burlington County and these companies, subject to the terms and conditions set forth therein.]

(d) Waste flows within, into and out of the Camden County District:

[1. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Brooklawn, Clementon, Collingswood, Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mount Ephraim, Oaklyn, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, and Woodlynne shall be disposed of out-of-state in an approved facility in accordance with the laws and regulations of the receiving state.

2. All waste types 10, 13, 23, 25, and 27 generated from within the Camden County municipalities of Chesilhurst, Waterford Township, and Winslow Township shall be disposed of at the Winslow Township Solid Waste Disposal Area, facility number 0436A, located in Winslow Township, Camden County, New Jersey.

i. All waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Berlin Borough and Berlin Township which is collected by the public works departments of these two municipalities shall be disposed of at the Winslow Township Solid Waste Disposal Area, facility number 0436A, located in Winslow Township, Camden County, New Jersey, effective January 1, 1986.

ii. Any waste types 10, 13, 23, 25 and 27 generated from within the Camden County municipalities of Berlin Borough and Berlin Township which is not collected by the respective public works departments of these municipalities may be disposed of at the Forge, Inc. Transfer Station, located in the city of Philadelphia, Pennsylvania, effective January 1, 1986.]

[3.]**1.** All residential waste types 10, 13, 23, 25 and 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be directed to the Winslow Township Transfer Station, facility number 0436I, located in Winslow Township, Camden County, New Jersey, [when it becomes operational prior to out-of-state disposal. Disposal out-of-state shall be in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations] **Once transferred, the waste from the Winslow Township Transfer Station shall be disposed of** at the South Camden Resource Recovery Facility, Facility Number 0408C, [these waste types shall be directed from the transfer station to the resource recovery facility] except for waste type 25 which shall continue to be directed from the transfer station to out-of-State disposal **in accordance with the laws and regulations of the receiving state**.

i. All commercial waste types 10, 13, 23, [and 25] and industrial waste type 27 generated in Chesilhurst Borough, Waterford Township and Winslow Township shall be disposed of directly [out-of-state in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations] at the South Camden Resource Recovery Facility, Facility Number 0408C, [waste shall be directed to the facility] except that waste type 25 shall continue to be disposed of directly out-of-State **in accordance with the laws and regulations of the receiving state**.

[ii. All solid waste types 10, 13, 23, 25 and 27 generated in Berlin Borough and Berlin Township which is collected and transported by the public works departments of Berlin Borough and Berlin Township shall be directed to the Winslow Township Transfer Station when it becomes operational, facility number 0436I, located in Winslow Township, Camden County, New Jersey, prior to out-of-state disposal. Disposal out-of-state shall be in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations, at the South Camden Resource Recovery Facility, facility number 0408C, waste will be directed from the transfer station to the resource recovery facility except that waste type 25 shall continue to be directed from the transfer station to out-of-state disposal.

iii. All solid waste types 10, 13, 23, 25 and 27 generated in Berlin Borough and Berlin Township which is not collected and transported by the public works departments of Berlin Borough and Berlin Township shall be disposed of directly out-of-state in an approved facility in accordance with the laws and regulations of the receiving state. Upon commencement of operations at the South Camden Resource Recovery Facility, facility number 0408C, waste shall be directed to the facility except that waste type 25 shall continue to be disposed of directly out-of-state.]

[4.]**2.** All waste types [10, 13,] 23 and 27 **and nonprocessible 13** generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Pennsauken Township Sanitary Landfill, facility numbers 0427D**1SE01, 0427D1SE03, and 0427A-E1**, located in Pennsauken Township, Camden County, New Jersey.

i. All waste type 25 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township, Lindenwold, Merchantville, Pennsauken, Tavistock and Voorhees shall be disposed of out-of-state in an approved facility in accordance with the laws and regulations of the receiving state.

ii. All waste types 10 and processible 13 generated from within the Camden County municipalities of Audubon, Cherry Hill, Haddonfield, Haddon Township, Lindenwold, Merchantville, Pennsauken, Tavistock, and Voorhees shall be disposed of at the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County. (Effective January 13, 1992).

[5. All waste types 10, 23, 25 and 27 generated from within the Camden County municipality of Camden City shall be disposed of out-of-state in an approved facility in accordance with the laws and regulations of the receiving state.

i. All waste type 13 generated from within the Camden County municipality of Camden City shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

6. (Reserved)]

[7.]**3.** All solid waste types 10, 13, 23, and 27 generated within the Camden County municipalities of Audubon Park, Barrington, Bellmawr, Berlin Borough, Berlin Township, Brooklawn, Camden City, Chesilhurst, Clementon, **Collingswood,** Gibbsboro, Gloucester City, Gloucester Township, Haddon Heights, Hi-Nella, Laurel Springs, Lawnside, Magnolia, Mt. Ephraim, **Oaklyn,** Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Waterford, Winslow and Woodlynne shall be directed to the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County, New Jersey[, upon commencement of operation of that facility].

i. All waste type 25 from the municipalities listed in (d)[7]**3** above, [bypass waste,] and ash from the operation of the South Camden Resource Recovery Facility shall be disposed of at approved out-of-State facilities in accordance with the laws and regulations of the receiving state.

ii. All of the bypass and nonprocessible waste from the operation of the South Camden Resource Recovery Facility shall be disposed of at the Pennsauken Township Sanitary Landfill, facility numbers 0427D1SE01, 0427D1SE03, and 0427A-E1, located in Pennsauken Township, Camden County, New Jersey. Also, in the event that nonhazardous ash from the operation of the resource recovery facility cannot be disposed of at an out-of-State facility, such ash shall be disposed of at the Pennsauken Township Sanitary Landfill. (Effective January 13, 1992).

iii. In the event a unified rate system is established for all solid waste facilities within Camden County, all solid waste types 10, 13, 23, 25 and 27 generated from within Berlin Borough and Berlin Township shall be directed to the Winslow Township Transfer Station, facility number 0436I, located in Winslow Township, Camden County, New Jersey. Once transferred, the waste from the Winslow Township Transfer Station shall be disposed of at the South Camden Resource Recovery Facility, facility number 0408C, located in Camden City, Camden County, New Jersey, except that waste type

25 shall be directed from the transfer station to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

(e) Waste flows within, into and out of the Cape May County District:

[1. All waste types 10, 13, 23, 25, and 27 generated from within Cape May County municipalities of Avalon, Sea Isle City and Woodbine shall be disposed of at the Foundation and Structures, Inc. landfill, facility number 0516B, located in Woodbine Boro, Cape May County, New Jersey.

2. All waste types 10, 13, 23, 25, and 27 generated from within the Cape May municipality of Dennis Township shall be disposed of at the Dennis Township Belleplain Landfill, facility number 0504B, located in Dennis Township, Cape May County, New Jersey or the Dennis Township South Seaville Landfill, facility number 0504C, located in Dennis Township, Cape May County, New Jersey.

3. All waste types 10, 13, 23, 25, and 27 generated from within the Cape May County municipalities of Lower, Middle, North Wildwood, Stone Harbor, West Wildwood and Wildwood City shall be disposed of at the Mar-Tee Middle Township Sanitary Landfill, facility number 0506C, located in Middle Township, Cape May County, New Jersey.

4. All waste type 10 generated from within the Cape May County municipalities of Cape May City, Cape May Point Boro, West Cape May, and Wildwood Crest Boro shall be disposed of at the Smith's Landfill, facility number 0505D, located in Lower Township, Cape May County, New Jersey.

i. All waste types 13, 23, 25, and 27 generated from within the Cape May municipalities of Cape May City, Cape May Point Boro, West Cape May, and Wildwood Crest Boro shall be disposed of at the Mar-Tee Middle Township Sanitary Landfill, facility number 0506C, located in Middle Township, Cape May County, New Jersey.

5. All waste types 10, 23, and 27 generated from within the Cape May County municipality of Upper shall be disposed of at the Upper Township Sanitary Landfill, facility number 0511A, located in Upper Township, Cape May County, New Jersey.

i. All waste types 13 and 25 generated from within the Cape May County municipality of Upper shall be disposed at the Foundation and Structures, Inc. Landfill, facility number 0516B, located in Woodbine Boro, Cape May County, New Jersey.

6. All waste types 10, 13, 23, 25, and 27 generated from within the Cape May County municipality of Ocean City shall be disposed of at the Lee's Gravel Pit landfill, facility number 0108B, located in Egg Harbor Township, Atlantic County, New Jersey, until the Cape May regional landfill becomes operational.]

[7. When the Cape May County regional landfill becomes operational, all] **1. All** waste types [(] 10, 13, 23, 25, and 27 [)] generated from within the Cape May County municipalities of Avalon, Cape May City, Cape May Point Boro, Dennis, Lower, Middle, North Wildwood, Ocean City, Sea Isle City, Stone Harbor, Upper, West Cape May, West Wildwood, Wildwood, Wildwood Crest, and Woodbine shall be disposed of at [this facility] **the Cape May County regional landfill, facility number 0511C, located in Woodbine Township, Cape May County.**

(f) Waste flows within, into and out of the Cumberland County District:

[1. All waste types 10, 13, 23, 25, and 27 generated from within the Cumberland County municipality of Bridgeton shall be disposed of at the Bridgeton City landfill, facility number 0601A, located in Bridgeton City, Cumberland County, New Jersey.

2. All waste types 10, 13, and 23 generated from within the Cumberland County municipality of Commercial Township shall be disposed of at the Commercial Township landfill, facility number 0602A, located in Commercial Township, Cumberland County, New Jersey.

i. All waste types 25 and 27 generated from within the Cumberland County municipality of Commercial Township shall be disposed of at the Millville City landfill, facility number 0601A, located in Millville City, Cumberland County, New Jersey.

3. All waste types 10, 13, and 23 generated from within the Cumberland County municipality of Deerfield Township shall be disposed of at the Deerfield Township landfill, facility number 0603A, located in Deerfield Township, Cumberland County, New Jersey.

i. All waste type 25 generated from within the Cumberland County municipality of Deerfield Township shall be disposed of at the Vineland City landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.

ii. All waste type 27 generated from within the Cumberland County municipality of Deerfield Township shall be disposed of at the Millville City landfill, facility number 0614A, located in Millville City, Cumberland County, New Jersey.

4. All waste types 10, 13, and 23 generated from within the Cumberland County municipality of Downe Township shall be disposed of at the Downe Township landfill, facility number 0604B, located in Downe Township, Cumberland County, New Jersey.

i. All waste type 25 generated from within the Cumberland County municipality of Downe Township shall be disposed of at the Vineland City landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.

ii. All waste type 27 generated from within the Cumberland County municipality of Downe Township shall be disposed of at the Millville City landfill, facility number 0610A, located in Millville City, Cumberland County, New Jersey.

5. All waste types 10, 13, and 23 generated from within the Cumberland County municipality of Fairfield Township shall be disposed of at the Fairfield Township landfill, facility number 0605A, located in Fairfield Township, Cumberland County, New Jersey.

i. All waste types 25 and 27 generated from within the Cumberland County municipality of Fairfield Township shall be disposed of at the Bridgeton City landfill, facility number 0601A, located in Bridgeton City, Cumberland County, New Jersey.

6. All waste types 10, 13, and 23 generated from within the Cumberland County municipalities of Hopewell Township and Greenwich Township shall be disposed of at the Hopewell Township landfill, facility number 0607A, located in Hopewell Township, Cumberland County, New Jersey.

i. All waste types 25 and 27 generated within the Cumberland County municipalities of Hopewell Township and Greenwich Township shall be disposed of at the Bridgeton City landfill, facility number 0601A, located in Bridgeton City, Cumberland County, New Jersey.

7. All waste types 10, 13, and 23 generated from within the Cumberland County municipality of Lawrence Township shall be disposed of at the Lawrence Township landfill, facility number 0608C, located in Lawrence Township, Cumberland County, New Jersey.

i. All waste type 25 generated from within the Cumberland County municipality of Lawrence Township shall be disposed of at the Vineland City landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.

ii. All waste type 27 generated from within the Cumberland County municipality of Lawrence Township shall be disposed of at the Millville City landfill, facility number 0610A, located in Millville City, Cumberland County, New Jersey.

8. All waste types 10, 13, 23, and 25 generated from within the Cumberland County municipality of Maurice River Township shall be disposed of at the Maurice River Township landfill, facility number 0609B, located in Maurice River Township, Cumberland County, New Jersey, or the Maurice River Township landfill, facility number 0609C (for municipal, type 10, bulky, type 13, and vegetative, type 23 waste only), located in Maurice River Township, Cumberland County, New Jersey.

i. All waste type 27 generated from within the Cumberland County municipality of Maurice River Township shall be disposed of at the Millville City landfill, facility number 0610A, located in Millville City, Cumberland County, New Jersey.

9. All waste types 10, 13, 23, and 27 generated from within the Cumberland County municipality of Millville City shall be disposed of at the Millville City landfill, facility number 0610A, located in Millville City, Cumberland County, New Jersey.

i. All waste type 25 generated from within the Cumberland County municipality of Millville City shall be disposed of at the Vineland City landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.

10. All waste types 10, 13, and 23 generated from within the Cumberland County municipalities of Stow Creek Township and Shiloh Borough shall be disposed of at the Stow Creek Township landfill, facility number 0612A, located in Stow Creek Township, Cumberland County, New Jersey.

i. All waste types 25 and 27 generated from within the Cumberland County municipalities of Stow Creek Township and Shiloh Borough shall be disposed of at the Bridgeton City landfill, facility number 0601A, located in Bridgeton City, Cumberland County, New Jersey.

11. All waste types 10 and 23 generated from within the Cumberland County municipality of Upper Deerfield Township shall be disposed of at the Upper Deerfield Township landfill, facility number 0613A, located in Upper Deerfield Township, Cumberland County, New Jersey.

i. All waste types 13, 25, and 27 generated from within the Cumberland County municipality of Upper Deerfield Township shall be disposed of at the Bridgeton City landfill, facility number 0601A, located in Bridgeton City, Cumberland County, New Jersey.

ii. Upon closure of the Upper Deerfield Township landfill, facility number 0613A, all waste types directed to this landfill shall be disposed of at the Bridgeton City landfill, facility number 0601A, located in Bridgeton City, Cumberland County, New Jersey.

12. All waste types 10, 13, 23, 25, and 27 generated from within the Cumberland County municipality of Vineland City shall be disposed of at the Vineland City landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.

13. According to Section D.2(a) of the approved Cumberland County District Solid Waste Management Plan and Section D.1(d) of the approved Gloucester County District Solid Waste Management Plan, all waste types 10, 13, 23, 25, and 27 generated from the Gloucester County municipality of Newfield Borough shall be disposed of at the Vineland City landfill, facility number 0614B, located in Vineland City, Cumberland County, New Jersey.]

[14. When the Cumberland County regional landfill(s), becomes operational, all] **1. All** waste types 10, 13, 23, 25, and 27 generated from within the Cumberland County municipalities of Bridgeton, Commercial, Deerfield, Downe, Fairfield, Greenwich, Hopewell, Lawrence, Maurice River, Millville, Stow Creek, Shiloh, Upper Deerfield, and Vineland shall be disposed of at [these facilities] **the Cumberland County regional landfill, facility number 0603B, located in Deerfield Township, Cumberland County, New Jersey**.

(g) Waste flows within, into and out of the Essex County District:

1.-5. (No change.)

6. [Upon commencement of operations of the Essex County Resource Recovery Facility, all] **All** solid waste types 10, 23, and 27 generated within the municipalities of Belleville, Bloomfield, Caldwell, Cedar Grove, East Orange, Essex Fells, Fairfield, Glen Ridge, Irvington, Livingston, Maplewood, Millburn, Montclair, Newark, North Caldwell, Nutley, Orange, Roseland, South Orange, Verona, West Caldwell, and West Orange [shall be] **is** directed to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey.

i. All waste types 13, [and] 25 **and nonprocessible type 27** from the municipalities listed in (g)6 above, [bypass waste] shall be disposed of at approved out-of-state facilities in accordance with the laws and regulations of the receiving state. Out-of-State disposal shall be via [the transfer stations referenced in (g)1 through 5 above for so long as these facilities remain in an approved District Solid Waste Management Plan for Essex County; otherwise, waste shall be disposed of directly out-of-state] **the Solid Waste Transfer and Recycling, Inc., Transfer Station, facility number 0714R, located in Newark, Essex County, New Jersey**.

7. Two hundred and fifty thousand (250,000) tons per year of processible solid waste types 10 and 23 generated from within Bergen County and processed at the transfer stations listed in (b)1 above shall be directed to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, Essex County, New Jersey. (Effective May 1, 1991). In addition, at the request of Essex County, processible solid waste types 10 and 23 generated within Bergen County in an amount not to exceed 1,600 tons per week in 1992, 2,000 tons per week from January 4, 1993 through February 28, 1993, and 1,700 tons per week from March 1, 1993 through July 31, 1993 shall be transported to the Essex County Resource Recovery Facility, facility number 0714X, located in Newark, New Jersey, on an as needed basis from one of the transfer stations set forth in (b)1 and 4 above.

i. All residual ash generated from the operation of the Essex County RRF shall be disposed of by the BCUA consistent with the agreement between the BCUA and Essex County and in compliance with the Essex County RRF facility permit at permitted and approved out-of-State landfill facilities. (Effective May 1, 1991).

ii. Bypass waste and nonprocessible waste generated from the operation of the Essex County RRF shall be disposed of consistent with the agreement between the BCUA and Essex County and in accordance with the provisions of the approved Essex County District Solid Waste Management Plan. (Effective May 1, 1991).

(h) (No change.)

(i) Waste flows within, into and out of the Hackensack Meadowlands District:

1. The Hackensack Meadowlands Development Commission shall accept certain waste flows from Bergen[, Essex,] **and** Hudson[, Passaic and Union] Counties as described in [subsections] (b) [and (g)] above[,] and (j)[, (q) and (u)] below.

[2. In addition to these approved waste flows, the following interdistrict waste flow changes that have been made as a result of modifications, directives and/or resolutions approved and issued by the Department and/or the HMDC shall be incorporated into the affected district plans:

i. July 28, 1981: The HMDC directed (Resolution number 81-62) that certain recycling facilities known as Envirogetics, Inc. of Hoboken, V. Ponte and Sons, Inc., of Jersey City, Consolidated Carting Company (t/a Tri-Compaction Sales) of Lyndhurst and Barretti Carting (t/a Hoboken Recycling Corp.) of Hoboken shall dispose of their unrecycled residues at such disposal facility as is designated for Essex County Solid Waste.

ii. August 25, 1981: The HMDC adopted an emergency amendment (Resolution number 81-65) to its Solid Waste Management Plan, subsequently approved by DEP, which authorized the temporary diversion of Kearny town residential solid waste to the MSLA 1-D landfill, or such facility designated for Essex County waste.

iii. October 27, 1981: The HMDC adopted an emergency amendment (Resolution number 81-77) to its Solid Waste Management Plan, subsequently approved by DEP, which authorized the temporary diversion of residues from the V. Ponte and Sons recycling plant in Jersey City to the HMDC Baler and like amount of the Jersey City Incinerator Authority residential waste from the HMDC Baler to the Essex County disposal facility. This emergency action also temporarily diverts certain wastes collected by V & L Contracting and Equipment Co., Inc. from the HMDC Baler to the Essex County disposal facility.

iv. November 10, 1981: A DEP directive of this date directed solid waste generated in the Essex County municipality of Essex Fells from the closed Combe-Fill Corporation Landfill in Morris County to the MSLA 1-D facility in Kearny, New Jersey, thus incorporating Essex Fells as part of the Essex County waste flow.

v. November 25, 1981: A temporary waste flow modification was issued by DEP which directed that certain residential solid waste from the City of Elizabeth in Union County may be redirected from the Industrial Land Reclaiming and Global landfills in Middlesex County to the MSLA 1-D site in Kearny during times when the Middlesex County facilities are closed or as otherwise specified by the directive. See the November 25, 1981 directive for specific details.

vi. January 15, 1982: DEP interprets the Certification of Approval with Modification of the Bergen County and the Hackensack Meadowlands District Solid Waste Management Plans such that they designate the Bergen County Utilities Authority as the agency

responsible for the implementation of the proposed resource recovery facility for the disposal of waste generated in Bergen County.

vii. March 2, 1982: A consent judgment filed with the Superior Court of New Jersey, Law Division-Essex County ordered that the HMDC shall develop, construct and operate a baler facility within the Hackensack Meadowlands District for all solid waste generated from within Essex County. Said facility, in conjunction with other interim disposal facilities shall accommodate all Essex County solid waste for a period of six and one-half years from the date of the consent judgment. Thereafter, all Essex County solid waste must be accommodated by Essex County at a resource recovery facility (or an appropriate interim facility) to be constructed and operated by Essex County, in Essex County. (See Consent Order of March 2, 1982 for additional details).

viii. April 12, 1982: Position statement by the HMDC requests that, at the time DEP directs the amendment of the HMDC, Essex and Union County district plans, DEP require Union County to ready alternate disposal facilities to accept the wastes generated by Union and Springfield no later than six and one-half years from March 2, 1982 consistent with the Essex County agreement of that date.

ix. September 9, 1982: The HMDC adopted an emergency amendment by resolution to the Solid Waste Management Plan which directs all solid waste disposed of at the MSLA 1-D landfill to the MSLA 1-C landfill until October 26, 1982. The purpose of this action was to provide continued landfill space for Essex County waste until the designated interim disposal facility for Essex County has been prepared.

x. According to the May 2, 1983 amended Consent Judgment issued by the Honorable John A. Murzulli, J.S.C., all waste types 10, 13, 23, 25, and 27 generated from within all of Essex County's municipalities shall be disposed of at facilities located in the Hackensack Meadowlands District until July 31, 1987. Under the amended Consent Judgment, the HMDC will assume no responsibility for the acceptance of Essex County's waste beyond July 31, 1987 except insofar as residual, non-processible and backup capacity is required upon completion of the Essex County resource recovery facility.]

(j) Waste flows within, into and out of the Hudson County District:

1. All waste types 13, 23, 25, and 27 generated from within the Hudson County municipalities of Bayonne City, East Newark Boro, Guttenberg Town, Harrison Town, Hoboken City, Jersey City, Kearny Town, North Bergen Township, Secaucus Town, Union City, Weehawken Township and West New York town shall be directed to the Hackensack Meadowlands Development Commission Baler facility, facility number 0239C, located in North Arlington, Bergen County, New Jersey for handling prior to transportation to out-of-State permitted disposal facilities in accordance with the laws and regulations of the receiving state. (Effective February 4, 1991).

2. All waste type 10 generated from within the Hudson County municipalities of Bayonne City, East Newark Boro, Guttenberg Town, Harrison Town, Hoboken City, Jersey City, Kearny Town, North Bergen Township, Secaucus Town, Union City, Weehawken Township and West New York Town shall be directed to the Hackensack Meadowlands Development Commission Baler facility, facility number 0239C, located in North Arlington, Bergen County, New Jersey, for baling prior to disposal at the Hackensack Meadowlands Development Commission 1-E landfill, facility number 0907W, located in North Arlington, Bergen County, New Jersey. (Effective February 4, 1991).

3. Upon closure of the HMDC 1-E landfill, all waste type 10 generated from within the Hudson County municipalities of Bayonne City, East Newark Boro, Guttenberg Town, Harrison Town, Hoboken City, Jersey City, Kearny Town, North Bergen Township, Secaucus Town, Union City, Weehawken Township and West New York Town shall be directed to the Hackensack Meadowlands Development Commission Baler facility, facility number 0239C, located in North Arlington, Bergen County, New Jersey for handling prior to transportation to out-of-State permitted disposal facilities in accordance with the laws and regulations of the receiving state. (Effective February 4, 1991).

[1. All waste types 10, 13, 23, 25, and 27 generated from within all of Hudson County's municipalities with the exception of Bayonne, shall be disposed of at the Hackensack Meadowlands Development Commission Baler facility, facility number 0239C/0232D, located in North Arlington, Bergen County, New Jersey. When the Hudson County resource recovery facility scheduled to be on line by January 1, 1985 becomes operational, these processable solid wastes shall be directed to said facility. Residues and non-processable solid wastes shall be disposed of at a landfill(s) designated in the first two-year update of the Hackensack Meadowlands District Solid Waste Management Plan.

2. All waste types 10, 13, 23, and 25 generated from within the Hudson County municipality of Bayonne shall be disposed of at the Bayonne Sanitary Landfill, facility number 0901A, located in the City of Bayonne.

i. All waste type 27 generated from within Bayonne shall be disposed of at the HMDC Baler/Balefill, facility number 0239C/0232D, located in North Arlington, Bergen County, New Jersey.

ii. Upon closure of the Bayonne Sanitary landfill, scheduled to close on April 1, 1983, all solid waste generated from within Bayonne shall be directed to the HMDC Baler/Balefill. When the Hudson County resource recovery facility scheduled to be on line by January 1, 1985 becomes operational, this waste stream shall be redirected to said facility. Residues and non-processable solid waste shall be disposed of at a landfill(s) designated in the first two-year update of the Hackensack Meadowlands District Solid Waste Management Plan.

3. In addition to the above mentioned waste flows, other modifications, directives, and/or resolutions approved and issued by the Department and/or the HMDC may affect the Hudson County waste flow (see (i) above, waste flows within, into and out of the Hackensack Meadowlands District).]

(k)[.] Waste flows within, into and out of the Hunterdon County District:

1.-2. (No change.)

3. Up to 100 tons per day of processible solid waste generated within Hunterdon County shall be transported from the Hunterdon County Transfer Station, facility number 1006B, located in Clinton Township, Hunterdon County, New Jersey, to the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County, New Jersey, through the year 2001. (Effective June 1, 1988).

(l) Waste flows within, into and out of the Mercer County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all Mercer County municipalities shall be directed to the Mercer County Transfer Station, facility number 1102D, located in Ewing Township, Mercer County, New Jersey, for processing prior to disposal at the G.R.O.W.S. landfill in Bucks County, Pennsylvania, in accordance with the laws and regulations of the receiving state. (Effective November 1, 1988).

[1. All waste types 10, 13, 23, 25, and 27 generated from within Mercer County shall be disposed of at out-of-state facilities as designated in the Mercer County District Solid Waste Management Plan when such disposal does not violate any law or regulation of the receiving state.]

(m) Waste flows within, into and out of the Middlesex County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all municipalities in Middlesex County shall be disposed of at the Middlesex County Utilities Authority Landfill (Edgeboro), facility number 1204A, located in East Brunswick, Middlesex County, New Jersey. (Effective July 19, 1990).

[1. In-County Wastes:

i. All solid waste types 10, 13, 23, 25, and 27 generated from within the Middlesex County municipalities of Middlesex, Dunellen, Piscataway and South Plainfield, shall be disposed of at the Industrial Land Reclaiming Inc. landfill, facility number 1205C, located in

Edison Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be directed to another solid waste facility(ies).

ii. All solid waste types 10, 13, 23, 25, and 27 generated from within the Middlesex County municipalities of Edison, Metuchen and Highland Park, shall be disposed of at the Edison Disposal Area landfill, facility number 1205A, located in Edison Township, Middlesex County, New Jersey. Upon closure of this facility said solid wastes will be redirected to another alternate facility(ies).

(1) The solid wastes including leaves, branches, tree trunks, tires, and pallets from Metuchen and Highland Park are permitted to be disposed at the Industrial Land Reclaiming landfill (1205C) in Edison Township in the event the Edison Disposal Area landfill refuses to accept these waste types.

iii. All solid waste types 10, 13, 23, 25, and 27 generated from within the Middlesex County municipalities of New Brunswick, North Brunswick, Plainsboro, Cranbury, East Brunswick, Milltown, South River, Spotswood, and Helmetta, and all solid waste types 13, 23, 25, and 27 generated from within the Middlesex County municipality of South Brunswick, shall be disposed of at the Edgeboro Disposal Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

iv. All solid waste type 10 generated from within the Middlesex County municipality of South Brunswick shall be disposed of at the South Brunswick municipal landfill, facility number 1221B, located in South Brunswick, Middlesex County, New Jersey. Upon closure of this facility, which shall occur no later than December 31, 1984, said solid wastes will be redirected to another alternate facility(ies).

v. All solid waste types 10, 13, 23, 25, and 27 generated from within the Middlesex County municipalities of Carteret, Woodbridge, Perth Amboy, South Amboy, Sayreville, Old Bridge, Monroe and Jamesburg shall be disposed at the Global Landfill Reclaiming Corp. landfill, facility number 1209A, located in Old Bridge Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another alternate facility(ies).

(l) Litigation between Carteret and the State Attorney General's Office indicates that the Carteret Landfill has no legal right to operate. However, at the time of this rulemaking, the Superior Court, Chancery Division, has permitted the Carteret Landfill to continue operating until final closure in March 1983.

vi. All solid waste types 10, 13, 23, 25, and 27 generated within Middlesex County municipalities shall be disposed of at the proposed Landfill No. 1 and No. 2 in Middlesex County as designated upon closure of existing landfills which are currently accepting solid wastes generated in those municipalities.

vii. Upon development and operation of the Middlesex County resource recovery facility, all processable non-recyclable solid wastes generated within all municipalities in Middlesex County shall be disposed of at said facility. Residue and non-processable solid wastes shall be disposed of at designated landfills.

2. Out-of-County wastes:

i. All solid waste types 10, 13, 23, 25, and 27 generated from within the Hunterdon County municipalities of Clinton Township, Delaware, East Amwell, Flemington, Kingwood, Raritan, Readington and Tewksbury shall be disposed of at the Edgeboro Disposal Landfill, facility number 1204A, located in East Brunswick until the expiration of the interdistrict agreement. At such time, all solid waste from these municipalities shall be disposed of at High Point Sanitary Landfill, facility number 2105A, located in Franklin Township, Warren County, New Jersey.

ii. All solid waste types 10, 13, 23, 25, and 27 generated from within the Union County municipalities of Berkeley Heights, Fanwood, Hillside, Plainfield, Roselle Park, Scotch Plains, Mountainside, Westfield, Winfield, Garwood, Cranford and Clark shall be disposed of at the Industrial Land Reclaiming Inc. landfill (ILR), facility number 1205C, located in Edison Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

iii. All sofid waste types 10, 13, 23, and 25 generated from within the Union County municipalities of Elizabeth, Roselle, and Kenilworth shall be disposed of at the Industrial Land Reclaiming Inc., landfill (ILR), facility number 1205C, located in Edison Township, Middlesex County, New Jersey. Upon closure of this facility, said solid waste will be redirected to another designated solid waste facility(ies).

(1) All type 27 solid wastes generated from within the Union County municipalities of Kenilworth and Roselle shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, East Brunswick, Middlesex County, New Jersey.

(2) All type 27 solid wastes generated from within Elizabeth shall be disposed of at the Global Landfill Reclaiming Corp. landfill, facility number 1209A, Old Bridge Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

(3) Exceptions to the Elizabeth waste flows shall include the following: a maximum of four City of Elizabeth trucks (only) per day that are unable to finish their routes by 2:00 P.M. are permitted to dispose of their solid waste at facilities operated in, by, or under the authorization of the Hackensack Meadowlands District; and any single load of solid waste from Elizabeth consisting solely of tree stumps, tires, or concrete will be permitted to be disposed of at facilities operated in, by, or under the authorization of the Hackensack Meadowlands District.

iv. All solid waste types 10, 13, 23, 25, and 27 generated from within the Union County municipalities of New Providence, Rahway, and Summit shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, East Brunswick, Middlesex County, New Jersey.

v. All solid waste type 25 and 27 generated in Linden City shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, East Brunswick, Middlesex County, New Jersey.

vi. All solid waste types 25 generated from within the Morris County municipalities of Boonton Town, Boonton Township, Butler, Denville, Dover, Jefferson, Kinnelon, Lincoln Park, Mine Hill, Montville, Mountain Lakes, Mount Olive, Netcong, Pequannock, Riverdale, Rockaway Borough, Rockaway Township, Roxbury, Victory Gardens, and Wharton shall be disposed of at Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

vii. All waste types 25 and 27 generated from within the Morris County municipality of Mount Arlington shall be disposed of at Edgeboro Disposal, Inc. Landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

viii. All solid waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipalities of Chatham Borough, Chatham Township, Chester Borough, Chester Township, East Hanover, Florham Park, Hanover, Harding, Madison, Mendham Township, Morris Township, Morris Plains, Morristown, Parsippany-Troy Hills Township, Passaic Township, and Randolph shall be disposed of at Edgeboro Disposal Landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

ix. All waste types 10, 25, and 27 generated from within the Morris County municipality of Mendham Borough shall be disposed of at Edgeboro Landfill, facility number 1204A, located in East Brunswick, New Jersey.

x. Upon closure of the Somerville landfill, facility number 1818A, located in Somerville Borough, Somerset County, New Jersey, all solid waste types 10, 13, 23, and 27 generated from within the Somerset County municipalities of Raritan and Somerville will be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

xi. Solid waste type 25 generated from within the Somerset County municipalities of Raritan and Somerville shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

xii. All solid waste types 10, 13, 23, 25, and 27 generated from within the Somerset County municipalities of Branchburg, Bridgewater, Green Brook, North Plainfield, Warren, and Watchung shall be disposed of at the Industrial Land Reclaiming Inc. landfill, facility number 1205C, located in Edison Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

xiii. All solid waste types 10, 13, 23, 25, and 27 generated from within the Somerset County municipalities of Bedminster, Bernards, Bernardsville, Bound Brook, Far Hills, Franklin, Hillsborough, Millstone, Montgomery, Peapack-Gladstone, Rocky Hill, and South Bound Brook shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

xiv. All solid wastes generated in the Somerset County municipality of Manville which are collected by private collector haulers, including type 25 solid wastes, shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

xv. All solid waste type 25 generated from within the Sussex County municipalities of Andover Borough, Andover Township, Branchville, Byram, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Lafayette, Montague, Newton, Ogdensburg, Sandyston, Stanhope, Sussex, Vernon, Walpack, Stillwater, Hardyston, Hopatcong, Sparta and Wantage shall be of disposed at Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

xvi. All solid waste type 25 generated from within the Passaic County municipalities of Bloomingdale, Pompton Lakes, Ringwood, Wanaque, and West Milford shall be disposed of at the Edgeboro Disposal Landfill, facility number 1204, located in East Brunswick, Middlesex County, New Jersey.]

(n) Waste flows within, into and out of the Monmouth County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all Monmouth County municipalities shall be disposed of at the Monmouth County Reclamation Center Landfill and Shredder Facility, facility numbers 1336F and 1336D, located in Tinton Falls Borough, Monmouth County, New Jersey.

[1. All waste type 13 generated from within the Monmouth County municipality of Englishstown shall be disposed of at the Englishtown Disposal Area, facility number 1312A, located in Englishtown Borough, Monmouth County, New Jersey.

i. All waste types 10, 23, 25, and 27 generated from within Englishtown Borough shall be disposed of at the Monmouth County Reclamation Center landfill and shredder, facility numbers 1336B and 1336D, located in Tinton Falls Borough, Monmouth County, New Jersey.

ii. Upon closure of the Englishtown Disposal Area, facility number 1312A, wastes going to this facility shall be disposed of at the Monmouth County Reclamation Center landfill and shredder, facility numbers 1336B and 1336D.

2. All waste types 10, 13, 23, and 27 generated from within the Monmouth County municipalities of Allentown, Asbury Park, Brielle, Farmingdale, Howell, Manasquan, Millstone, Roosevelt, Upper Freehold, Wall, and that portion of Freehold Township south of Route 524 shall be disposed of at the Waste Disposal, Inc. landfill, facility number 1319B, located in Howell Township, Monmouth County, New Jersey.

i. All waste type 25 generated from within the Monmouth County municipalities of Allentown, Asbury Park, Brielle, Farmingdale, Howell, Manasquan, Millstone, Roosevelt, Upper Freehold, Wall, and that portion of Freehold Township south of 524 shall be disposed of at the Monmouth County Reclamation Center landfill and shredder, facility numbers 1336B and 1336D, located in Tinton Falls Borough, Monmouth County, New Jersey.

ii. Upon closure of the Waste Disposal, Inc. landfill, facility number 1319B, wastes going to this facility shall be disposed of at the Monmouth County Reclamation Center landfill and shredder, facility numbers 1336B and 1336D.

3. All waste types 10, 13, 23, 25, and 27 generated from within the Monmouth County municipalities of Aberdeen, Allenhurst, Atlantic Highlands, Avon, Belmar, Bradley Beach, Colts Neck, Deal, Eatontown, Fair Haven, Freehold Borough, that portion of Freehold Township north of Route 524, Hazlet, Highlands, Holmdel, Interlaken, Keansburg, Keyport, Little Silver, Loch Arbour, Long Branch, Manalapan, Marlboro, Matawan, Middletown, Monmouth Beach, Neptune City, Neptune Township, Ocean, Oceanport, Rumson, Sea Bright, Sea Girt, Shrewsbury Borough, Shrewsbury Township, South Belmar, Spring Lake, Spring Lake Heights, Tinton Falls, Union Beach, and West Long Branch shall be disposed of at the Monmouth County Reclamation Center landfill and shredder, facility numbers 1336B and 1336D, located in Tinton Falls Borough, Monmouth County, New Jersey.

4. All waste types 13, 23, and 27 generated from within the Monmouth County municipality of Red Bank shall be disposed of at the Red Bank Sanitary Landfill, facility number 1340A, located in Red Bank Borough, Monmouth County, New Jersey.

i. All waste types 10 and 25 generated from within Red Bank Borough shall be disposed of at the Monmouth County Reclamation Center landfill and shredder, facility numbers 1336B and 1336D, located in Tinton Falls Borough, Monmouth County, New Jersey.

ii. Upon closure of the Red Bank Sanitary Landfill, facility number 1340A, waste going to this facility shall be disposed of at the Monmouth County Reclamation Center landfill and shredder, facility numbers 1336B and 1336D.]

(o) Waste flows within, into and out of the Morris County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipalities of Chester Borough, Chester Township, Dover, Jefferson, Mendham Borough, Mendham Township, Mine Hill, Mount Arlington, Mount Olive, Netcong, Randolph, Rockaway Borough, Rockaway Township, Roxbury, Victory Gardens, Washington, and Wharton shall be directed to the Morris County Transfer Station, facility number 1427F, located in Mount Olive Township, Morris County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipalities of Boonton Borough, Boonton Township, Butler, Chatham Borough, Chatham Township, Denville, East Hanover, Florham Park, Hanover, Harding, Kinnelon, Lincoln Park, Madison, Montville, Morris Plains, Morris Township, Morristown, Mountain Lakes, Parsippany-Troy Hills, Passaic, Pequannock, and Riverdale shall be directed to the Morris County Transfer Station, facility number 1429J, located in Parsippany-Troy Hills Township, Morris County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

[1. All solid waste types 10, 13, 23, and 27 generated from within the Morris County municipalities of Boonton Borough, Boonton Township, Butler, Denville, Dover, Jefferson, Kinnelon, Lincoln Park, Mine Hill, Montville, Mountain Lakes, Mount Olive, Netcong, Pequannock, Riverdale, Rockaway Borough, Roxbury, Victory Gardens, and Wharton shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

2. All solid waste type 25 generated from within the Morris County municipalities of Boonton Borough, Boonton Township, Butler, Denville, Dover, Jefferson, Kinnelon, Lincoln Park, Mine Hill, Montville, Mountain Lakes, Mount Olive, Netcong, Pequannock, Riverdale, Rockaway Borough, Roxbury, Victory Gardens, and Wharton shall be disposed of at Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

3. All solid waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipalities of Chatham Borough, Chatham Township, Chester Borough, Chester Township, East Hanover, Florham Park, Hanover, Harding, Madison, Mendham Township, Morris Township, Morris Plains, Morristown, Parsippany-Troy Hills Township, Passaic Township, and Randolph shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

4. All waste types 10, 13, and 23 generated from within the Morris County municipality of Mount Arlington shall be disposed of at Mount Arlington Borough Landfill, facility number 1426A, located in Mount Arlington Borough, Morris County, New Jersey.

5. All waste types 25 and 27 generated from within the Morris County municipality of Mount Arlington shall be disposed of at

Edgeboro Disposal Landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

6. All waste types 10, 25, and 27 generated from within the Morris County municipality of Mendham Borough shall be disposed of at Edgeboro Disposal Landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

7. All waste types 13 and 23 generated from within the Morris County municipality of Mendham Borough shall be disposed of at Mendham Borough Landfill, facility number 1418A, located in Mendham Borough, Morris County, New Jersey.

8. All waste types 10 and 27 generated from within the Morris County municipality of Rockaway Township shall be disposed of at Hamm's Sanitary Landfill, facility number 1913A, located in Lafayette Township, Sussex County, New Jersey.

9. All waste types 13 and 23 generated from within the Morris County municipality of Rockaway Township shall be disposed of at the Rockaway Township Landfill, facility number 1435A, located in Rockaway Township, Morris County, New Jersey.

10. All waste type 25 generated from within the Morris County municipality of Rockaway Township shall be disposed of at Edgeboro Disposal Landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

11. All waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipality of Washington Township shall be disposed of the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

i. All solid waste directed to the Ocean County Landfill Corporation landfill may be disposed of out-of-state when such disposal is in compliance with the laws and regulations of the receiving state.

12. Currently, the municipalities of Boonton, Boonton Township, Butler, Lincloln Park, Montville, Mountain Lakes, Pequannock, and Riverdale are utilizing the disposal facilities previously indicated. This waste flow, upon review and approval by the Board of Public Utilities, will be directed to Carrino Contracting and Trucking Company Sanitary Landfill, facility number 1605A, if and when it is permitted to open following the resolution of the litigation with Montclair State College. This waste flow resulted from consultations with the representatives from both Morris and Passaic Counties and was derived due to limited existing disposal capacity and transportation difficulties to the currently utilized disposal facilities.

i. It is necessary for the Board of Chosen Freeholders of Morris and Passaic Counties to formally propose and adopt for inclusion in the respective District Solid Waste Management Plans, a waste flow which directs approximately 75,000 tons per year of solid waste (type 10, 13, 23, and dead animals) to Carrino's Landfill for a two year period. This waste flow may be the same as the waste flow designated by the Department. It should be noted that the waste flow designated by the Boards of Chosen Freeholders must be included in interdistrict agreements between the two Counties.]

(p) Waste flows within, into and out of the Ocean County District:

1. All solid waste types 10, 13, 23, 25, and 27 generated from within all Ocean County municipalities shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

[1. All waste types 10, 13, and 23 generated from within the Ocean County municipality of Beachwood shall be disposed of at the Beachwood landfill, facility number 1504A, located in Beachwood Borough, Ocean County, New Jersey.

i. All waste types 25 and 27 generated from within Beachwood Borough shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A, located in Ocean Township, Ocean County, New Jersey.

ii. Upon closure of the Beachwood Landfill, number 1504A, wastes going to this facility shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A.

2. All waste types 10, 13, and 23 generated from within the Ocean County municipalities of Lavallette, Mantoloking, Point Pleasant and Point Pleasant Beach shall be disposed of at the James H. James, Inc. landfill, facility number 1506A, located in Brick Township, Ocean County, New Jersey.

i. All waste types 25 and 27 generated from within the Boroughs of Lavallette, Mantoloking, Point Pleasant and Point Pleasant Beach shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

ii. Upon closure of the James H. James, Inc. landfill, facility number 1506A, waste going to this facility shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B.

3. All waste types 10, 13, 23, 25, and 27 generated from within the municipalities of Bay Head, Island Heights, and Lakewood shall be disposed of at the Lakewood Township Landfill, facility number 1514A, located in Lakewood Township, Ocean County, New Jersey.

i. Upon closure of this Lakewood Township Landfill, facility number 1514A, wastes going to this facility shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

4. All waste types 13 and 23 generated from within the Ocean County municipality of Manchester shall be disposed of at the Manchester Township Municipal Sanitary Landfill, facility number 1518A, located in Manchester Township, Ocean County, New Jersey.

i. All waste types 10, 25, and 27 generated from within Manchester Township shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

ii. Upon closure of the Manchester Township Municipal Sanitary Landfill, facility number 1518A, wastes going to this facility shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B. The Manchester Township Municipal Sanitary Landfill, facility number 1518A, was inadvertently left out of the Proposed Solid Waste laws for Ocean County Solid Waste Management District (August 1982) even though it is currently operating. Therefore, a waste flow is given to the Manchester Township Municipal Sanitary Landfill.

5. All waste types 10, 13, 23, 25 and 27 generated from within the Ocean County municipalities of Brick, Dover, Jackson, Lakehurst, Plumsted, Seaside Heights, Seaside Park and those portions of Berkeley Township in Holiday City, Silver Ridge Park and South Seaside Park shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

i. The November 28, 1984 Ocean County Solid Waste Management Plan amendments state that it is expected that, in 1992, the planned resource recovery facility will be operable for the disposal of a substantial portion of the solid waste generated in the county. At that time, waste flows shall be redirected to the resource recovery facility in quantities sufficient to meet the design capacity.

6. All waste types 10, 13, 23, 25, and 27 generated from within the Ocean County municipalities of Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Lacey, Ocean Township, Ocean Gate, Pine Beach and those portions of Berkeley Township not in Holiday City, Silver Ridge Park and South Seaside Park shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A, located in Ocean Township, Ocean County, New Jersey.

i. Upon closure of the Southern Ocean Landfill, facility number 1520A, (mandated in 1990 by regulations of the Pinelands Commission), wastes going to this facility shall be disposed of at the Ocean County Landfill Corporation Landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey. In the event that the Southern Ocean Landfill obtains a waiver from the Pinelands Commission to operate after 1990, waste flow to this landfill shall continue, pursuant to the terms of the waiver, until the proposed resource recovery facility for Ocean County is operational, at which time waste flow shall be redirected to that facility.

ii. The November 28, 1984 Ocean County Solid Waste Management Plan amendments state that it is expected that, in 1992, the planned resource recovery facility will be operable for the disposal of a substantial portion of the solid waste generated in the County. At that time, waste flows shall be redirected to the resource recovery facility in quantities sufficient to meet the design capacity.

7. All waste types 10, 13, and 23 generated from within the Ocean County municipality of South Toms River shall be disposed of at the South Toms River Sanitary Landfill, facility number 1529A, located in South Toms River, Ocean County, New Jersey.

i. All waste types 25 and 27 generated from within South Toms River shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A, located in Ocean Township, Ocean County, New Jersey.

ii. Upon closure of the South Toms River Sanitary Landfill, facility number 1529A, wastes going to this facility shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A.

8. All waste types 10, 13, and 23 generated from within the Ocean County municipalities of Little Egg Harbor, Long Beach, Ship Bottom, Stafford, Surf City and Tuckerton shall be disposed of at the Stafford Township Landfill, facility number 1530A, located in Stafford Township, Ocean County, New Jersey.

i. All waste types 25 and 27 generated from within Little Egg Harbor, Long Beach, Ship Bottom, Stafford, Surf City and Tuckerton shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A, located in Ocean Township, Ocean County, New Jersey.

ii. Upon closure of the Stafford Township Landfill, facility number 1530A, waste going to this facility shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A.

9. All waste types 10, 13, 23, 25, and 27 generated from within the Warren County municipalities of Allamuchy, Alpha, Blairstown, Frelinghuysen, Hackettstown, Hardwick, Hope, Independence, Knowlton, Liberty, Mansfield, Oxford, Pahaquarry, Phillipsburg, Washington Borough, and Washington Township shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

10. All waste types 10, 25, and 27 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

11. All waste types 10, 13, 23, 25, and 27 generated from within the Morris County municipality of Washington Township shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

12. All wastes directed to the Ocean County Landfill Corporation landfill from Warren and Morris County municipalities as set forth in (p)9, 10 and 12 above may be disposed of at out-of-state facilities when such disposal does not violate any law or regulation of the receiving state.]

(q) Waste flows within, into and out of the Passaic County District:

1. All solid waste types 10 (except medical wastes), 13 (except large bulky wastes including such items as cable larger than six feet, foam insulation, tires, etc.), 23 (except leaves), 25, and 27 (except dry industrial waste such as plastics, rags, bulk powders, and containers with tar and paint residues, etc.) generated from within the Passaic County municipalities of Haledon, Hawthorne, North Haledon, Passaic City, Prospect Park, and Paterson shall be directed to the Pen Pac, Inc., Fulton Street Transfer Station, facility number 1608H, located in the City of Paterson, Passaic County, New Jersey. Waste received at this facility will be transported to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

2. Upon issuance of all required departmental permits, all solid waste types 10 (except medical wastes), 13 (except large bulky wastes including such items as cable larger than six feet, foam insulation, tires, etc.), 23 (except leaves), 25, and 27 (except dry industrial waste such as plastics, rags, bulk powders, and containers with tar and paint residues, etc.) generated from within the Passaic County municipalities of Bloomingdale, Clifton, Little Falls, Pompton Lakes, Ringwood, Totowa, Wanaque, Wayne, West Milford, and West Paterson shall be directed to the Pen Pac, Inc., Totowa Transfer Station, facility number 1612B, located in Totowa Borough, Passaic County, New Jersey. Waste received at this facility will be transported to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

3. Only solid waste types 10, 13, and 27, which are prohibited from the Fulton Street and Totowa Transfer Stations as indicated in (q)1 and 2 above, generated from all Passaic County municipalities shall be directed to Pen Pac, Inc., Iowa Avenue Transfer Station, facility number 1608A, located in the City of Paterson, Passaic County, New Jersey. Waste received at this facility will be transported to permitted out-of-State disposal facilities in accordance with the laws and regulations of the receiving state.

[1. The Lakeland Regional Solid Waste Management Authority comprised of six municipalities: Pompton Lakes, Ringwood, and Bloomingdale within Passaic County and Butler, Kinnelon and Pequannock within Morris County, completed a solid waste management plan in July of 1978. The plan recommends the construction of a resource recovery facility with a capacity of 240 tons per day to accommodate wastes generated by its six member municipalities. Both the adopted Passaic and Morris County Solid Waste Management Plans acknowledge the planning efforts accomplished by the Lakeland Authority and have recommended that the resource recovery facility be on line by 1983. The Department is in agreement with these recommendations.

i. Assuming that the Lakeland Authority has its resource recovery facility in operation on or about July 1, 1983, all processable solid waste generated from within the aforementioned municipalities shall be disposed of at this facility. Residues and nonprocessable solid wastes shall be disposed of at landfills designated in the first two-year update of the Passaic County Solid Waste Management Plan. In the event that the Lakeland Authority's proposed resource recovery facility does not come on line as scheduled, the aforementioned Passaic County municipalities shall dispose of their wastes in accordance with (q)2 and 4 below.

2. All waste types 10, 13, 23, and 27 generated from within the Passaic County municipalities of Bloomingdale, Pompton Lakes, Ringwood, Wanaque, and West Milford shall be disposed of at the Hamm's Sanitation, Inc. landfill, facility number 1913A, located in Lafayette, Sussex County, New Jersey.

i. All waste type 25 generated from within the Passaic County municipalities of Bloomingdale, Pompton Lakes, Ringwood, Wanaque, and West Milford shall be disposed of at the Edgeboro Disposal Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey. The redirection of the waste stream identified in this section will be evaluated by the Department upon the completion of Passaic County's landfill siting study.

3. All waste types 10, 13, 23, 25, and 27 generated from within the Passaic County municipalities of Clifton, Haledon, Hawthorne, Little Falls, North Haledon, Passaic, Paterson, Prospect Park, Totowa, Wayne, and Wests Paterson shall be disposed of at the HMDC Baler/Balefill, facility number 0239C/0232D located in North Arlington, Bergen County, New Jersey.

4. When the Passaic County resource recovery facility scheduled to be on line by January 1, 1985 becomes operational, all processable solid waste generated from within all of Passaic County's municipalities shall be directed to the resource recovery facility. Residue and nonprocessable solid waste shall be disposed of at a disposal facility(ies) designated in the first two-year update of the Passaic County Solid Waste Management Plan.

5. Currently, the municipality of Little Falls is utilizing the disposal facility previously indicated. This waste flow, upon review and approval by the Board of Public Utilities, will be directed to Carrino Contracting and Trucking Company Sanitary Landfill, facility number 1605A, if and when it is permitted to open following the resolution of the litigation with Montclair State College. This waste flow resulted from consultations with representatives from Passaic County and was derived due to limited existing disposal capacity and transportation difficulties to the currently utilized disposal facilities.

i. It is necessary for the Board of Chosen Freeholders of Passaic County to formally propose and adopt for inclusion in their district Solid Waste Management Plan, a waste flow which directs solid waste

(type 10, 13, 23, and dead animals) to Carrino's Landfill for a two-year period. This waste flow may be the same as the waste flow designated by the Department.

6. In addition to the above mentioned waste flows, other modifications, directives, and/or resolutions approved and issued by the Department and/or the HMDC may affect the Passaic County waste flow (see (i) above, waste flows within, into and out of the Hackensack Meadowlands District).]

(r) Waste flows within, into and out of the Salem County District:

[1. All waste types 10, 13, and 23 generated from within the Salem County municipality of Alloway Township shall be disposed of at the Alloway Township landfill, facility number 1701A, located in Alloway Township, Salem County, New Jersey.

i. All waste type 25 generated from within the Salem County municipality of Alloway Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey.

ii. All waste type 27 generated from within the Salem County municipality of Alloway Township shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.

2. All waste types 10, 13, 23, and 27 generated from within the Salem County municipality of Carney's Point Township shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.

i. All waste type 25 generated from within the Salem County municipality of Carney's Point Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey.

3. All waste types 10, 13, 23, and 25 generated from within the Salem County municipalities of Elmer Borough, Elsinboro Township, and Mannington Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey.

i. All waste type 27 generated from within the Salem County municipalities of Elmer Borough, Elsinboro Township, and Mannington Township shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.

4. All waste types 10, 13, 23, and 25 generated from within the Salem County municipality of Lower Alloways Creek Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey; or (waste type 10 only) residents hauling their own wastes may use the Lower Alloways Creek Township Landfill, facility number 1704A, located in Lower Alloways Creek Township, Salem County, New Jersey.

i. All waste type 27 generated from within the Salem County municipality of Lower Alloways Creek Township shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.

5. All waste types 10, 13, 23, and 27 generated from within the Salem County municipality of Oldmans Township shall be disposed of at the Oldmans Township Landfill, facility number 1706A, located in Oldmans Township, Salem County, New Jersey.

i. All waste type 25 generated from within the Salem County municipality of Oldmans Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey.

6. All waste types 10, 13, 23, and 27 generated from within the Salem County municipality of Pennsville Township shall be disposed of at the Pennsville Township Landfill, facility number 1708A, located in Pennsville Township, Salem County, New Jersey.

i. All waste type 25 generated from within the Salem County municipality of Pennsville Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Qunton Township, Salem County, New Jersey.

7. All waste types 10, 13, 23, and 25 generated from within the Salem County municipality of Penns Grove Borough shall be disposed of at the Eckert Landfill, facility number 1705B, located in Oldmans Township, Salem County, New Jersey.

i. All waste type 27 generated from within the Salem County municipality of Penns Grove Borough shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point, Salem County, New Jersey.

8. All waste types 10, 13, and 23 generated from within the Salem County municipalities of Pilesgrove Township and Woodstown Borough shall be disposed of at the Woodstown-Pilesgrove Landfill, facility number 1709A, located in Pilesgrove Township, Salem County, New Jersey.

i. All waste type 25 generated from within the Salem County municipalities of Pilesgrove Township and Woodstown Borough shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey.

ii. All waste type 27 generated from with the Salem County municipalities of Pilesgrove Township and Woodstown Borough shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.

9. All waste types 10, 13, and 23 generated from within the Salem County municipality of Pittsgrove Township shall be disposed of at the Pittsgrove Landfill, facility mumber 1701A, located in Pittsgrove Township, Salem County, New Jersey.

i. All waste type 25 generated from within Salem County municipality of Pittsgrove Township will be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey.

ii. All waste type 27 generated from within the Salem County municipality of Pittsgrove Township shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.

10. All waste types 10, 13, 23, and 25 generated from within the Salem County municipality of Quinton Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey; or (waste types 10, 13, and 23 only) residents hauling their own wastes may use the Quinton Township Landfill, facility number 1711A, located in Quinton Township, Salem County, New Jersey.

i. All waste type 27 generated from within the Salem County municipality of Quinton Township shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.

11. All waste types 10, 13, 23, 25, and 27 generated from within the Salem County municipality of Salem City shall be disposed of at the Salem City Landfill, facility number 1712A, located in Salem City, Salem County, New Jersey.

12. All waste types 10, 13, and 23 generated from within the Salem County municipality of Upper Pittsgrove Township shall be disposed of at the Upper Pittsgrove Landfill, facility number 1710A, located in Pittsgrove Township, Salem County, New Jersey.

i. All waste type 25 generated from within the Salem County municipality of Upper Pittsgrove Township shall be disposed of at the Q.T. Landfill, facility number 1711B, located in Quinton Township, Salem County, New Jersey.

ii. All waste type 27 generated from within the Salem County municipality of Upper Pittsgrove Township shall be disposed of at the Clemente Landfill, facility number 1713A, located in Carney's Point Township, Salem County, New Jersey.]

[13. When the Salem County regional landfill becomes operational, all] **1. All** waste types [(]10, 13, 23, 25 and 27[)] generated from within the Salem County municipalities of Alloway, Carney's Point, Elmer, Elsinboro, Lower Alloways Creek, Mannington, Oldmans, Pennsville, Penns Grove, Pilesgrove, Pittsgrove, Quinton, Salem City, Upper Pittsgrove and Woodstown, shall be disposed of at [this facility] **the Salem County regional landfill, facility number 1701B, located in Alloway Township, Salem County, New Jersey.**

(s) Waste flows from within, into and out of the Somerset County District:

1. All nonputrescible, recyclable (commercial and institutional) waste type 10 and all waste type 27 generated from within the Somerset County municipalities of Bound Brook, Franklin, Manville, Millstone, Montgomery, Raritan, Rocky Hill, Somerville, and South Bound Brook, shall be directed to the Somerset Intermediate

Recycling Center Transfer Station, facility number 1808K, located in Franklin Township, Somerset County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Somerset County municipalities of Bedminster, Bernards, Bernardsville, Branchburg, Bridgewater, Far Hills, Green Brook, Hillsborough, North Plainfield, Peapack-Gladstone, Warren, and Watchung, and all solid waste types 10, 13, 23, and 25 generated from within the Somerset County municipalities of Bound Brook, Franklin, Manville, Millstone, Montgomery, Raritan, Rocky Hill, Somerville, and South Bound Brook not directed to the Somerset Intermediate Recycling Center Transfer Station, shall be directed to the Bridgewater Resources, Inc. Transfer Station, facility number 1806A, located in Bridgewater Township, Somerset County, New Jersey, prior to disposal at permitted out-of-state facilities in accordance with the laws and regulations of the receiving state or pursuant to (s)3 below. (Effective January 2, 1988).

3. Up to 1,400 tons per week of processible solid waste generated within Somerset County shall be transported from the Bridgewater Resources, Inc. Transfer Station to the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County, New Jersey, through the year 2001. (Effective June 30, 1989). From January 1, 2002 through November 30, 2008, Somerset County shall increase the processible waste it directs to the Warren County Resource Recovery Facility to 1,977 tons per week.

[1. All solid waste types 10, 13, 23, and 27 generated from within the Somerset County municipalities of Raritan and Somerville shall be disposed of at the Somerville Borough landfill, facility number 1818A, located in Somerville Borough, Somerset County, New Jersey.

i. Upon closure of the Somerville landfill, all solid waste identified above and generated from within Raritan and Somerville will be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

ii. Solid waste type 25 generated from within the Somerset County municipalities of Raritan and Somerville shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick, Middlesex County, New Jersey.

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Somerset County municipalities of Branchburg, Bridgewater, Green Brook, North Plainfield, Warren, and Watchung shall be disposed of at the Industrial Reclaiming, Inc. landfill, facility number 1205C, located in Edison Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

3. All solid waste types 10, 13, 23, 25, and 27 generated from within the Somerset County municipalities of Bedminster, Bernards, Bernardsville, Bound Brook, Far Hills, Franklin, Hillsborough, Millstone, Montgomery, Peapack-Gladstone, Rocky Hill, and South Bound Brook shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

4. All solid waste types 10, 13, 23, and 27 generated from within the Somerset County municipality of Manville and collected by Manville municipal vehicles, shall be disposed of at the Johns-Manville Sales Corp. landfill, facility number 1811A, located in Manville Borough, Somerset County. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

i. All other solid wastes generated in Manville which are collected by private collector/haulers, and all type 25 solid wastes, shall be disposed at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

5. All solid waste types 10, 13, 23, 25, and 27 generated in every municipality in Somerset County with the exception of solid wastes collected by Manville Borough, shall be disposed of at the new Somerset County landfill planned for April 1, 1983.

6. The new County landfill will continue to be utilized for disposal of said wastes until the proposed resource recovery facility(ies) are on line. At such time, all designated processable, non-recyclable solid wastes shall be redirected to designated resource recovery facility(ies). All residue from the resource recovery facility(ies) and non-processable, non-recyclable solid wastes shall be disposed of at the new County landfill.]

(t) (No change.)

(u) Waste flows within, into and out of the Union County District:

1. All solid waste type 10 collected by municipal vehicles and generated from within the Union County municipalities of Summit and New Providence shall be directed to the Summit Transfer Station, facility number 2018A, located in Summit, Union County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

2. All solid waste types 10, 13, and 23 generated from within the Union County municipality of Linden and collected by municipal vehicles shall be disposed of at the Linden Landfill, facility number 2009A, located in Linden, Union County, New Jersey. (Effective January 2, 1988).

3. All solid waste types 10, 13, and 23 formerly delivered by private citizens to the Elizabeth Public Works Convenience Center and all solid waste types 10, 13, and 23 generated from within the Union County municipalities of Elizabeth, Hillside, Roselle, Roselle Park, and Union Township and collected by municipal vehicles or White Brothers Trucking, and all solid waste types 10 and 13 generated by hospitals from within these same Union County municipalities shall be directed to the Ellesor Transfer Station, facility number 2004D, located in Elizabeth, Union County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

4. All solid waste types 10, 13, 23, 25, and 27 generated from within the Union County municipalities of Berkeley Heights, Clark, Cranford, Fanwood, Garwood, Kenilworth, Mountainside, Plainfield, Rahway, Scotch Plains, Springfield, Westfield, and Winfield; all solid waste type 10 generated within the Union County municipalities of New Providence and Summit not directed to the Summit Transfer Station pursuant to (u)1. above; all solid waste type 13, 23, 25, and 27 generated from within the Union County municipalities of New Providence and Summit; all solid waste types 10, 13, and 23 generated from within the Union County municipalities of Elizabeth, Hillside, Roselle, Roselle Park, and Union Township not directed to the Ellesor Transfer Station pursuant to (u)3 above; all solid waste types 25 and 27 generated from within the Union County municipalities of Elizabeth, Hillside, Roselle, Roselle Park, Union Township and Linden; and all solid waste types 10, 13 and 23 generated within the Union County municipality of Linden not directed to the Linden Landfill pursuant to (u)2 above, shall be directed to the Automated Modular Systems Transfer Station, facility number 2009I, located in Linden, Union County, New Jersey, prior to disposal at permitted out-of-State facilities in accordance with the laws and regulations of the receiving state. (Effective January 2, 1988).

5. For the purposes of this rule for Union County, municipal vehicles shall constitute collection vehicles owned or operated by a municipality, or collection vehicles owned or operated by a private entity which operates pursuant to a municipal contract.

[1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Union County municipalities of Berkeley Heights, Fanwood, Hillside, Plainfield, Roselle Park, Scotch Plains, Mountainside, Westfield, Winfield, Garwood, Cranford and Clark shall be disposed of at the Industrial Land Reclaiming, Inc. landfill (ILR), facility number 1205C, located in Edison Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

2. All solid waste types 10, 13, 23, and 25 generated from within the Union County municipalities of Elizabeth, Roselle and Kenilworth shall be disposed of at the Industrial Land Reclaiming,

Inc. landfill (ILR), facility number 1205C, located in Edison Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

i. All type 27 solid wastes generated from within the Union County municipalities of Kenilworth and Roselle shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, East Brunswick, Middlesex County, New Jersey.

ii. All type 27 solid wastes generated from within Elizabeth shall be disposed of at the Global Landfill Reclaiming Corp. landfill, facility number 1209A, Old Bridge Township, Middlesex County, New Jersey. Upon closure of this facility, said solid wastes will be redirected to another designated solid waste facility(ies).

iii. Exceptions to the Elizabeth waste flows shall include the following: a maximum of four City of Elizabeth trucks (only) per day that are unable to finish their routes by 2:00 P.M. are permitted to dispose of their solid waste at facilities operated in, by, or under the authorization of Hackesnack Meadowlands District and any single load of solid waste from Elizabeth consisting solely of tree stumps, tires or concrete will be permitted to be disposed at facilities operated in, by, or under the authorization of the Hackensack Meadowlands District.

3. All solid waste types 10, 13, 23, 25, and 27 generated from within the Union County municipalities of New Providence, Rahway and Summit shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.

4. All solid waste types 10, 13, 23, 25, and 27 generated from within the Union County municipalities of Springfield and Union shall be disposed of at facilities operated in, by, or under the authorization of the Hackensack Meadowlands District designated for Essex County for no later than six and one-half years from March 2, 1982 consistent with the Essex County HMDC agreement of that date. At that time, solid wastes generated in Union and Springfield shall be disposed at a facility designated for Union County wastes other than the HMDC facilities.

5. All solid waste types 10, 13, and 23 generated from within the Union County municipality of Linden and solid wastes generated from the Exxon Corp. under agreement with the City of Linden shall be disposed of at the Linden Landfill, facility number 2009A, located in Linden City, Union County, New Jersey.

i. All solid waste types 25 and 27 generated in Linden City shall be disposed of at the Edgeboro Disposal, Inc. landfill, facility number 1204A, located in East Brunswick Township, Middlesex County, New Jersey.]

[6.]**5.** When the Union County resource recovery facility**, facility number 2013C, located in Rahway City, Union County,** becomes operational, processable non-recyclable solid wastes generated from [designated] **all** Union County municipalities shall be redirected to the energy recovery facility. [Residues] **Ash** from the resource recovery facility **and all bypass and nonprocessible waste** shall be disposed of at the [Linden landfill, pending approval of the Linden landfill upgrading and expansion application by the Division of Waste Management. Non-processable and non-recyclable solid wastes from said municipalities shall continue to be disposed of at designated solid waste facilities] **Empire Landfill located in Lackawanna County, Pennsylvania, in accordance with the laws and regulations of the receiving state.**

(v) Waste flows within, into and out of the Warren County District:

1. All processible portions of solid waste types 10, 23, and 27 generated from within all Warren County municipalities shall be disposed of at the Warren County Resource Recovery Facility, facility number 2117A, located in Oxford Township, Warren County, New Jersey. (Effective June 1, 1988).

2. All nonprocessible, nonrecyclable portions of solid waste types 10, 23, and 27, all solid waste types 13 and 25 generated from within all Warren County municipalities, and all ash, bypass and nonprocessible waste from the Warren County Resource Recovery Facility shall be disposed of at the Warren County Landfill, facility 2123D, located in White Township, Warren County, New Jersey. (Effective June 1, 1988).

3. Up to 100 tons per day of processible solid waste generated from within Hunterdon County shall be transported from the Hunterdon County Transfer Station, facility number 1006B, located in Clinton Township, Hunterdon County, New Jersey, to the Warren County Resource Recovery Facility through the year 2001. (Effective June 1, 1988).

4. Up to 1,400 tons per week of processible solid waste generated from within Somerset County shall be transported from the Bridgewater Resources Transfer Station, facility number 1806A, located in Bridgewater Township, Somerset County, New Jersey, to the Warren County Resource Recovery Facility through the year 2001. (Effective June 30, 1989). From January 1, 2002 through November 30, 2008, Somerset County shall increase the processible waste it directs to the Warren County Resource Recovery Facility to 1,977 tons per week.

[1. All solid waste types 10, 13, 23, 25, and 27 generated from within the Warren County municipalities of Allamuchy, Alpha, Blairstown, Frelinghuysen, Hackettstown, Hardwick, Hope, Independence, Knowlton, Liberty, Mansfield, Oxford, Pahaquarry, Phillipsburg, Washington Boro, and Washington Township shall be disposed of at Ocean County landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

2. All solid waste types 10, 13, 23, 25, and 27 generated from within the Warren County municipalities of Franklin, Greenwich, Harmony, Lopatcong and Pohatcong are permitted to utilize disposal facilities out-of-state, so long as these municipalities or collector/haulers which services these municipalities are able to pursuant to law. In the event that any of these municipalities are unable to continue disposal of solid waste out-of-state landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

3. All solid waste types 13 and 23 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at Belvidere-White Landfill, facility number 2123A, located in White Township, Warren County, New Jersey.

i. Upon closure of the Belvidere-White Landfill, waste types 13 and 23 shall be disposed of at the Ocean County Landfill Corp. landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

4. All solid waste types 10, 25, and 27 generated from within the Warren County municipalities of Belvidere and White shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

5. All solid waste types 10, 13, 23, 25, and 27 generated from within Warren County municipalities as set forth in (v)1, 3, and 4 above are permitted to be disposed of out-of-state facilities so long as the municipalities or any collector/hauler which services the municipalities are able pursuant to any law or regulation of the receiving state.]

(w) The dates set forth in parentheses in the preceeding subsections indicate when the emergency redirection orders originally implementing the subsections provisions became effective.

(x) If any section, subsection, provision, clause, or portion of this subchapter, 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.

7:26-6.6 Procedure for modification of waste flows [pursuant to an amendment to a District Solid Waste Management Plan]

[(a) This section shall govern the procedures to be followed in the event that a Board of Chosen Freeholders or the Hackensack Commission adopts a plan amendment, in accordance with N.J.S.A. 13:1E-23, which provides for the modification of existing waste flows.

(b) Upon a determination by the Department that such a plan amendment is complete and acceptable for review, which determination shall be made within 30 days of receipt by the Department, the Department shall forward a copy of that amendment to the Board of Public Utilities (Board).

1. Amendments found not acceptable shall be returned to the district, with explanation of the reasons for such determination.

(c) The Department and the Board shall, after notice pursuant to N.J.S.A. 52:14B-4 and N.J.A.C. 1:30, conduct a public hearing at least 15 days following publication of the proposed waste flow modification in the New Jersey Register.

(d) Within 30 days after the public hearing, the Board shall submit its recommendations to the Department on the proposed waste flow modification.

(e) The Department may, concurrent with, or following approval by the Commissioner of the relevant portions of the plan amendment, adopt the proposed waste flow modification pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.]

(a) The Department may modify the disposal facility designations set forth in N.J.A.C. 7:26-6.5, by amending that section in a rulemaking pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(b) At least 15 days after a proposal of the amendment described in (a) above is published in the New Jersey Register, the Department shall conduct a public hearing on the proposed amendment.

(c) If the Commissioner has not certified an amendment to the relevant district solid waste management plan or plans making such plan or plans consistent with the amendment described in (a) above before or within 360 days after promulgating the amendment described in (a) above, the Department shall adopt and promulgate such plan amendment or plan amendments pursuant to N.J.S.A. 13:1E-23i.

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RULE ADOPTIONS

MILITARY AND VETERANS' AFFAIRS

(a)

DIVISION OF VETERANS' ADMINISTRATIVE SERVICES

New Jersey Veterans' Memorial Homes Admission Criteria

Adopted New Rules: N.J.A.C. 5A:5

Proposed: July 20, 1992 at 24 N.J.R. 2499(b).

Adopted: August 31, 1992 by Richard J. Bernard, Sr., Deputy Commissioner Veterans' Affairs, Department of Military and Veterans' Affairs.

Filed: August 31, 1992 as R.1992 d.372, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1988, c.444; N.J.S.A. 38A:3-2.2, 38A:3-2b, 38A:3-6.4, 38A:3-6.5, 38A:3-6.6, 38A:3-6.8, 38A:3-6.9 and 38A:3-6.12.

Effective Date: September 21, 1992.

Expiration Date: September 21, 1997.

Summary of Public Comments and Agency Responses:
No comments were received.

Summary of Agency-Initiated Changes:

In N.J.A.C. 5A:5-1.1, the plural "bases" is corrected to the more appropriate singular "basis."

In N.J.A.C. 5A:5-2.1, the term "New Jersey veterans' memorial facility" in the definition of "community spouse" is changed to "veterans' facility" as is used throughout the chapter. Also, the spelling of "Paramus" in the "veterans' facility" definition is corrected.

In N.J.A.C. 5A:5-5.1(c), the term "welfare refund fee" is corrected to "welfare fund fee," and the reference to "this savings account" in the last sentence is changed as "their savings account," to more clearly reflect the regulatory intent that each resident pay one percent of individual interest earned on their savings accounts.

In N.J.A.C. 5:5A-2.1 and 5.1, references to the effective date of these rules has been changed to the actual date, September 21, 1992.

Full text of adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 5
NEW JERSEY VETERANS' FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

5A:5-1.1 Purpose

The purpose of this chapter is to establish requirements for eligibility for admission, pre-admission screening, admission review and implementation, computation of the care maintenance fee for New Jersey veterans' facilities, and the *[bases]* ***basis*** for discharge or transfer from such facilities.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

5A:5-2.1 Definitions

The words and terms, as used in this chapter, shall have the following meanings. All other words shall be given their ordinary meaning unless the content of their use clearly indicates otherwise.

"Accountable assets" means any item that has a determined value and is owned solely by the applicant or spouse, or owned jointly with spouse or others and must be spent down or liquidated and used toward payment of the resident's care and maintenance.

"Admission" means the procedure for entering one of the New Jersey veterans' memorial facilities.

"Aid and attendance" means supplemental income provided by the U.S. Department of Veterans' Affairs for extended care services.

"Allowable deductions" means those approved items which will be subtracted from the gross income when calculating admission eligibility.

"Asset determination" means an investigation and evaluation of the financial circumstances of a person applying for admission to a New Jersey veterans' memorial facility.

"Care and Maintenance" means the actual cost of services for an individual in one of the veterans' facilities.

"Community spouse" means the married spouse of the individual who is residing in a *[New Jersey]* veterans' *[memorial]* facility.

"Conservatorship" means the appointment of a person by the court to manage the financial affairs of a conservatee. A "conservatee" is one who has not been judicially declared incompetent, but who by reason of advanced age, illness, or physical infirmity, is unable to care for or manage his or her property or who has become unable to provide for himself or herself or others dependent upon him or her for support.

"Dependent" means a child of the Veteran Home Resident who is under the age of 21 or a child of any age who is blind or totally and permanently disabled. 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.

"Durable power of attorney" means a designation and appointment of another in writing conveying specific powers to that attorney in fact and showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive.

"Eligible others" are as follows:

1. "Spouse" means the person married to an individual who has been honorably discharged from the active military of the United States, provided that the spouse is not less than 50 years of age, has been married to such person for a period of not less than 10 years, and meets the New Jersey residency requirement as described in paragraph 1 of the definition of "veteran" below.

2. "Surviving spouse" means the widow or widower of a person who died an honorable death while in the active military service of the United States, or who was a disabled veteran at the time of death, provided that the surviving spouse was the person's spouse at the time of the person's service or was married to the person not less than 10 years prior to the date of application and has not married since the person's death, and provided that the surviving spouse has been a resident of New Jersey for at least two years prior to the date of application.

3. "Parent" means the mother or father of a person who was a resident of New Jersey at the time of service entry, and who died an honorable death in time of war or emergency while in the active military service of the United States, provided that the parent has been a resident of New Jersey for at least two years prior to the date of application.

"Guardian" means a person who has been entrusted as the legal representative of one who has been adjudicated incompetent by a court of law and requires a legal representative to act on their behalf for all matters.

"Guardianship" means the process by which an individual is appointed the legal representative of another person who has been adjudicated incompetent by a court of law and requires a legal representative to act on their behalf for all matters.

"Income" means all revenue received by resident for a given period. Includes funds received for labor or services, social security, pensions, aid and attendance, rental of property, the proceeds of business or enterprises and investments.

"Medically needy applicants" means those individuals who cannot be maintained in the community because of the need for additional

support and care to meet their physical, medical and psychosocial needs.

"Needy veteran" means an individual who is without sufficient financial ability to provide for their support and necessary care in the community.

"Net income" means the total gross income received, minus allowable deductions.

"New resident" means those individuals admitted after *[the effective date of this chapter]* ***September 21, 1992***.

"Non-accountable assets" means those items of determined value that are owned solely by the applicant or spouse, or owned jointly with spouse or others and will not be spent down or liquidated and used toward payment of resident's care and maintenance. The following are considered non-accountable assets:

1. The primary residence and any appurtenance thereto;
2. All of the household effects therein; and
3. An automobile if there is a community spouse.

"Personal needs account" means an account maintained at the veterans' facility for deposit of the personal funds of the resident and which will be considered part of the accountable assets.

"Personal needs allowance" means a set amount received by a resident for individual use and spending.

1. A resident whose source of monthly income exceeds $100.00 will retain a minimum of $100.00 for personal needs.
2. A resident whose source of monthly income does not exceed $100.00 will retain all of their monthly income.
3. A resident who has no source of funds will be provided a monthly allowance for personal needs of $50.00.

"Representative Payor" means a designated person or institution responsible for the payment of the resident's financial obligations.

"Resident" or "veterans' facility resident" means an individual residing in a New Jersey veterans' memorial facility.

"Resident fee" means the monthly charges billed by the veterans' facility to the resident for their cost of care and maintenance.

"Spend down" means that which occurs when accountable assets exceed the maximum amount allowed and are liquidated and spent towards the actual care and maintenance cost. This process will continue as long as the accountable assets exceed the maximum amount allowed.

"Veteran" means:

1. A person who has been honorably discharged from the active military service of the United States and has been a resident of New Jersey for at least two years prior to the date of application; or
2. A person who was a citizen of the State of New Jersey at the time of entrance into the active military service of the United States, and who is qualified for admission except for the required period of State residence. Preference shall be given to persons who have been residents of the State for a period of at least two years prior to application.

"Veterans' facility" means any home, institution, hospital, or part thereof, the admission to which is under the jurisdiction of the Department of Military and Veterans' Affairs, being the facilities at Menlo Park, *[Parmus]* ***Paramus***, Vineland, and such other veterans' facilities as may be developed.

"Welfare Fund" means an account established at each facility pursuant to N.J.S.A. 38A:3-6.16 for the specific purpose of accepting monies that will be spent for and on behalf of residents' programs, special events and services. This fund will provide for and maintain a quality of life which might otherwise not be possible for the residents and shall be administered by the Adjutant General in accordance with the provisions of N.J.S.A. 38A:3-6.16.

5A:5-2.2 Admission eligibility

(a) Eligibility for admission to the New Jersey veterans' memorial facilities is considered on financial and medical needs. The following individuals, in order of priority, are eligible for admission consideration:

1. A New Jersey needy veteran, being one who does not exceed the maximum accountable assets from all sources, but meets the New Jersey residency requirement as described in paragraph 1 of the definition of "veteran" in N.J.A.C. 5A:5-2.1.
2. A needy veteran, being one who does not exceed the maximum accountable assets from all sources but does not meet the New Jersey residency requirement as described in paragraph 1 of the definition of "veteran" in N.J.A.C. 5A:5-2.1.
3. Needy eligible others, as set forth in no priority order in (a)3i through iv below being those whose accountable assets do not exceed the maximum allowable assets.
   i. Spouse;
   ii. Widow;
   iii. Gold Star Parent; and
   iv. Dependent others; and
4. Those who exceed the maximum allowable assets, who shall still be eligible for admission, but shall be required to pay the actual cost of care and maintenance.

(b) The non-needy applicants in (a)4 above shall be defined by their financial assets; however, those who are defined as medically needy will be admitted on a bed available basis determined upon receipt of the completed and dated application.

(c) All accountable assets shall be spent down or liquidated and used to pay resident's actual care and maintenance until:

1. A single applicant's maximum accountable assets do not exceed $15,000 from all sources of accountable assets; or
2. A married couple's maximum accountable assets do not exceed $40,000 from all sources of accountable assets.

(d) Admission eligibility is contingent upon a facility's ability to meet the applicant's individual health care needs which will be reviewed and determined by the Admission Committees of each facility and bed availability. The applicant shall also sign a statement that he or she will accept placement in the facility designated by the Adjutant General, and that he or she will abide by the rules, regulations and discipline of the facility to which admitted.

(e) The following shall be denied admission into a New Jersey veterans' memorial facility:

1. Applicants who are active substance abusers, exhibit active psychiatric problems or exhibit behavioral actions which may pose a danger to self or others;
2. Applicants who require treatment beyond the facilities' ability to meet the applicants' individual health care and psychological needs; and
3. Applicants who refuse to sign the required statement of compliance under (d) above.

(f) An approved applicant may be subject to reevaluation in the following circumstances:

1. A more than six months lapse from the time of application, before admission;
2. A change in medical or psychological status; or
3. An omission of significant medical or financial information.

(g) Criteria for admitting applicants with special needs are as follows:

1. Any applicant who is adjudicated legally incompetent is required to have a legal guardian.
   i. A copy of the guardianship document shall be submitted with the application prior to admission being scheduled.
2. Any applicant who has a conservatorship shall submit a copy of the document prior to admission being scheduled.
3. Any applicant who has a durable power of attorney for both medical and financial matters shall submit a copy of the document for guardianship criteria to be waived. The document shall be notarized, witnessed and signed by the applicant while competent.

SUBCHAPTER 3. PRE-ADMISSION SCREENING OF APPLICANTS

5A:5-3.1 Sequence of screening activities

(a) The admission to a veterans' memorial facility shall be as follows:

1. To establish basic eligibility of all applicants, the following documentation and information reviews are required:
   i. Service history:
   (1) Proof of other than dishonorable discharged; and
   (2) A completed "Request Pertaining to Military Records" (Standard Form 180);

ii. Social history:
(1) A birth certificate;
(2) Marital status verification; and
(3) Verification of residency;
iii. Medical status:
(1) An Application for Medical Benefits (VA 10-10);
(A) Medicare Part A and B; and
(B) Other health insurances;
(2) A Veterans Administration Medical Certificate (VA 10-10m);
(3) A Veterans Administration Referral for Community Nursing Home Care (10-1204);
(A) This requirement applies only if the applicant is currently under VA care or in a nursing home under VA contract; and
(4) A Medical History Release Request;
iv. Financial eligibility:
(1) All assets will be reviewed and considered in determining financial eligibility;
(2) Non-accountable assets will not be considered in determining accountable assets;
(3) All financial transactions and transfer of resources, which have occurred within 18 months preceding the date of application, will be reviewed and considered as accountable assets;
(4) The value of all assets will be determined as of the date of application and revalued on the date of admission; and
(5) Income from all sources shall be disclosed. Income shall be verified by submitting the most recent copy of the Federal and State Income Tax Reports and other such documents as may be required;
v. Verification of admission eligibility as defined in N.J.A.C. 5A:5-2.1; and
vi. Other:
(1) Verification of funeral arrangements;
(A) Burial insurance not to exceed $10,000;
(2) Submission of advance directives for health care, if desired by the applicant, such as:
(A) An advance directive;
(B) A proxy directive;
(C) An instruction directive;
(D) A combined directive; and
(3) Appointment of a representative payor, if desired by the applicant.

2. Applicants shall be eligible for admission consideration upon the completion of the documentation and information for the following:
i. Service history;
ii. Social history;
iii. Medical status;
iv. Financial eligibility; and
v. Admission eligibility.

SUBCHAPTER 4. ADMISSION REVIEW AND IMPLEMENTATION

5A:5-4.1 Admission review policy

(a) It is the policy of the New Jersey veterans' memorial facilities to have an admission committee review all completed and tentatively approved applications for appropriateness of placement. A tentatively approved application is one which has produced all required documents and meets admission and financial eligibility requirements. In addition to financial eligibility, the following areas will be considered in all applications for admission and may be grounds for rejection:
1. Medical and psychosocial behaviors;
2. Past medical history;
3. Present medical condition;
4. Evaluation of medical acuity levels;
5. Treatments/care required to meet the applicant's individual health care and psychological needs;
6. An applicant's participation in active substance abuse; and
7. Whether an applicant poses danger to self or others.

(b) If the committee rejects an applicant, the facility will provide written notice of denial and the reason for denial within 14 days to the applicant or representative.

(c) Approved applicants will be placed on the waiting list. The waiting list process is as follows:
1. All completed applications with the required documentation will be timed and dated when received and prioritized in accordance with N.J.A.C. 5A:5-2.1.
2. Once the applicant is approved for admission, his or her name will be placed on the bottom of the approved waiting list. An applicant, who is awaiting guardianship, will remain on the waiting list in sequence but can not be admitted until the guardian is appointed.
3. There will be no consideration for by-passing approved applicants on the waiting list except when bed availability is based on gender.
4. If an approved applicant refuses admission at the time offered, the applicant will be placed at the bottom of the waiting list. If offered admission a second time and refuses, the applicant will be taken off the list and may be barred from reapplying for a period of six months.
5. The waiting list is a confidential document; numerical assignment will be provided when requested.

SUBCHAPTER 5. CARE MAINTENANCE FEE COMPUTATION

5A:5-5.1 General requirements for computing monthly resident fee

(a) At the time of admission and annually thereafter, based on a determined date, the computation of the monthly resident fee is calculated with the resident or representative payor. The calculation is determined by review of Federal and State Income Tax Returns and all financial statements and transactions. *[Upon the effective date of this rule,]* ***As of September 21, 1992,*** the resident fee will be based on 80 percent of the net income for all residents admitted thereafter. Those individuals residing in the facilities prior to *[the effective date]* ***September 21, 1992****, will have the resident fee based on 60 percent of the net income.

(b) The resident fee will be based on 80 percent of the net income, not to exceed the established monthly care rate set by the Adjutant General annually.

(c) Residents admitted on or after *[the effective date of these rules]* ***September 21, 1992*** will be required to pay a welfare refund fee not to exceed 10 percent of the balance of their monthly income, excluding all allowable deductions and the care maintenance fee payment. These monies will be deposited in the facility's welfare fund. The remainder of the net income will be returned to the resident for personal use. Residents admitted before *[the effective date of these rules]* ***September 21, 1992*** will continue to pay one percent of earned interest on *[this]* ***their*** savings account as a welfare fund fee.

(d) Payment for the resident fee is due the first of each month.

(e) At the time of admission, a resident will be assessed charges for that month pro-rated according to the date of admission.

(f) At the time of discharge, there will be no reimbursement to the resident or resident's estate for pre-paid care and maintenance fees.

5A:5-5.2 Formula for computing single resident's monthly resident fee based on an 80/20 percentage

(a) The monthly resident fee for a single 80/20 resident is based on the total gross income, minus allowable deductions. This figure is the net income. Eighty percent of the net income will be the resident fee charged. An additional 10 percent of the balance will be deposited in the Welfare Fund of the facility. The remainder of the net income will be deposited in the resident's personal needs account.

(b) The allowable deductions for a single resident are as follows:
1. The personal needs allowance;
2. Health insurance premiums;
3. Life insurance/burial accounts: This insurance will have had to be in effect prior to the date of application. The face value of the policy shall not exceed $10,000. Life insurance will be considered in lieu of a burial account; and

4. Other expenses as may be individually approved by the Deputy Commissioner of the Department of Military and Veterans' Affairs.

5A:5-5.3 Formula for computing a married resident's monthly resident fee based on an 80/20 percentage

(a) The monthly resident fee for a married resident is based on the total personal income of the resident, minus allowable deductions. This figure is the net income. Eighty percent of the net income will be the resident fee charged. An additional 10 percent of the balance will be deposited in the welfare fund of the facility. The remainder of the net income will be deposited in the resident's personal needs account.

(b) The resident fee will be based solely on the applicant's income.

(c) The community spouse must divulge all sources of their monthly income in order to file for consideration of allowable deductions. Allowable deductions will be offset by the community spouse's monthly income before the applicant's monthly income will be considered. In the event that each individual of the marriage is a resident, the resident fee for each will be calculated as for a single resident. Failure to make a full and complete disclosure will constitute a breach of the facility regulations and may be grounds for removal as provided for in N.J.S.A. 38A:3-6.9.

(d) The allowable deductions for a married resident are as follows:

1. Personal needs allowance;
2. Health insurance premiums;
3. Rent/primary residence first mortgage: The mortgage must have been in effect 30 months prior to the date of application. Verification of mortgage payment schedule is required. The actual cost of property taxes and insurance for the primary residence will be deducted equally over the 12 month period. Verification shall be required;
4. Food deductions shall be $200.00 for the community spouse and $130.00 per additional dependent per month;
5. Heat/electric deduction shall be based on preceding year usage and cost. The deduction will be divided equally over the 12 month period;
6. Water/sewage deduction shall be the actual annual cost. The deduction will be divided equally over the 12 month period;
7. Automobile/transportation deduction shall be $150.00 per month;
8. Clothing deduction shall be $50.00 per month per dependent;
9. Telephone deduction shall be ($25.00) per month;
10. Trash disposal deduction shall be the actual annual cost. The deduction will be divided equally over the 12 month period;
11. Home maintenance deduction shall be $50.00 per month;
12. Life insurance/burial accounts: The life insurance shall have had to be in effect one year prior to the date of application. The face value of the policy shall not exceed $10,000. Life insurance will be considered in lieu of a burial account. This deduction can be considered for both the applicant and spouse with verification of policies and payment schedule;
13. Guardianship/advance directives: The actual cost of legal fees up to a maximum of $2,400 may be deducted. This deduction will be divided into 24 monthly installments, which will only be permitted as long as the resident resides in the veterans' memorial facility. This deduction will only be approved for a guardianship hearing/advance directive protocol which was processed no later than one year prior to the date of application. Verification of cost and date of action shall be required; and
14. Other extraordinary expenses as may be individually approved by the Deputy Commissioner of the Department of Military and Veterans' Affairs.

(e) No deduction beyond the approved listing shall be permitted until all accountable assets, to include the personal needs account, are depleted.

5A:5-5.4 Financial responsibilities for veterans' facility resident

(a) An eligible applicant who desires admission and whose assets are in excess of the allowable assets may be admitted on a bed available basis. They will be billed for and required to pay the actual cost of care and maintenance until their resources meet the accountable asset maximum.

(b) Once admitted, a resident will be able to accumulate accountable assets of $5,000. This money will be added to the accountable assets; thus, increasing the amount from $15,000 to $20,000 for a single resident and from $40,000 to $45,000 for a married resident.

(c) When an account exceeds the allowable maximum, the resident will be billed and required to pay the actual cost of care and maintenance until the allowable asset limit is reached.

(d) The resident will be responsible for all financial obligations for services not provided by the facility. This includes, but is not limited to:

1. Transportation;
2. Medical appointments;
3. Hospitalization;
4. Specialized services/programs/treatments;
5. Adaptive equipment;
6. Diagnostic services;
7. Other outside services as requested by the resident; and
8. Deductible fees not covered by medical insurances.

(e) The facility will not accept responsibility for any nonpayment of debts incurred by a resident including health care costs.

(f) All personal property of the resident is the responsibility of the resident or guardian. The facility assumes no responsibility and will not reimburse a resident for loss or damage of personal items.

SUBCHAPTER 6. RESIDENT TRANSFER OR DISCHARGE

5A:5-6.1 Transfer or discharge of a resident

(a) Any resident may be removed from a veterans' facility on being restored to an ability to promote his or her own support and welfare in the community, or for immorality, or for fraud or willful misrepresentation, or refusal to abide by the rules, regulations and discipline of the veterans' facility, as well as:

1. In an emergency, with notification of the resident's physician, next of kin or guardian;
2. For medical reasons or to protect the resident's welfare or the welfare of others;
3. For nonpayment of fees, in situations not prohibited by law; or
4. Expiration of the resident.

CORRECTIONS

(a)

THE COMMISSIONER

Close Custody Units
Definitions; Temporary Close Custody
Adopted Amendment: N.J.A.C. 10A:5-1.3
Adopted New Rules: N.J.A.C. 10A:5-7

Proposed: May 4, 1992 at 24 N.J.R. 1676(a).
Adopted: August 21, 1992 by William H. Fauver, Commissioner, Department of Corrections.
Filed: August 25, 1992 as R.1992 d.365, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: September 21, 1992.
Expiration Date: June 17, 1996.

Summary of Public Comments and Agency Responses:

The Department of Corrections received a total of 16 comments to the proposed amendment and new rules all from inmates at the New Jersey State Prison. Their names, a summary of their comments, which were repetitive, and the Department's responses are as follows: William Deeves; Lloyd Johnson; Willie Williams; Jamaal Allah; Ronald Allen; John Bland; Jeffrey Bunyan; Alberto Carrazana; Stephen Castellano; Carlos Colon; Marco D'Giovanni; Jerome Fitzpatrick; George Jacques; David Russo; Daud Tulam; and Richard Young.

COMMENT: Commenters stated that the amendment and new rules would be abused by correctional facility staff persons who will use the amendment and new rules as an excuse to punish an inmate, rather than for the purposes expressed in the amendment and new rules. This anticipated misconduct will result, they contend, in a great increase in litigation.

RESPONSE: The Department of Corrections has no reason to expect that its lawfully promulgated rules will be disregarded by personnel. N.J.A.C. 10A:5-7.1 provides specific criteria and high-level oversight authority to insure that its provisions are utilized appropriately. In particular, the monthly review by a designated Assistant Commissioner, N.J.A.C. 10A:5-7.1(g), is designed to provide such assurances. In addition, an internal grievance procedure and contact with the Office of the Ombudsman will create additional avenues for monitoring and relief, should any improper actions be noted.

COMMENT: Commenters believe that the proposed amendments and new rules are repetitive and unnecessary because of other existing rules which the commenters believe are sufficient, such as Pre-Hearing Detention, M.C.U. and Protective Custody.

RESPONSE: The rules cited by commenters are for narrowly defined purposes which do not permit close custody for all the varieties of situations which arise in a correctional facility. Rules such as N.J.A.C. 10A:5-2, (M.C.U.), N.J.A.C. 10A:5-3 (Administration Segregation), and N.J.A.C. 10A:5-5 (Protective Custody), are all intended for long-term use, thus requiring due process procedures. However, there are situations as set forth in N.J.A.C. 10A:5-7.1(b) in which it is necessary to place an inmate in short term (temporary) close custody, both for his or her own safety and for the orderly operation of the correctional facility. It is anticipated that this section will fill the "gaps" as needed.

COMMENT: Commenters stated that N.J.A.C. 10A:5-7.1 will violate the due process clause of the U.S. Constitution because it specifies no notice or opportunity for a hearing.

RESPONSE: The Department of Corrections believes that the non-punitive type of temporary close custody permitted by the amendment and new rules do not invoke a need for constitutional protections or procedures. In N.J.A.C. 10A:5-7.1(b)1 and (d), it is clear that in cases which will require continued close custody, the due process spelled out in N.J.A.C. 10A:4 or other appropriate rules shall be followed.

COMMENT: Commenters stated that if the temporary period for close custody is 72 hours, there should be no provision for extension of this time without due process procedures.

RESPONSE: N.J.A.C. 10A:5-7.1 is designed so that during or after 72 hours, the inmate will be released to general population, or other procedures for maintaining him or her in a close custody status will be instituted (see N.J.A.C. 10A:5-7.1(d)). The purpose of an emergency provision is to insure that prison officials will have latitude to deal with unforeseen events or newly developing facts which may influence decision making.

COMMENT: One commenter disagreed with the Department of Corrections' Economic Impact statement. He believes that implementation of N.J.A.C. 10A:5-7.1 will result in a need for additional manpower to conduct investigations or that it will be used to justify more overtime hours, thus incurring increased expenditures.

RESPONSE: The conducting of investigations is an activity which is within the daily duties of staff officers. All such activities are therefore already within the Department of Corrections' budgeted funds. It is not expected that the rules will cause a significant rise in numbers of investigations required.

COMMENT: One commenter suggested that N.J.A.C. 10A:5-7.1 may result in close custody confinement of a mentally disturbed inmate, based only on the "whims" of unqualified personnel.

RESPONSE: Decisions to place a mentally disturbed inmate in Temporary Close Custody may be made only by a psychiatrist, psychologist, medical doctor, or the Superintendent (see N.J.A.C. 10A:5-7.1(b)3 and 4). The Department of Corrections believe that such decisions will be made by qualified staff persons.

Full text of the adoption follows.

10A:5-1.3 Definitions

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

. . .

"Temporary close custody" means the non-punitive removal of an inmate from the inmate general population, or other assigned housing, with restriction to the inmate's cell or to a close custody unit for a period not to exceed 72 hours, for special observation or investigation.

. . .

SUBCHAPTER 7. TEMPORARY CLOSE CUSTODY

10A:5-7.1 Placement in temporary close custody

(a) An inmate may be placed in temporary close custody for a period not to exceed 72 hours, unless exceptional circumstances, such as other information received or other substantial evidence found, warrant extension of this time period.

(b) Criteria for placement of an inmate in temporary close custody status are:

1. Reasonable suspicion exists to indicate that the inmate is engaged in, or is planning a serious violation (asterisked offenses under N.J.A.C. 10A:4-4.1(a)) of correctional facility rules, on which disciplinary action is considered premature;

2. Reasonable suspicion exists to indicate that the inmate is in possession of, or plans to obtain, contraband which may pose a danger to the inmate or others;

3. The inmate exhibits assaultive, self-mutilating and/or threatening behavior related to a medical or psychiatric condition, in the written opinion of a psychiatrist, psychologist or medical doctor; and/or

4. Any other reason, which, in the opinion of the Superintendent, or his or her designee, requires temporary close custody confinement to protect the inmate, staff, general public, and/or the security and control of the correctional facility.

(c) When placement of an inmate in temporary close custody is ordered by the Superintendent's designee, the designee shall, as soon as possible, within 72 hours inform the Superintendent and shall provide a written report to the Superintendent setting forth the reason for every such placement.

(d) On or before the expiration of the 72 hour period, unless there are emergent reasons for extension, the inmate shall be released from temporary close custody to:

1. General population;

2. Pre-hearing detention;

3. Detention in connection with a disciplinary action pursuant to N.J.A.C. 10A:4;

4. A medical or psychiatric housing unit for continued observation, treatment, or commitment procedures (N.J.A.C. 10A:16-13); or

5. Another close custody unit in accordance with procedures set forth in this chapter, such as, Protective Custody, Management Control Unit.

(e) Release from temporary close custody may be ordered only by the Superintendent or his or her designee.

(f) In consideration of the reason for an inmate's placement in temporary close custody, the chief custody officer, or his or her designee, shall determine the personal property and other services, such as visits and telephone calls, which the inmate may be afforded while in temporary close custody.

(g) The Superintendent shall forward a monthly written report to his or her designated Assistant Commissioner for review of all placements and releases from temporary close custody.

(a)

THE COMMISSIONER

Inmate Orientation and Handbook

Readoption with Amendments: N.J.A.C. 10A:8

Proposed: July 6, 1992 at 24 N.J.R. 2330(a).

Adopted: August 17, 1992 by William H. Fauver, Commissioner, Department of Corrections.

Filed: August 19, 1992 as R.1992 d.356, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: August 19, 1992, Readoption;
September 21, 1992, Amendments.
Expiration Date: August 19, 1997.

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. 10A:8.

Full text of the adopted amendments follows.

10A:8-2.3 Scheduling orientation
(a)-(c) (No change.)
(d) Orientation may be presented in a foreign language at the discretion of the Superintendent.

10A:8-2.4 Content of orientation sessions
(a) (No change.)
(b) Topics of orientation sessions shall include, but shall not be limited to:
1.-2. (No change.)
3. Correctional facility services:
i.-viii. (No change.)
4.-12. (No change.)

10A:8-3.3 Inmate Handbook revision
(a) (No change.)
(b) When a correctional facility has a large number of inmates in the population who speak a foreign language, the Inmate Handbook revision shall also be printed in the foreign language.
(c) (No change in text.)

10A:8-3.5 Inmate Handbook content
(a) The Inmate Handbook shall contain an introduction which explains, in plain language, the philosophy of the correctional facility.
(b) The Inmate Handbook shall also include, but shall not be limited to, an explanation and/or description of:
1.-4. (No change.)
5. Correctional facility services:
i.-viii. (No change.)
6.-9. (No change.)
10. Procedures for name change;
11.-13. (No change.)

10A:8-3.6 Spanish Inmate Handbook
The Inmate Handbook shall be available in Spanish.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BUREAU OF EMPLOYMENT AND PERSONNEL SERVICES

Personnel Services

Adopted Repeal and New Rules: N.J.A.C. 13:45B

Proposed: August 19, 1991 at 23 N.J.R. 2470(a) (see also 23 N.J.R. 2919(a)).
Adopted: August 12, 1992 by Emma N. Byrne, Director, Division of Consumer Affairs.
Filed: August 19, 1992 as R.1992 d.357, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with N.J.A.C. 13:45B-4.4 and 5.7 not adopted.**
Authority: N.J.S.A. 34:8-43 et seq. and 56:8-1.1.
Effective Date: September 21, 1992.
Expiration Date: September 21, 1997.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:45B, relating to personnel services. The proposed rules were published in the New Jersey Register on August 19, 1991 at 23 N.J.R. 2470(a) together with announcement of a public hearing, which was held at the Richard J. Hughes Justice Complex in Trenton on September 16, 1991. The official comment period was extended on September 13, 1991 and ended on October 16, 1991. Announcement of the opportunity to respond to the Division was forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Bergen Record, the Atlantic City Press, the Asbury Park Press, the Courier Post, the Mid-Atlantic Association of Personnel Consultants, the New Jersey Association of Personnel Consultants, the New Jersey Association for Temporary Services, the Home Health Agency Assembly of New Jersey, the New Jersey Career Counselor Association, the Home Care Council of New Jersey, the Association of Human Resource Consultants, the Corporate Recruiters Exchange, and other interested parties. A full record of the opportunity to be heard can be inspected by contacting the Bureau of Employment and Personnel Services, P.O. Box 45028, Newark, N.J. 07101.

Summary of Hearing Officer's Recommendations and Agency Response:
The following persons testified at the public hearing:
Grant Shannon, Merrill-Adams Associates
Frank Karpati, New Jersey Career Development Association
Reid Stroud, Alternatives in Health Care Service
Myrna Hildebrant, Home Health Services and Staffing Association of New Jersey
Carol Kientz, Home Health Assembly of New Jersey, Inc.
Mark Baiada, Bayada Nurses, Inc.
Renee Dale, New Jersey Association of Personnel Consultants
Mitchell Gorsen, ADAPSO, the computer software and service industry association
Alan Pearl, AGS Information Services
John Pecoraro, consumer
Brighton Weeks, McCarter & English, on behalf of the Association of Executive Search Consultants
Lester Minsuk, of Minsuk, Macklin, Stein & Associates, on behalf of the National Association of Career Development Consultants
Armando Corbino, Impact Personnel
John Luneski, Olsten Temporary Service in Northern New Jersey

The hearing officer recommended that Subchapters 1 and 3, and Subchapters 6 through 13, be adopted in their entirety. In Subchapter 2, he recommended modification of N.J.A.C. 13:45B-2.6(a)1 and 2.7(b)1, to provide an alternative method of entry into conditional employment agent status, and to eliminate the diploma requirement for a full license since a candidate for that license must in all circumstances pass the licensing examination. He recommended adoption of Subchapter 4, except for N.J.A.C. 13:45B-4.4 regarding nursing standards, to be reserved for further review. He recommended that all of Subchapter 5 be adopted, with the exception of N.J.A.C. 13:45B-5.7 concerning temporary help service firms that offer nursing or health care services, which should be reserved for future reproposal.

The Division has accepted the recommendation of the hearing officer to adopt the rule while reserving certain sections for further consideration, as outlined above.

Summary of Public Comments and Agency Responses:
During the original and extended comment period, the Bureau of Employment and Personnel Services received 59 written communications regarding the proposed rules. Comments were received from the following:
The National Association of Personnel Consultants, by Robert P. Style, Esq., of Rubin, Quinn, Moss, Meaney & Patterson, P.C., King of Prussia, Pa.
The Association of Executive Search Consultants, Inc., by Alfred L. Ferguson, Esq., of McCarter & English, Newark, N.J.
The Mid-Atlantic Association of Personnel Consultants and the New Jersey Association of Personnel Consultants, by Alan H. Ettenson, Esq., of Taenzer, Friedman & Ettenson, Moorestown, N.J.
ADAPSO, The Computer Software and Services Industry Association, Arlington, Virginia
Marlene Levitt, former president, New Jersey Association of Personnel Consultants
Grant Shannon, President, Merrill-Adams Associates, New York, N.Y.
Remus J. Klimaski, Sales Consultants of Summit
Marvin Davidson, President, John-David Personnel Agency, Inc., Clifton, N.J.
Fred and Carol Hollander, Management Recruiters of Marlton

Richard K. Sinay, President, Sales Consultants of Hudson County, Inc.
Ernest Bivona, President, Sales Consultants of Morris County, Inc.
Allen B. Pearl, Vice President, AGS International Services, Inc., Mountainside, N.J.
Mary Munson, President, Munson Placement Services, Inc.
Bob Ceresi, President, Sales Consultants of Andover
Barry Franzino, Jr., President, Career Center, Inc.
J.C. Burgess, P.E., CPI Engineering Services, Inc., Westfield, N.J.
Herbert Hardbrod, Management Recruiters of Middlesex County
Donald L. Goldman, Vice President, Management Recruiters International, Inc.
Renee Dale, President, Force II Personnel
Vic Trzesniowski, President, WRT & Associates, Westfield, N.J.
National Association of Career Development Consultants, by Dennis J. Drasco, Esq., Lum, Hoens, Conant, Danzis & Kleinberg, Roseland, N.J.
New Jersey Career Development Association, by Frank Karpati, President
Phyllis Solomon, Executive Search, Inc., Englewood Cliffs, N.J.
Cap Gemini America, Inc., by Mark H. Berlind, General Counsel, New York, N.Y.
William J. Linton, Partner, Linton Associates, a Partnership, d/b/a Snelling and Snelling
Home Health Services and Staffing Association of New Jersey, Trenton, N.J. by Jane N. Inge, Director
Home Health Assembly of New Jersey, Inc., by Carol J. Kientz, Executive Director
Overlook Management Corporation, by John H. Scharf, Executive Vice President
OMC Health Services, by Judy H. Albers, Executive Director
Mary Herbermann, Director, Home Care Department, Robert Wood Johnson University Hospital, New Brunswick, N.J.
Preferred Health Care, Bricktown, N.J., by Annette McKean, RN, and Ann Girone, RN
New Jersey State Nurses Association, by Dorothy Flemming, Executive Director
Nancy J. Knight, President, Trauma Nurses, Inc., Trenton, N.J.
Critical Care Associates, Inc., by Theodore J. Leo, Esq., Leo, Johnson & Pasqualetto, Bloomfield, N.J.
Catherine Bratek
Anthony J. Schiavo, Vice President, People Care, an affiliate of the Medical Center of Ocean County, N.J.
Home Care Council of New Jersey, by Kenneth Dolan, Executive Director
Trans-Atlantic Renal Council, by Joan C. Solanchick, Executive Director
Bayada Nurses, by J. Mark Baiada, President; Amanda Gleason, Manager; Susan Lightman, Director; and Michelle Moran, Staff Supervisor
Rett Palmere, President, Staff Builders, Washington Township, N.J.
Lawrence I. Sosnow, Chairman, Patient Care, Inc., West Orange, N.J.
Furman & Halpern, P.C., by Barry A. Furman, Esq., on behalf of three nursing registries
Nurse Brokers and Contractors of America, Inc., by Harvey Shulman, General Counsel
New Jersey State Board of Nursing, by Sister Teresa L. Harris, Executive Director
Nursefinders, Mount Laurel, N.J., by Cynthia D. Kirkif, Administrator; Kathy Basile, Coordinator; Pam Meglino, Clinical Director; P. Cecilia Payne; Phyllis Ranir; Debra Semeon; Sherry L. Dixon; Charlene Pollnow; Patricia Baron; and Arveth M. Stokes

A large number of comments, oral and written, concerned the provision of health care services. For example, several commenters did not see the need to have a registered nurse in agencies providing nursing and health care services. They contended that an excessive economic burden would result from compliance with this requirement. One commenter urged clarification of the responsibilities of owners versus the responsibility of supervising nurses. Other persons stated that the State Board of Nursing certification requirement for home health care workers would eliminate large numbers of capable and experienced persons from this occupation. It was also pointed out that nurses and health care personnel placed by temporary help service firms in hospitals, nursing homes, etc., would be required to follow the protocols and quality assurance plans of those entities, which might conflict with manuals or plans required under the proposed rules to be prepared by a nurse-supervisor of the temporary help service firm.

The Division is not, at the present time, adopting its proposed rules for nursing and home health care agencies because the Division needs additional time to revise the rules. However, proposed N.J.A.C. 13:45B-2.6(b) and 2.7(d) regarding employment agents' licenses which include "nursing" or "nursing and/or health care services" are being adopted without change. A similar provision, N.J.A.C. 13:45B-4.3, is also being adopted, with technical changes for consistency with N.J.A.C. 13:45B-2.6(b) and 2.7(d).

The remaining rules in the nursing and home health care area will undergo further review, and those not being adopted at this time are reserved for reproposal in the future.

A summary of comments regarding the remaining sections, together with the Division's responses, follows:

General

COMMENT: The promulgation of new rules should be delayed until the Attorney General has completed his comprehensive review of occupational and professional regulations in this State, as ordered by the Governor. In addition, regulations which fail to protect the consumer are pointless and complicate doing business in New Jersey. Further, the impact assessments contained in the proposed rules are "grossly inadequate" and compliance with the proposed rules will be unduly burdensome.

RESPONSE: The Attorney General's review was completed in January of 1992 and does not contradict the promulgation of these rules. The Division's purpose in adopting the proposed rules is to protect consumers who use employment and personnel services. While all segments of the industry may not pose similar hazards to consumers, the Division is obligated to carry out its present statutory mandates. Further, the burdens of compliance are lessened by the new distinction between licensed and registered entities.

N.J.A.C. 13:45B-1.1(b)

COMMENT: The law distinguishes between consulting firms and employment agencies but the regulations do not. A job seeker who goes to a consulting firm does not pay the consulting firm; all fees are paid by the client company hiring the individual and, therefore, consulting firms pose no risk of fraud to the consumer. The Division's claim that the regulations safeguard the consumer is offensive since it implies that the consumer needs to be protected against consulting firms.

RESPONSE: A separate subchapter, N.J.A.C. 13:45B-9, is devoted to consulting firms, in conformity with separate treatment in the statute, specifically N.J.S.A. 34:8-64. The subchapter deals principally with the registration form, as authorized under N.J.S.A. 34:8-64a.

It should be further recognized that in the consulting firm scenario there are two classes of consumers: the employer-client and the job-seeker.

N.J.A.C. 13:45B-1.2

COMMENT: The regulations establish a separate career counseling category. Career counseling is something that career consultants provide. What is the distinction?

RESPONSE: The categories are not established by the rules; they are defined in N.J.S.A. 34:8-43. The Division believes that the most salient distinction between career counselors and career consultants is in the testing: the career counselor's major emphasis is on evaluation of a job seeker's abilities and feasible careers through in-depth testing; while the career consultant's major emphasis is assisting the job seeker with his or her presentation for job placement. Also, unlike career counselors, a career consultant, as a registered organization, is barred by N.J.S.A. 34:8-65l from engaging in certain activities, such as solicitation of job openings from employers.

COMMENT: The definition of "temporary help service firm" should be amended to make it clear that the requirement of paying Federal social security taxes and State and Federal unemployment insurance does not apply to an independent contractor who is paid a fee rather than a salary. Is a firm disqualified from the temporary help service firm exemption if it retains a few independent contractors?

RESPONSE: Pursuant to the statutory definition of "temporary help service firm," each temporary help service firm is in fact the employer of the individuals it sends out to assist customers in handling temporary, excess or special work loads. As the employer of the individuals, the temporary help service firm must pay the applicable taxes. "Temporary help service firms" are subject to the Consumer Fraud Act, specifically N.J.S.A. 56:8-1.1, which equates the services of a temporary help service

firm with the supplying of "merchandise." The "merchandise" is the work supplied on a temporary basis to the client of the temporary help service firm.

A firm that places independent contractors is not within the statutory definition of a temporary help service firm; in order to place independent contractors the firm must be licensed as an employment agency or registered as a consulting firm.

COMMENT: The definition of temporary help service firm contained in the regulations does not sufficiently clarify the statute. What about a firm that employs specialized consultants who are sent to clients for projects, often very long-term, that end only when the client's strategic determinations are realized? Is such a firm, which ordinarily continues its consultants on full salary, with benefits, even when unassigned, considered a "temporary help service firm"?

RESPONSE: Wording has been added to the definition to make clear that the term "temporary help service firm" applies to those firms that pay employees only while on temporary assignment and do not pay them between assignments.

COMMENT: The definition of "consulting firm" should include traditional employment agencies and the definition of "employment agency" should be limited to those firms which charge a fee only to the job-seeker. The definition of "fee, charge, or commission" should include a fee paid by the job-seeker that may be originally paid by the employer or by indirect charges, such as charges for "900" number telephone calls.

RESPONSE: These definitions repeat verbatim the definitions in the Act governing employment and personnel services, N.J.S.A. 34:8-43 et seq. The "900 number" operations, which provide lists of potential employers, are included in the provisions of N.J.S.A. 34:8-66 (covering prepaid computer job-matching or job-listing services), as well as the requirements specified in N.J.A.C. 13:45B-11.1.

COMMENT: It is suggested that the last sentence of the statutory definition of a career counseling service be added to the regulatory definition of career counseling service to avoid any inconsistency, uncertainty or controversy.

RESPONSE: The Division has adopted this suggestion.

COMMENT: Career consultants should not be called "agents" since they are not agents, but consultants.

RESPONSE: The rules follow the definition of "agent" and usage in N.J.S.A. 34:8-43 et seq.

COMMENT: A definition of "registration" was requested to complement the definition of "license" in the regulations.

RESPONSE: The Division has adopted this suggestion.

N.J.A.C. 13:45B-2.1

COMMENT: There are no time requirements in the proposed regulations for the State to respond to requests for licenses.

RESPONSE: N.J.S.A. 34:8-47b sets forth the time requirements for the Chief to respond to an application for a license. For the convenience of applicants, N.J.A.C. 13:45B-2.1(e) has been added setting forth the same time requirements for the Chief to respond to an application for a license.

N.J.A.C. 13:45B-2.4(a)4

COMMENT: The request for employer (that is, agency client) waiver of references is onerous and of questionable value.

RESPONSE: This requirement is statutory, N.J.S.A. 34:8-51a(2). It applies, however, only to "positions of trust" or work with private families. To make this clear, the Division has added language in the subsection.

N.J.A.C. 13:45B-2.5(e)

COMMENT: There are no time limits for the Chief of the Bureau of Employment and Personnel Services' approval of fee schedules or amendments to fee schedules.

RESPONSE: Language has been added stating that the Chief must respond within 14 days of receipt of a fee schedule or amendment to a fee schedule.

N.J.A.C. 13:45B-2.6(a)1 and 2.7(b)1

COMMENT: N.J.S.A. 34:8-48 does not require an applicant for an employment agency license or conditional employment agent license to submit evidence of graduation from a duly recognized high school or a graduate equivalency diploma.

RESPONSE: N.J.S.A. 34:8-48d states that an applicant shall furnish information to satisfy the Chief of the Bureau of Employment and Personnel Services that the applicant has sufficient knowledge of employment opportunities, career guidance or counseling, or employment-related services or products which the applicant intends to provide to job seekers. Since level of education is regarded as a measure for determining sufficient knowledge, the Division considered it appropriate to set forth an objective educational minimum for applicants for a conditional license. However, the Division has made three changes in the rule, for increased flexibility. First, the rule now permits an additional option for candidates for conditional licensure as an employment agent: either presentation of evidence of high school graduation or a graduate equivalency diploma, or successful passage of the licensing examination. Second, the examination may now be taken at any time during conditional licensure. Third, since applicants for a full license must sit for the formal examination, the requirement to present evidence of high school graduation or a G.E.D. has been eliminated.

N.J.A.C. 13:45B-2.8(a)

COMMENT: The language in the regulations for the two types of introductory cards is contradictory. Moreover, the introductory cards are unnecessary.

RESPONSE: Introductory cards are mandated by statute, N.J.S.A. 34:8-51a(4). However, in order to eliminate the contradiction correctly discerned, the first of the two mandatory card statements has been deleted. The remaining statement is required under the statute. Several words have been added for clarity and the rule now tracks the statute more closely.

N.J.A.C. 13:45B-3.1

COMMENT: The location in which an employment agency can conduct business should not be restricted.

RESPONSE: The restrictions concerning where an employment agency can conduct business are statutory and are set forth in N.J.S.A. 34:8-52a and b.

COMMENT: The use of the word "clients" in N.J.A.C. 13:45B-3.1(c)1 is confusing. Further, there is no statutory basis for restrictions on consulting firms' primary locations. Are consulting firms required to obtain a special permit, for conducting business at a temporary location?

RESPONSE: The word "clients" has been changed for clarity to "either job seekers or prospective employers." The statutory basis for restricting the primary location for consulting firms is set forth in N.J.S.A. 34:8-52. These location restrictions apply to "any person" engaging in employment and personnel services. The statutory definition of "person" in N.J.S.A. 34:8-43 includes consulting firms.

Consulting firms conducting business at a temporary location are excluded from the requirement to obtain a special permit pursuant to N.J.A.C. 13:45B-3.1(c)2.

N.J.A.C. 13:45B-4.5(b)1

COMMENT: It is unnecessary to require a master's degree in counseling or an equivalent degree as a licensing prerequisite for career counseling.

RESPONSE: The accepted professional standards require a graduate degree to perform such services as administering and interpreting aptitude, achievement, and vocational tests, vocational guidance based on testing and personal evaluation, and in-depth counseling. For example, a graduate degree provides evidence of mastery of the skills necessary to function as a career counselor.

N.J.A.C. 13:45B-5

General

COMMENT: The regulations concerning temporary help service firms are *ultra vires* and beyond the intent of consumer protection. N.J.A.C. 13:45B-5.4, 5.5, 5.6 and 5.7 should be deleted.

RESPONSE: As mentioned earlier, N.J.A.C. 13:45B-5.7 is not being adopted at this time, will be further reviewed, and is reserved for the future proposal. However, the Division considers the remaining sections suggested for deletion to be necessary to the implementation of N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1, and properly authorized by those statutes.

N.J.A.C. 13:45B-5.3(a)

COMMENT: The regulations state that the temporary help service firm cannot charge a fee to the individuals it employs and cannot prevent its employees from contracting with anyone else, but does not include the third statutory requirement that the temporary help service firm not send its employees into companies where strikes or lockouts are in progress.

RESPONSE: N.J.A.C. 13:45B-5.3(c) states that temporary help service firms excluded from N.J.S.A. 34:8-43 et seq. shall comply with the requirements set forth in N.J.A.C. 13:45B-5.4 through 5.7. N.J.A.C. 13:45B-5.4(c) covers all three statutory limitations.

N.J.A.C. 13:45B-5.4

COMMENT: Why are there differences in regulations between a temporary help service firm operated by an employment agency and one operated by a consulting firm?

RESPONSE: There are no differences unless the temporary help service firm is integrated into the employment agency, in which case it operates under the employment agency license and must conform to the rules governing employment agencies. If it is not integrated, as evidenced by conformity with N.J.A.C. 13:45B-5.3(b)2, the temporary help service firm operates in conjunction with an employment agency and must adhere to the same requirements as a temporary help service firm operated in conjunction with a consulting firm.

COMMENT: There is no justification, statutory or otherwise, to impose stringent regulations on temporary help service firms that are not associated with an employment agency and it is suggested that N.J.A.C. 13:45B-5.4 be deleted. Moreover, the definition of a temporary help service firm and the restrictions listed in N.J.S.A. 34:8-46h have been combined with the "far more onerous" restrictions imposed on firms affiliated with a registered agency.

RESPONSE: N.J.S.A. 56:8-1.1 provides authority for the requirements of this section, which apply to every temporary help service firm that sends employees to assist clients of the firm. The definition of "temporary help service firm" is pursuant to N.J.S.A. 34:8-43. That section specifically states that a temporary help service firm is required to comply with N.J.S.A. 56:8-1.1.

COMMENT: N.J.A.C. 13:45B-5.4(a)4 would prohibit an employer from contracting with an individual for reimbursement of specialized training or tuition assistance if the individual does not remain with the temporary help service firm. It was recommended that the words "for the purpose of finding employment" be added. N.J.A.C. 13:45B-5.4(a) should be amended to allow non-contractual concurrent and post-termination prohibitions against being employed by other persons.

RESPONSE: The Division agrees with the comment regarding N.J.A.C. 13:45B-5.4(a)4 and for clarity has added "for the purpose of finding a job" following the words "fee or liquidated charge." N.J.A.C. 13:45B-5.4(a)5, however, cannot be amended as suggested since allowing such prohibited acts would contravene the statute.

N.J.A.C. 13:45B-5.4(a)5

COMMENT: What is the consequence if a firm otherwise meets the definition of temporary help service firm and does prevent or inhibit, by contract, individuals it employs from becoming employed by any other person? Does it mean that the firm falls into the category of an employment agency regulated by Subchapter 2?

RESPONSE: Yes, because that temporary help service firm would no longer comply with the conditions for exemption from N.J.S.A. 34:8-43 et seq., specifically N.J.S.A. 34:8-46h.

N.J.A.C. 13:45B-5.4(b)3

COMMENT: The requirement in N.J.A.C. 13:45B-5.4(b)3 for seven days advance notice to the Bureau when a temporary help service firm wishes to use a location other than its primary location for the recruitment of applicants is beyond the statutory intent of N.J.S.A. 56:8-1.1(b). Concurrent or post-recruitment notification should be deemed acceptable.

RESPONSE: The seven-day advance notice requirement for a temporary help service firm that wishes to use a location other than its primary location has been modified to permit advance notification to the Bureau in writing or by telephone with subsequent written confirmation, or by facsimile transmission. Because these methods of transmission are available for instantaneous communication with the Division, concurrent or post-recruitment notification at a secondary location is unacceptable.

However, the payment of the secondary location fee must be received in advance of the recruitment of applicants; wording has been added in N.J.A.C. 13:45B-5.6 to make that clear.

N.J.A.C. 13:45B-5.4(b)6

COMMENT: N.J.A.C. 13:45B-5.4(b)6 allows a temporary help service firm to charge a liquidation fee to a client who permanently hires one of the firm's employees as a result of a temporary assignment, provided the terms of the liquidation fee were disclosed to the client when the temporary assignment was secured. This advance notice rule is beyond the statutory intent and contrary to common business practice.

RESPONSE: The Division disagrees; the liquidation fee should be disclosed in advance and this requirement is based on N.J.S.A. 56:8-2, which prohibits concealment of a material fact from a consumer (in this case the client who is using the services of the temporary help service firm).

N.J.A.C. 13:45B-5.4(b)7

COMMENT: N.J.A.C. 13:45B-5.4(b)7 requires a consulting firm that operates a temporary help service firm to place certain language in its advertisement. Why is this necessary, especially when an employment agency does not have that requirement?

RESPONSE: The comment is not correct; an employment agency has exactly the same requirement if it maintains a separate, non-integrated temporary help service firm. Pursuant to N.J.A.C. 13:45B-5.3(c), a temporary help service firm operated in conjunction with an employment agency but not integrated must conform to all rules set forth in N.J.A.C. 13:45B-5.4 through 5.7, including the one mentioned in this comment.

COMMENT: Requiring the words "A Temporary Help Service Firm" to appear in each advertisement, as mandated by N.J.A.C. 13:45B-5.4(b)7, is beyond the statutory intent of both the Consumer Fraud Act and N.J.S.A. 34:8-43 et seq. It would necessitate redesign of advertisements, including those which appear in national publications. This would make the advertisements more expensive and would not provide any significant information to the job seeker. Additionally, the requirement of maintaining a copy of every advertisement for two years pursuant to N.J.A.C. 13:45B-5.4(b)8, would be administratively burdensome.

RESPONSE: The Division considers omission of such identification to be misleading to a job seeker, a material misrepresentation of what the temporary help service firm is and what it will do for the job seeker. In the experience of the Bureau, it is imperative to inform the public of the exact nature of the advertiser. Retention of advertisements conforms to general business practice.

COMMENT: Identification as a temporary help service firm should be necessary only in advertising for employees, not advertising for clients.

RESPONSE: The Division agrees and has inserted the words "for job seekers" in N.J.A.C. 13:45B-5.4(b)7 and 12.1(g) to clarify the regulations. Also, slight inconsistencies in the two sections have been corrected.

N.J.A.C. 13:45B-5.4(c)

COMMENT: N.J.A.C. 13:45B-5.4(c) is confusing because there is a prohibition against the temporary help service firm charging an employee a fee or liquidated damages, but there is an exception if the firm registers as an employment agency pursuant to N.J.A.C. 13:45B-2. Also, there is a conflict between N.J.A.C. 13:45B-5.4(c)2 and 5.4(a)5, in that a prohibited act is permitted to those firms which file a copy of the non-employment contract with the Bureau.

RESPONSE: In order to retain its status as a temporary help service firm, a firm must not engage in the activities listed in N.J.A.C. 13:45B-5.4(c)1 and (c)2. If the firm engages in those activities, it loses its status as a temporary help service firm and must operate instead as a licensed employment agency. The Division believes that the third prohibition, supplying services to a company where a strike or lockout is in progress, carries no licensing alternative.

The statement in N.J.A.C. 13:45B-5.4(c)2 regarding filing of a non-employment contract has been deleted and the provision clarified by additional wording.

N.J.A.C. 13:45B-5.4(d)

COMMENT: Under N.J.A.C. 13:45B-5.4(d), two fees are charged to operate a consulting firm in conjunction with a temporary help service firm, creating additional adverse economic impact. One fee should be charged as is charged for licensed employment agencies operating in conjunction with a temporary help service firm.

RESPONSE: A fully-integrated temporary help service firm operates under the employment agency license, which requires licensed personnel and a substantial bond. Contrary to the commenter's assertion, a non-integrated temporary help service firm does pay a second fee even if it operates in conjunction with an employment agency. It is a self-contained business which must meet the separation requirements of N.J.A.C. 13:45B-5.3(b); it shares only the reception area of the employment agency. Unlike an integrated temporary help service firm, the non-integrated firm does not require licensed employment agents. It should be noted that a consulting firm cannot be integrated with a temporary

help service firm. They are two separate entities operating under different regulations, and they are monitored separately.

COMMENT: The statute only requires licensing and registration fees to cover expenses of the Bureau. With the additional fees and the increased fees being charged, the revenue will more than exceed the cost of implementation and enforcement.

RESPONSE: A fiscal study ascertained that the scheduled fees are necessary to cover the Bureau's expenses.

N.J.A.C. 13:45B-8

COMMENT: The Division's registration requirement for out-of-State consulting firms is based on a computer error in N.J.S.A. 34:8-64a, and, therefore, out-of-State consulting firms should not be required to register in the State of New Jersey.

RESPONSE: The subchapter conforms to N.J.S.A. 34:8-45a, which states that the provisions of the act shall apply to any person engaging in any of the activities regulated by the act, including persons whose residence or principal place of business is located outside the State. The Division must enforce the statute as it appears.

COMMENT: The vagueness and burdensome registration requirements, delay and expense will discourage executive search firms from doing business in New Jersey. The Legislature only intended a minimal registration requirement for executive search firms located in New Jersey.

RESPONSE: N.J.S.A. 34:8-45a et seq. mandates the registration of every consulting firm engaging in any of the activities regulated by N.J.S.A. 34:8-43 et seq. including firms whose residence or principal place of business is located outside of New Jersey.

N.J.A.C. 13:45B-9.1(c)

COMMENT: Items 2 and 5 in the registration form for consulting forms are not required by statute.

RESPONSE: N.J.S.A. 34:8-54 allows the Director to "prescribe forms as may be necessary." The information requested on the registration form is necessary in order to carry out the purposes of the Act. However, the requirement to supply Federal and State tax identification numbers has been deleted for registered entities, specifically at N.J.A.C. 13:45B-9.1(c)5, 10.1(c)5, and 11.1(c)5.

N.J.A.C. 13:45B-9.1(d)

COMMENT: The realities of a competitive business environment make submitting executive search contracts impractical, inadvisable and inappropriate. Even a minimal registration requirement must safeguard the confidentiality of the terms of the contract between the employer and the executive search firm. Executive search firms typically do not use any one form of contract; each firm negotiates each contract with each client on an individual basis.

RESPONSE: Recognizing the factors raised by this commenter, the Division has dropped the requirement for executive search firms to file a contract with the Bureau and will rely on its investigative powers if the need arises.

N.J.A.C. 13:45B-12

COMMENT: The subchapter concerning advertising and solicitation by licensees and registrants is unnecessary as the Consumer Fraud Act covers advertising practices.

RESPONSE: The section is designed to provide guidance tailored to the employment and personnel services industry.

N.J.A.C. 13:45B-12.1(a)

COMMENT: N.J.A.C. 13:45B-12.1(a) requires employment and personnel services to include the words "personnel agencies" in their advertisements and contains other onerous requirements including heavy recordkeeping. These requirements increase the expense of advertising.

RESPONSE: Employment and personnel services advertisers are not required to include the words "personnel agencies" in their advertisements. The section does require the advertiser to state its business name and address. Career consulting and outplacement services must add the words "not an employment agency." The recordkeeping requirements include keeping a copy of the advertisement with dates of publication and media identification. These requirements are within standard business practice.

N.J.A.C. 13:45B-12.1(b)

COMMENT: A consulting firm acts on behalf of its clients who are offering employment. Disclosure of the client's name as required in N.J.A.C. 13:45B-12.1(b) would be a breach of confidentiality.

RESPONSE: The rule requires disclosure of the name of a personnel and employment services firm offering services or products, not the name of a client offering employment to a job seeker. (However, if such a client is mentioned in an advertisement or solicitation, the identity of that client may not be misrepresented.) For clarity, the Division has inserted the word "employment" in the appropriate place.

N.J.A.C. 13:45B-12.1(c)

COMMENT: Career consulting and outplacement organizations are required to state "not an employment agency" in not less than 10-point type in a newspaper advertisement. It is inappropriate to demand a 10-point type disclaimer in advertisements which may be placed in a classified section.

RESPONSE: The Division has changed the regulation to require, in classified advertisements, type no smaller than the test, in all capital letters.

N.J.A.C. 13:45B-13.1

COMMENT: Reference in N.J.A.C. 13:45B-13.1(a) and (b) to the Consumer Fraud Act is misleading. The penalties in that statute are quite severe and although the words "if applicable" are used, there is the suggestion that even a minor violation of the proposed rules could lead to a violation of that statute. The language serves only to encourage unnecessary litigation.

RESPONSE: The rules only state what actions are available to the Division in case of violations.

N.J.A.C. 13:45B-13.1(d)

COMMENT: N.J.S.A. 34:8-52f states that a licensed or registered firm is not allowed to accept money prior to a job being accepted, "however, a firm can accept a retainer from an employer."

RESPONSE: There is no prohibition against charging a retainer to a potential employer; the limitation in N.J.S.A. 34:8-52f is against charging a job seeker. Wording has been added in N.J.A.C. 13:45B-13.1(d) to make this clear.

COMMENT: The broad subpoena powers of the Director in N.J.A.C. 13:45B-13.1 do not protect employment and personnel services who are given confidential information by a job seeker or client.

RESPONSE: These powers are authorized by N.J.S.A. 34:8-54 and would be exercised only when it appears that an investigation into unlawful practice is warranted. The specific investigatory procedures that may be undertaken by the Director are further authorized under N.J.S.A. 34:8-55.

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

CHAPTER 45B
PERSONNEL SERVICES

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:45B-1.1 Purpose and scope

(a) The rules contained in this chapter implement N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1, and regulate the operation *[in the State of New Jersey]* of persons offering, promising, attempting to procure and/or supplying, procuring, obtaining or assisting in procuring or obtaining employment or personnel services or products ***in the State of New Jersey***.

(b) This chapter shall apply to any person engaging in any of the activities regulated by N.J.S.A. 34:8-43 et seq., including persons whose residence or principal place of business is located outside of this State.

13:45B-1.2 Definitions

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

"Accepting employment" means that a job seeker has entered into an agreement with an employer which includes:

1. The terms and conditions of employment;

2. The salary or wages and any benefits to be paid to the job seeker as compensation for employment; and

3. The date, time and place employment will commence.

"Act" means P.L. 1989, c.331, (N.J.S.A. 34:8-43 et seq.), an Act regulating certain employment agencies, services and firms, supplementing Title 52 of the Revised Statutes and repealing P.L. 1951, c.337 and Section 6 of P.L. 1981, c.500.

"Advertisement" means any advertisement as defined by N.J.S.A. 56:8-1(a) of any service or product, including any statement appearing in a newspaper, periodical, pamphlet, circular, or other publication, in direct mail literature, on a display or any exterior or interior sign, or radio or television broadcast, or transmitted by telecopier, telex, or telephone, that offers a service or product for sale, whether or not the statement includes a price.

"Agent" means any individual who performs any function or activity for or on behalf of any person, the purpose of which is to provide services or products to individuals seeking employment, career guidance or counseling, or employment-related services or products.

"Agent-registrant" means a person authorized and empowered by the owner of a service registered pursuant to N.J.S.A. 34:8-43 et seq. to solicit business or otherwise act as an agent of the registered service.

"Applicant" means any person applying for licensing or registration under the Act.

"Bona fide job order" means an accurate written or recorded description of a job or jobs to be filled, with an address or location where the job is to be performed, the range of salary, the conditions of employment offered, the date of order, the name of the individual placing the order, and the name of the interviewer to be contacted by the job seeker.

"Booking agency" means any person who procures, offers, promises, or attempts to procure employment for performing artists, or athletes, not under the jurisdiction of the Athletic Control Board, and who collects a fee for providing those services. Under N.J.S.A. 34:8-43 et seq., a booking agency is licensed as an employment agency.

"Bureau" means the Bureau of Employment and Personnel Services, a component of the Division of Consumer Affairs within the Department of Law and Public Safety.

"Career consulting or outplacement organization" means any person required to be registered under N.J.S.A. 34:8-65, providing or rendering services, with or without related products, in connection with advice, instruction, analysis, recommendation or assistance concerning past, present, or future employment or compensation for an individual's time, labor or effort where the products or services are paid for by the job seeker.

"Career counseling service" means any person who, through its agents or otherwise, procures or represents itself as procuring employment or employment assistance or advertises in any manner the following services for a fee paid by the job seeker: career counseling; vocational guidance; aptitude, achievement or vocational testing; executive consulting; personnel consulting; career management, evaluation, or planning; the development of resumes and other promotional materials relating to the preparation for employment; or referral services relating to employment or employment qualifications. Pursuant to N.J.S.A. 34:8-43 et seq., a career counseling service is licensed as an employment agency. ***A career counseling service shall not include career consulting or outplacement organizations required to be registered under N.J.S.A. 34:8-65.***

. . .

"Chief" means the Chief of the Bureau of Employment and Personnel Services.

["Integrated" means sharing a common business structure as well as any one or more of the following: the same trade name, office space, management, personnel, advertising, business and personnel records, office systems and/or equipment, such as telephone and/or telecopier.]

"Consulting firm" means any person required to be registered under N.J.S.A. 34:8-64 who: identifies, appraises, refers or recommends individuals to be considered for employment by the employer; and is compensated for services solely by payments from the employer and is not in any instance, compensated, directly or indirectly, by an individual who is identified, appraised, referred or recommended. (Consulting firms are commonly known as "executive search firms" or "headhunters.")

"Director" means the Director of the Division of Consumer Affairs or his or her designee.

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety, 1207 Raymond Boulevard, Newark, New Jersey 07102.

"Employer" means a person seeking to obtain individuals to perform services, tasks, or labor for which a salary, wage, or other compensation or benefits are to be paid. For purposes of the Act alone, an employment agency is not an "employer," except of its own agents.

"Employment" means hiring or engaging the services of a person.

"Employment agency" means any person who, through its agents or otherwise, for a fee, charge or commission:

1. Procures, or obtains, or offers, promises or attempts to procure, obtain, or assist in procuring or obtaining employment for a job seeker or employees for an employer;
2. Supplies job seekers to employers seeking employees on a part-time or temporary assignment basis who has not filed as a temporary help service pursuant to the provisions of N.JS.A. 56:8-1.1;
3. Procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models;
4. Acts as a placement firm, career counseling service, or resume service;
5. Acts as a nurses' registry, as defined hereinafter;
6. Places health care personnel in private homes or on private duty; or
7. Places household workers in domestic positions, including salaried "nannies" or "au pairs."

"Fee, charge or commission" means any payment of money, or promise to pay money to a person in consideration for performance of any service for which licensure or registration is required by the Act, or the excess of money received by a person furnishing employment or job seekers over what he has paid for transportation, transfer of baggage or lodging for a job seeker. "Fee, charge or commission" shall also include the difference between the amount of money received by any person who either furnishes job seekers or performers for any entertainment, exhibition or performance, or who furnishes baby sitters for any occasion, and the amount paid by the person to the job seekers, performers or baby sitters.

"Integrated" means sharing a common business structure as well as any one or more of the following: the same trade name, office space, management, personnel, advertising, business and personnel records, office systems and/or equipment, such as telephone and/or telecopier.

"Job listing service" means any person required to be registered under N.J.S.A. 34:8-66 who, by advertisement or other means, offers to provide job seekers with a list of employers, a list of job openings or a similar publication, or prepares resumes or lists of applicants for distribution to potential employers, where a fee or other valuable consideration is exacted or attempted to be collected, either directly or indirectly.

"Job order" is a request received from a client for job seekers and is recorded by the employment and personnel service in written form. The following minimum information is required to be recorded:

1. The name of the company;
2. The address of the company;
3. The name of the person placing the order;
4. The job title;
5. The salary; and
6. A brief description of the job.

"Job seeker" means any individual seeking employment, career guidance or counseling or employment-related services or products.

"License" means a license issued by the Director to any person:

1. To carry on the business of an employment agency, career counseling service, or booking agency; and/or

2. To perform, as an agent of the agency, any of the functions related to the operation of these agencies.

"Nurses' registry" means any person who operates a business which directly or indirectly procures, assigns, or supplies, or offers, arranges or attempts to procure, assign or supply temporary or permanent personnel service(s) classified as nursing and/or homemaker-home health services, and directly or indirectly receives or attempts to receive a payment, fee, charge or commission for such service(s). Under N.J.S.A. 34:8-43 et seq., a nurses' registry is licensed as an employment agency.

"Performing artists" means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, whether employed or engaged individually or as a group, and athletes not under the jurisdiction of the Athletic Control Board.

"Person" means any natural person or legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof.

"Prepaid computer job matching service" means any person required to be registered under N.J.S.A. 34:8-66 who is engaged in the business of matching job seekers with employment opportunities, pursuant to an arrangement under which the job seeker is required to pay a fee in advance of, or contemporaneously with, the supplying of the matching, but which does not otherwise involve services for the procurement of employment by the person conducting the service.

"Primary location" means an address used for 90 or more calendar days by a person for the conduct of an activity regulated under the Act.

"Principal owner" means any person who, directly or indirectly, holds a beneficial interest or ownership in an applicant or who has the ability to control an applicant.

"Product" means any tangible thing that is the result of labor or effort, thus any merchandise, object, wares, goods, commodity or item offered, directly or indirectly, for sale to the public or a job seeker.

***"Registration" means a registration issued by the Director to any person:**

1. To carry on the business of a consulting firm, temporary help service firm, career consulting or outplacement organization, job listing service or prepaid computer job matching service; or

2. To perform as an agent of any of the above-listed entities except for temporary help service firms and consulting firms.*

. . .

"Service" means any act offered or rendered by a person supplying employment or personnel services or products, in order to implement the provisions of an agreement between that person and a job seeker or employer.

"Temporary employment" means employment in which the duration is fixed as some definite agreed period of time or by the occurrence of some specified event, where the jobseeker is employed by a client.

"Temporary help service firm" means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in the handling of the customers' temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals ***while on assignment***, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; carries or is required to carry worker's compensation insurance as required by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm's customers. This definition applies to "temporary help service firm" as the term is used in both N.J.S.A. 34:8-43 et seq. and N.J.S.A. 56:8-1.1.

SUBCHAPTER 2. EMPLOYMENT AGENCIES

13:45B-2.1 Employment agency license requirements

(a) In order to open, conduct, or maintain an employment agency, the owner shall obtain an employment agency license by application to the Director and fulfillment of all requirements for such license. In addition to any other information the Director may require, an applicant for an employment agency license shall provide:

1. The complete name, business address, and telephone number of the owner(s); if a corporation, the name, address and telephone number of its officers and directors;

2. The business structure of the agency, that is, whether it is a sole proprietorship, a partnership, or a corporation; if a corporation, the state where it is incorporated;

3. The name, address, and telephone number of the person who is to be contacted on any matter related to the Act or these rules;

4. The type of services to be provided to the public;

5. Affidavits of at least two New Jersey citizens who have known the applicant (or the chief executive officer of a corporate applicant) for at least five years, attesting to the applicant's good moral character. If an applicant finds it impossible to submit affidavits from two New Jersey citizens, the applicant may substitute affidavits of two citizens of any state who have known the applicant for at least five years. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall contain the address and the telephone number of the person signing the affidavit; and

6. A disclosure statement as to whether the applicant (if a corporation, every officer and director) has ever been convicted of any crime as defined in N.J.S.A. 34:8-44a(1), (2), (3) and the nature of that crime or the equivalent under the laws of any jurisdiction.

(b) Every person, including an owner of a licensed employment agency, who places or refers jobseekers or furnishes information as to where the help or employment may be obtained, or who personally manages, operates, or carries on the business of an employment agency, shall obtain an employment agent's license by application to the Bureau and fulfill all requirements for such license.

(c) The holder of an employment agency license shall be under a continuing obligation to inform the Chief of any change in information contained in a license or license application, such as change of address, change of ownership, change of contact person, conviction of a crime, etc.

(d) An employment agency license may not be transferred by the licensee to another person or amended without the written consent of the Director, and payment of the total statutory annual fee by the new holder shall be required in order to effect the transfer, regardless of the date of original issuance or renewal.

(e) The Chief shall act upon any application for a license within 30 days after receiving it, except that the Director may extend the maximum time for acting upon an application to 60 days for the purpose of allowing an applicant to submit additional information or if a hearing on an application is required.

13:45B-2.2 Posting

(a) Each employment agency shall display its license in a prominent place where it may be easily seen and read by all persons visiting the agency.

(b) Each person required to have an employment agent's license shall display such license in such place and manner as to make it easily seen and read by persons doing business with such licensee.

(c) There shall be posted in each employment agency the agency's schedule of fees, as well as a certified abstract of the Act and these rules. Such posting shall be in a manner and place as to be readily seen and readable by persons doing business with the employment agency. The employment agency shall also have full copies of the Act and these rules available for any job seeker's or employer's review. The certified abstract shall be available from the Bureau for a fee of $5.00.

13:45B-2.3 Bond required

(a) Before an Employment Agency License is issued, the applicant shall deposit with the Director an original bond in the sum of $10,000, with a duly authorized surety company as surety, to be approved by the Director.

(b) The bond shall be payable to the State of New Jersey with the condition that the person applying for the license will comply

with the Act and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed person, agents, or employees, while acting within the scope of their employment, made, committed, or omitted in the business conducted under the license or caused by any violation of the Act and this chapter in carrying on the business for which the license is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in his or her name for the recovery of damages sustained by the breach.

(c) If at any time, in the opinion of the Director, the surety on any bond shall become financially irresponsible, the person holding the license shall, upon notice by registered mail, return receipt requested from the Director, provide a new bond, subject to the provisions of this section. Failure to provide a new bond within 10 days after such notice shall operate at the direction of the Director automatically as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.

(d) If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director, the 60 days shall begin to run on the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

(e) The bond shall be retained by the Bureau until 90 days after either the expiration or revocation of the license.

13:45B-2.4 Records

(a) To effectuate the purposes of the Act, every holder of an employment agency license, as well as every representative authorized by the owner to supervise or conduct the operation of the employment agency, shall keep and maintain, readily available for inspection by the Director or the Director's duly authorized representative for a period of at least two years, the following:

1. All requests for job seekers (job orders) or applications for employment which shall include the name and address of the applicant, the date of application and the following additional information:

i. When the application is for employment, a reasonably accurate description of the types or classes of employment and such other facts as the applicant may wish to record;

ii. On the job order, the information shall include a reasonably accurate description of the job or jobs to be filled, whether the job(s) is temporary or permanent, the address or location at which the work is to be performed, the range of salary and the conditions of employment offered;

iii. Memorializations of applications for employment and/or job orders made by telephone or other oral communication, which shall be kept in writing on standard forms. Copies of these forms shall be filed with the Chief prior to their use by the employment agency. However, the written records of oral job orders may be kept in a book or binder used exclusively for such purpose; and

iv. For the purpose of convenience, there may be recorded on the application forms such additional information as is not in violation of any law of the State of New Jersey;

2. For all advertisements published or disseminated by the employment agency:

i. A record containing complete information as to the date and manner of publication, with the name of the paper, periodical or other media in or through which the advertisement was published or disseminated;

ii. Copies of advertisements published through all media, including such items as letterheads and programs; and

iii. The text of any telemarketed message, the date disseminated, and the approximate number of recipients;

3. A record of fees charged, collected, and refunded, and such accounting record as may be necessary to enable the Bureau to readily verify the record of fees charged, fees collected, and refunds made;

4. All correspondence concerning references of job seekers including written records of information secured by telephone or other oral communication. In cases where *[employers waive]* ***the job seeker applies for a position of trust or work with a family and the employer waives*** references, written records of such waivers shall be kept available for inspection by the Bureau; and

5. Copies of all contracts between job seekers or employers and the employment agency.

13:45B-2.5 Agreements; fee schedules

(a) Agreements between an employment agency and an employer or between an employment agency and a job seeker shall be in writing and shall include, but not be limited to:

i. The employment agency's fee schedule;

ii. The time at which a fee becomes due and owing to the employment agency;

iii. The manner in which the fee is to be paid, by whom, and at what intervals, if not paid in a lump sum; and

iv. The conditions under which a refund or adjustment in fee will be made, and the amount of the refund or adjustment, which may be expressed as a percentage.

(b) All agreements and writings required to complete any transaction between an employment agency and a job seeker shall comply with the Plain Language Act, N.J.S.A. 56:12-1 et seq.

(c) The employment agency shall provide each job seeker with an exact copy of every writing the job seeker has signed, and every document incorporated by reference in the written agreement between the employment agency and the job seeker. The employment agency shall also provide each job seeker with a receipt stating the name of the job seeker, the name and address of the employment agency and its agent, the date and amount of the fee and the purpose for which it was paid.

(d) Upon application for licensure, an employment agency shall file with the Bureau a copy of the form(s) of contract used or to be used for all agreements between the employment agency and job seekers.

(e) Every employment agency shall file with the Bureau, for the Chief's approval, the employment agency's proposed schedule of fees to be charged for any service rendered or product sold to job seekers. The Chief***, who shall respond within 14 days of receipt,*** shall not approve the fee schedule unless he or she is satisfied that the fee schedule is in a form which makes the schedule reasonably understandable by job seekers, and that the fee schedule is in compliance with all applicable provisions of the Act. The schedule of fees may thereafter be changed or supplemented by filing an amended or supplemental schedule with the Bureau. The changes shall not become effective until approval has been granted by the Chief and the amended or supplemental fee schedule has been posted on agency premises pursuant to N.J.A.C. 13:45B-2.2(c). The agency shall adhere to the schedule in charging for these services or products.

(f) An employment agency shall:

1. Compute fees paid by a job seeker seeking employment on the basis of permanent employment, unless the employment is temporary employment. Where temporary employment merges into permanent employment, or where a job seeker accepts permanent employment within 30 days after the termination of temporary employment, the permanent employment may be considered the result of the references to the temporary position and the fee may be based on the permanent employment with due credit given for the payment made for the temporary employment; and

2. Not accept payment of a fee or attempt to collect any fee from a job seeker for a service rendered or product sold where employment has not been accepted except:

i. That these requirements shall not apply to any career counseling service if that service receives no prepayment for services or products and provides services or products strictly on an hourly basis, with

no financial obligation required of the job seeker beyond the hourly fee for the services or products rendered. However, a career counseling service shall be licensed as an Employment Agency and shall comply with all other requirements applicable to employment agencies;

ii. Entertainment agencies which offer placement, directly or indirectly, to a performing artist may accept a fee if they adhere to the provisions of N.J.A.C. 13:45B-6. However, these agencies shall be licensed as an employment agency and shall comply with all other requirements applicable to employment agencies; and

iii. Employment agencies which offer resume services or products to a job seeker may accept a fee for these services or products if the fee for such a service or product is included on the fee schedule filed with the Bureau and the fee is not collected prior to the delivery of the product or service;

3. Not charge to a job seeker who obtains employment and who is discharged without cause or who voluntarily terminates employment for just cause more than one percent of the scheduled fee for each day worked. For purposes of this subsection, the employment agency shall repay to any job seeker so discharged or terminated any excess of the maximum fee in accordance with the fee schedule, allowing three days' time to determine that the termination was not due to any fault on the part of the job seeker. The employment agency may, however, by separate written agreement beween the employment agency and the job seeker, retain the fee or any part of the fee which has been paid for the job from which the job seeker has been discharged without cause or terminated, if the employment agency furnishes the job seeker with another job and allows due credit for the retained payment;

4. Not charge more than 30 percent of the scheduled fee to a job seeker who either fails to report for duty after accepting employment or voluntarily terminates employment without just cause within 30 days of commencement of employment; and

5. Obtain a bona fide order for employment prior to collecting any fee from a job seeker or sending out a job seeker to any place of employment. Except as may be otherwise provided in this chapter, no advance fee or monetary assessment of any kind shall be charged, demanded, collected, or received by the employment agency from a job seeker seeking employment until employment has been obtained by or through the efforts of the employment agency.

13:45B-2.6 Employment agent's license qualifications

(a) Every applicant for an employment agent's license, before being permitted to sit for the written examination as required by the Act and by this chapter, shall, by means of affidavit of the applicant and the affidavit of the holder of the employment agency license by whom the applicant is to be employed and by such other evidence as the Director may require, reasonably satisfy the Director that the applicant has, for a period of at least one year, been engaged actively, lawfully and reputably in business in the capacity of owner or employee, or in a licensed profession or occupation. The affidavits shall also show that the applicant, for a period of at least six months, has been employed in the handling of personnel problems including the securing of help for employers and jobs for employees in the types or classes of occupations for which application is made. The applicant shall also submit to the Bureau*[:

1. Evidence of graduation from a duly recognized high school or a graduate equivalency diploma; and

2. Affidavits]* ***affidavits*** attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least a year; if an applicant finds it impossible to submit such affidavits from two New Jersey citizens, the applicant may substitute affidavits from two citizens of any state who have known the applicant for at least a year. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall include the addresses and telephone numbers of the affiants.

(b) Whenever the application is for an employment agent's license which includes "nursing" or "nursing and/or health care services" as a type or class of services which is to be provided, the applicant shall, before the license is approved, submit to the Chief evidence establishing that at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey.

(c) If the holder of an employment agent's license has his or her employment terminated, the licensed agency's owner shall notify the Chief within five business days of such termination. Upon such notification, the Chief shall cancel the employment agent's license held by that person; the person is nevertheless entitled to a new license for the unexpired term of the old license, upon payment of the transfer fee, if employed elsewhere by a properly-licensed employment agency owner. However, the Director may refuse to issue the new license for good cause consistent with the provisions of the Act.

(d) The holder of an employment agent's license shall be under a continuing obligation to inform the Chief of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

13:45B-2.7 Employment agent's conditional license qualifications

(a) For the purpose of enabling individuals to secure experience and knowledge to qualify them as an agent, the Director may issue a conditional license authorizing the holder to perform functions requiring a license, when acting under the direct supervision of a duly qualified licensed agent.

(b) Before being granted an agent's conditional license, an applicant for such license shall, by means of affidavit of the applicant and upon such other evidence as the Director may reasonably require, establish that the applicant has at least one year of business experience or equivalent education. The applicant shall also submit to the Bureau:

1. Evidence of graduation from a duly recognized high school or a Graduate Equivalency Diploma ***or successful passage of the written licensing examination****;

2. Two affidavits attesting to the applicant's good moral character from two New Jersey citizens who have known the applicant for at least a year; if an applicant finds it impossible to obtain affidavits from two New Jersey citizens, the applicant may substitute affidavits of two citizens of any state who have known the applicant for at least five years. In that case, however, the applicant shall also submit an affidavit substantiating why it is impossible for him or her to obtain the character affidavits from the required number of New Jersey citizens. All affidavits shall include the addresses and telephone numbers of the affiants;

3. The name, business address, and employment agency license number of the licensee who will be supervising the applicant; and

4. The name and license number of the duly licensed agent on premise who will supervise the conditional agent.

(c) The holder of an agent's conditional license shall be under a continuing obligation to inform the Chief of any change in information contained in a license or license application, such as change of address, conviction of a crime, etc.

(d) Whenever the application is for an agent's conditional license which includes "nursing" and/or "health care services" as a type or class of services which is to be provided, the applicant shall, before such license is issued, submit to the Director evidence establishing that at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey.

(e) A conditional license remains effective for one year only*[; the examination for unrestricted licensure shall be taken within the final six months of that year]*.

13:45B-2.8 Identification and introductory card

(a) The employment agency shall furnish to each job seeker who is sent to a prospective employer for an interview ***or*** for future employment in a job for which no order has been given to the agency, a ***company*** card or *[paper]* ***letterhead*** containing the name and address of the agency, the names of the job seeker and prospective employer, the address of the prospective employer *[and the statement, "This will introduce _____ (name of job seeker), who is referred to you as per your order for _____ (job description)." The employment agency may add]****, and*** any other particulars the agency may determine

are necessary*[, but on]***. On*** every card or *[paper]* ***letterhead***, there shall be printed in bold-faced type the following:

"This card of introduction is given to _____ (name of job seeker) with the understanding that there is no obligation to this employment agency for any fee until, as a result of the services rendered by the agency, _____ (name of job seeker) is employed in a job with respect to which the agency received a bona fide order from an employer. _____ (name of job seeker) has agreed to pay the fee under the foregoing conditions if the fee is not paid by an employer."

(b) The employment agency shall require all job seekers applying for positions of trust or work with private families to furnish the agency with names and addresses of individuals available as character references, and shall communicate, orally or in writing, with at least one of the individuals given by the job seeker as a character reference.

1. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the employment agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be written upon the referral slip given by the employment agency to the job seeker to present to the prospective employer. The written result of the verification to determine the character and responsibility of any job seeker shall be kept on file in the employment agency subject to examination by the chief.

2. If the employer voluntarily waives, in writing, a verification of references, the licensed employment agency shall not be required to make the verification.

SUBCHAPTER 3. BUSINESS LOCATIONS

13:45B-3.1 Business locations; special permits

(a) Any building or part thereof in which an employment agency is conducted or operated shall be maintained with due regard to reasonably safeguarding such confidential information as may properly be given to the agency.

(b) An employment agency license, or registration under N.J.S.A. 34:8-65 or 66, shall not authorize activities at any place other than the place designated in the license or registration except upon issuance of a special permit by the Director, as follows:

1. Where an activity is to take place away from the premises designated in the license, application for a special permit shall be made on a form supplied by the Bureau, which must be received by the Bureau no later than seven business days before the event.

2. Each separate location shall require a separate special permit.

3. The fee for each special permit shall be $10.00. A check or money order for that sum shall accompany the application.

4. The special permit shall be prominently displayed in the entrance to the event in a location where it is clearly visible to all patrons.

(c) An employment agency, or any licensed or registered person, shall not conduct business or any phase thereof, in any room or place where:

1. An individual sleeps or conducts his or her household affairs, unless the business premises have separate ingress and egress from the residential premises; this provision shall not apply to persons who do not have any personal contact with *[clients]* ***either job seekers or prospective employers*** on their business premises; or

2. Premises which are rented or leased on an hourly, daily, weekly, or other transient basis unless approved by special permit, as set forth in (b) above; this provision shall not apply to consulting firms.

(d) The following shall apply to entertainment showcases:

1. A special permit is required when the services of any performing artist are offered to the public at a specific time and location, such being known as an entertainment showcase, if the services are being offered by a person who will be accepting a fee, commission or charge when the performer books an engagement with an employer. (Only licensed booking agencies may offer this service). The permit is required whether performers appear in person or their services are offered by electronic means.

2. If services are offered by electronic means for a prospective employer in the home of the prospective employer, a special permit is not required. However, at the beginning of any electronic presentation, the name, address, and license number of the entertainment agency and the name and address of this Bureau shall be displayed on an electronic screen for a minimum period of 20 seconds or, if any other type of electronic presentation is given, the above information shall be supplied in written form.

SUBCHAPTER 4. EXAMINATIONS AND VARIOUS CLASSIFICATIONS OF EMPLOYMENT AND PERSONNEL SERVICES

13:45B-4.1 Examination subjects

(a) Each applicant for an employment agent's license shall, in the manner and at the time and place designated by the chief, answer written questions concerning the following:

1. The provisions of the Act;

2. This chapter; and

3. The applicant's knowledge of and experience in the fields of employment specified in the application.

13:45B-4.2 "Aeronautical" classification

Applicants for an employment agent's license who include "aeronautical" in the type or class of occupation in which they intend to furnish help or employment shall furnish to the Chief a written statement from the Division of Aeronautics in the State Department of Transportation certifying to the Chief that, in the opinion of the Division of Aeronautics, the applicant has sufficient knowledge of the types of licenses required by persons to be legally engaged in the operation, maintenance or repair of aircraft.

13:45B-4.3 "Nursing registry" and "nursing*[" occupation]* ***and/or health care services" classification***

Applicants for an employment agent's license who include "nursing" or "nursing and/or health care services" as a type or class of services which they intend to provide shall, before being granted a license, establish to the satisfaction of the Director that ***at least one agent on premises possesses a current, valid license to practice as a registered nurse in the State of New Jersey, or that*** the applicant is a registered nurse with a current, *[unsuspended]* ***valid*** license to practice nursing in the State of New Jersey.

13:45B-4.4 *["Nursing" standards]* ***(Reserved)***

*[(a) Every holder of an employment agency license which includes "nursing" or "nursing and/or health care services" as a type or class of services which they intend to provide shall comply with the minimum standards set forth in (b) below as a condition of continued licensure.

(b) A registered nurse shall be appointed to serve as supervisor with responsibility for the direction, provision and quality of nursing services. In addition, he or she shall oversee:

1. Developing and maintaining written philosophy, objectives, policies, a procedural manual, an organizational plan and a quality assurance program for the nursing services;

2. Hiring and discharging personnel based on inquiries into the employee's current licensure/registration status, employment qualifications and history, and good moral character;

3. Monitoring the performance of personnel;

4. Making assignments and coordinating and integrating the nursing services with other health care services to provide a continuum of care for the patient;

5. Developing and maintaining written job descriptions for all personnel;

6. Ensuring that services are provided to the patient as specified in a nursing care plan developed by a registered nurse;

7. Ensuring that all nurses possess a current unrestricted license to practice nursing in the State of New Jersey;

8. Ensuring that all health care services are provided to the patient only by persons who have been duly certified by the New Jersey State Board of Nursing; and

9. Ensuring that nursing supervision is provided in accordance with N.J.S.A. 45:11-23 et seq. and N.J.A.C. 13:37-6.2.]*

13:45B-4.5 "Career counseling" classification

(a) An applicant for an employment agent's license who designates their field of employment as "career counseling" as a type or class of services which they intend to provide are persons other than those required to be registered pursuant to N.J.A.C. 13:45B-9.1 (that is, consulting firms, career consulting or outplacement organizations, and prepaid computer job matching or job listing services) and who provides or offers to provide the following services for a fee charged to the job seeker shall be classified as a career counseling agent:

1. Vocational guidance;
2. Aptitude, achievement or vocational testing beyond measurement of single skills, such as typing;
3. Career counseling, management, evaluation or planning;
4. Development of resumes and other promotional materials relating to the preparation for employment;
5. Referral services relating to employment or employment qualifications; or
6. Executive or personnel consulting.

(b) To be classified as a career counseling agent, an applicant shall:

1. Hold a graduate degree in counseling or in a related professional field which will ensure adequate and efficient service to clients;
2. Have at least one year of career counseling experience under the supervision of a certified or licensed career counselor; and
3. Pass the career counseling examination administered by the Bureau, which shall include:
   i. Testing of career counseling knowledge; and
   ii. Testing of knowledge of the Act and this chapter.

(c) A career counseling agent shall comply with all requirements applicable to holders of an employment agent's license.

13:45B-4.6 Temporary placement operation (functioning in conjunction with an employment agency and integrated)

(a) For purposes of this section, "temporary placement operation" means an operation integrated with a licensed employment agency that assigns job seekers to assist the agency's customers in handling temporary, excess, or special work loads, for a fee paid by the job seeker or the customer. A "temporary placement operation" differs from a temporary help service firm in that neither the temporary placement operation nor the employment agency with which it is integrated does any of the following things:

1. Pays a wage or salary to the employed individual;
2. Pays or is required to pay Federal social security taxes and State and Federal unemployment insurance;
3. Is required to carry workers' compensation insurance covering the employed individual; or
4. Sustains responsibility for the actions of the employed individuals while they render services to the agency's customers.

(b) If a licensed employment agency provides temporary placement services as described in (a) above, the temporary placement operation function shall be subject to the requirements of N.J.S.A. 34:8-43 et seq. and N.J.A.C. 13:45B-1 through 4 and 7, 8, 12 and 13, as well as this section.

(c) Employment agencies may integrate the permanent placement and temporary placement operations, provided that:

1. In addition to the fee schedule for permanent placements, employment agencies shall submit a fee schedule for temporary placements;
2. An employment agency shall charge the employer or the job seeker a fee based on the fee schedule the agency has submitted to the Bureau;
3. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed;
4. An employment agency is not permitted to conduct business at an unlicensed location, unless the agency holds a special permit for an activity, pursuant to N.J.A.C. 13:45B-3.1(b) and pays a fee of $10.00 as set forth in N.J.A.C. 13:45B-7.1; and
5. Job seekers are clearly informed in writing that a particular position is temporary or permanent.

13:45B-4.7 Temporary help service firm (operated in conjunction with an Employment Agency and integrated)

A temporary help service firm integrated with an employment agency functions under the employment agency license and shall comply with all requirements in this chapter that apply to employment agencies. All personnel acting as representatives for an employment agency, who are soliciting business, furnishing help or employment, or furnishing information as to where help or employment may be obtained, or who manage, operate or carry on the business of an employment agency are required to be licensed.

SUBCHAPTER 5. PROVIDERS OF TEMPORARY HELP EXEMPT FROM N.J.S.A. 34:8-43 et seq.

13:45B-5.1 Purpose and scope

The rules contained in this subchapter implement N.J.S.A. 56:8-1.1 and N.J.S.A. 34:8-43 et seq. and apply to all persons operating a temporary help service firm, as well as persons providing temporary placement services in New Jersey, including persons whose residence or principal place of business is located outside of this State.

13:45B-5.2 Definitions

For purposes of this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"In conjunction with" means bound in close association.

"Integrated" means sharing a common business structure as well as any one of the following: the same trade name, office space, management, personnel, advertising, business and personnel records, office systems and/or equipment, such as telephone and/or telecopier.

"Liquidation fee" means any fee charged by a temporary help service firm to a client when an individual employed by the temporary help service firm is hired as permanent employee by the client. This fee covers the initial payroll, advertising, and recruiting costs, as well as the replacement costs incurred by the temporary help service firm with regard to its employee.

"Primary location" means an address used for 90 or more calendar days by a person for the conduct of an activity regulated under the Act.

"Recruitment" means the process of procuring or obtaining, or offering promising or attempting to procure or obtain, employers or job seekers.

"Employment" means the hiring or engaging of services of a person.

"Temporary help service firm" means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in handling of the customers' temporary, excess or special work loads, and who, in addition to the payment of wages or salaries to the employed individuals, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; is required to carry workers' compensation insurance by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm's customers.

13:45B-5.3 Temporary help service firm (operated in conjunction with an employment agency but not integrated)

(a) "Temporary help service firm" as used in N.J.S.A. 56:8-1.1 and this section means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in handling the customers' temporary, excess or special work loads, and who:

1. In addition to the payment of wages or salaries to the employed individuals, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance;
2. Is required to carry workers' compensation insurance by State law;

3. Sustains responsibility for the actions of the employed individuals while they render services to the firm's customers;

4. Does not charge a fee or liquidated charge to any individual employed by the firm or in connection with the employment by the firm; and

5. Does not prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person.

(b) A temporary help service firm operated in conjunction with an employment agency is excluded from the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq., if:

1. It operates as a temporary help service firm as defined in N.J.A.C. 13:45B-5.2; and

2. It is independently operated and not integrated with the employment agency, as follows:

i. The business office of the temporary help service firm is physically separated from the business office space of the employment agency;

ii. If adjoining office space is utilized to conduct the business operation of a temporary help service and a licensed employment agency, the respective spaces are clearly designated by conspicuous placement of signs;

iii. All business and personnel records of the temporary help service firm are maintained separately from the records of the licensed employment agency;

iv. The telephone numbers used by a temporary help service firm are not the same as the telephone numbers utilized by the licensed employment agency; and

v. Any recruiting and business advertising by a temporary help service firm are not contained in the same advertising utilized by the licensed employment agency unless identified as set forth in N.J.A.C. 13:45B-12.1(g).

(c) A temporary help service firm, operated in conjunction with a licensed Employment Agency but not integrated, that is excluded from the Bureau of Employment and Personnel Services Act is nevertheless subject to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and shall comply with the requirements set forth in N.J.A.C. 13:45B-5.4 through 5.7.

13:45B-5.4 Temporary help service firm (operated separately, independently, or in conjunction with a consulting firm or other registered organization)

(a) "Temporary help service firm" as used in N.J.S.A. 56:8-1.1 and this section means any person who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in handling the customers' temporary, excess or special work loads, and who:

1. In addition to the payment of wages or salaries to the employed individuals, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance;

2. Is required to carry workers' compensation insurance by State law;

3. Sustains responsibility for the actions of the employed individuals while they render services to the firm's customers;

4. Does not charge a fee or liquidated charge ***for the purpose of finding a job*** to any individual employed by the firm or in connection with the employment by the firm; and

5. Does not prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person.

(b) A temporary help service firm operated separately, independently or in conjunction with a consulting firm or other registered organization shall:

1. Prior to commencement of operation and each July 1 thereafter, notify the Bureau of its true name; any trade name of its operation; its complete business address, including street and street number of the building(s) and place(s) where its business is to be conducted; and the names and all residence addresses of its officers, directors, principals, and owners. Any changes shall be reported to the Bureau within two weeks of such change;

2. Provide an affidavit to the Bureau setting forth whether any of its officers, directors, principals or owners has ever been convicted of a crime. If any of its officers, directors, principals or owners is convicted of a crime as set forth in N.J.S.A. 56:8-1.1(a) subsequent to providing such affidavit, a new affidavit setting forth the circumstances of the conviction shall be provided to the Bureau. The firm shall also provide a similar affidavit to the Bureau when any new officer, director, principal, or owner is added to the firm;

3. *[Notify]* ***Provide advance notification to*** the Bureau in writing ***or by telephone (201-504-6370) or facsimile (201-648-2807)*** *[which must be received at least seven days in advance]* when the firm wishes to use a location***, such as a job fair or seminar,*** other than or in addition to any of its primary locations, for the ***general*** recruiting of applicants. If the notification is made by telephone, it shall be subsequently confirmed in a writing directed to the Bureau's Temporary Help Service Section *[which writing must be received at least seven days prior to the use of such facility]*;

4. At the time of its initial notification to the Attorney General and on each July 1 thereafter, post a bond of $1,000 with the Attorney General to secure compliance with N.J.S.A. 56:8-1 et seq., the Consumer Fraud Act. The Director may waive such bond for any corporation or entity having a net worth of $100,000 or greater. In order to obtain such a waiver, the firm must provide a copy of a certified financial report prepared by a certified public accountant or licensed accountant establishing that the firm has a net worth of $100,000 or greater;

5. Ensure that all parties, at the time of referral to the temporary employment, have been informed either that the duration of employment is fixed, such as "one day" or "two weeks," or that a temporary job will terminate upon occurrence of some specified event, such as a management decision that temporary assistance or a particular temporary employee's services are no longer wanted;

6. Not charge any fees to its employees who, as a result of a temporary assignment, are hired as permanent employees of the client. The temporary help service firm may, however, charge its client a liquidation fee, provided the terms of such liquidation fee were fully disclosed to the client when the temporary help assignment was secured;

7. State in all advertising ***for job seekers*** the trade name of the temporary help service firm and the words "A Temporary Help Service Firm" or "Temp-No Fee" immediately under ***or following*** the name of the firm unless the words "temporary service" are included in the name of the firm;

8. Maintain copies of all temporary help service advertisements in a form suitable for inspection by the Bureau, and made available for inspection by representatives of the Bureau for two years; and

9. Designate on its application whether or not it is operated separately or in conjunction with a licensed employment agency.

(c) A temporary help service firm shall not:

1. Charge a fee or liquidated charge to any individual employed by the firm or in connection with employment by the firm. If a fee or liquidation charge is imposed, the firm shall register as an employment agency pursuant to N.J.A.C. 13:45B-2;

2. Prevent or inhibit, by contract, any of the individuals it employs from becoming employed by any other person *[unless it files a copy of the contract with the Bureau and gives the individual a copy of all papers signed by the individual]*. If *[the]* ***an*** individual ***pursuant to such contract*** is charged a fee by the temporary help service firm when the individual becomes employed by any other person, the temporary help service firm shall register as an Employment Agency pursuant to N.J.A.C. 13:45B-2; or

3. Knowingly send individuals it employs to, or knowingly continue to render services to, any plant or office not under the jurisdiction of the National Labor Relations Board where a strike or lockout is in progress, for the purpose of replacing individuals who are striking or who are locked out.

(d) Any consulting firm which also operates a temporary help service firm and which registered the temporary help service firm effective January 1, 1991, and paid $250.00 as a registration fee, will have a reduced fee of $125.00 for the period July 1, 1991 to June 30, 1992 for the temporary help service firm only. Fees for subsequent years will be assessed pursuant to N.J.A.C. 13:45B-7 and this subchapter.

13:45B-5.5 Information required

Information required by this subchapter shall be provided to the Bureau on July 1 of each year. Where the temporary help service firm begins operations after July 1, the information required by N.J.S.A. 56:8-1.1 and this subchapter shall be provided with the firm's application. Application forms shall be supplied by the Bureau. Upon submission, completed forms shall be accompanied by the affidavit required by N.J.A.C. 13:45B-5.4(b)2 and the bond or report required by N.J.A.C. 13:45B-5.4(a)4.

13:45B-5.6 Fees

A temporary help service firm shall annually pay a fee of $250.00 for each primary location and a fee of $10.00; **payable in advance*** for operation of any location other than a primary location.

13:45B-5.7 *[Temporary help service firm offering nursing or health care services]* ***(Reserved)***

*[(a) Every operator of a temporary help service firm which includes "nursing" or "nursing and/or health care services" as a type or class of services which they provide shall comply with the minimum standards set forth in (b) below.

(b) A registered nurse shall be appointed to serve as supervisor, with responsibility for the direction, provision and quality of nursing and health care services. In addition, he or she shall be responsible for:

1. Developing and maintaining written philosophy, objectives, policies, a procedural manual, an organizational plan and a quality assurance program for the nursing services;

2. Hiring and discharging personnel based on inquiries into the employee's current licensure/registration status, employment qualifications and history, and good moral character;

3. Monitoring the performance of personnel;

4. Making assignments and coordinating and integrating the nursing services with other health care services to provide a continuum of care for the patient;

5. Developing and maintaining written job descriptions for all personnel;

6. Ensuring that services are provided to the patient as specified in a nursing care plan developed by a registered nurse;

7. Ensuring that all nurses possess a current unrestricted license to practice nursing in the State of New Jersey;

8. Ensuring that all health care services are provided to the patient only by persons who have been duly certified by the New Jersey State Board of Nursing; and

9. Ensuring that nursing supervision is provided in accordance with N.J.S.A. 45:11-23 et seq. and N.J.A.C. 13:37-6.2.]*

SUBCHAPTER 6. ENTERTAINMENT AGENCIES

13:45B-6.1 Purpose and scope

(a) The rules contained in this subchapter implement the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq., and supplement rules in this chapter that govern the operation of entertainment agencies and agents, under which booking agencies and employment agencies and agents who procure, obtain, offer, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models in this State.

(b) This subchapter shall apply to all persons, as defined in N.J.A.C. 13:45B-1.2, operating entertainment agencies located in New Jersey, or agencies wherever located that place performing artists in temporary or permanent positions located in New Jersey, or that engage in single or repeated acts of solicitation to employees or job seekers resident in New Jersey, whether by mail, newspaper, magazine, telephone, sales/TV, radio/TV, poster, billboard, or any other media, or in person.

13:45B-6.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Booking agency" means any person which procures, offers, promises or attempts to procure employment for performing artists or athletes not under the jurisdiction of the Athletic Control Board and which collects a fee for providing such employment; a booking agency is licensed as an employment agency.

"Booking agent" means any person, as defined in N.J.S.A. 56:8-1(d), who performs any solicitation or recruiting function for or on behalf of any booking agency; a booking agent is licensed as an employment agent.

"Entertainment" agency means a booking agency or an employment agency which procures, obtains, offers, promises or attempts to procure or obtain employment or engagements for actors, actresses, performing artists, vocalists, musicians or models.

"Performing artists" means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, whether employed or engaged individually or as a group, and athletes not under the jurisdiction of the Athletic Control Board.

13:45B-6.3 Entertainment agency licenses; posting

(a) In every entertainment agency operated and conducted under the Act and this chapter, the license under which the entertainment agency is conducted and operated shall be displayed in a prominent place where it may be easily seen and read by all persons visiting the entertainment agency.

(b) Each person required to have an agent's license shall display such license in such place and manner as to make it readily visible and legible by persons doing business with such licensee.

(c) There shall be posted in each entertainment agency the agency's schedule of fees, as well as a certified abstract of the Act and this chapter. Such posting shall be in a manner and place as to be readily visible and legible by persons doing business with the agency. The entertainment agency shall also have full copies of the Act and this chapter available for any job seeker's or employer's review. The certified abstract shall be available from the Bureau for a fee of $5.00.

13:45B-6.4 Entertainment agency contracts

(a) Each performing artist shall be supplied with a copy of any contract with the entertainment agency signed by the artist.

(b) Each entertainment agency shall file a copy of the form(s) of any contract used or to be used by the agency with the Bureau of Employment and Personnel Services, 1207 Raymond Boulevard, P.O. Box 45028, Newark, New Jersey 07102.

(c) Copies of all executed contracts between the entertainment agency and performing artists shall be maintained by the agency in a form suitable for inspection by the Bureau. These copies shall be made available for inspection by representatives of the Bureau.

(d) If the entertainment agent's contract with the performing artist includes products, such as, but not limited to, photographs or a photographic publication, the contract shall state the extact quantity, quality, and cost of the item(s) to be supplied, and the date of delivery or publication.

(e) If date of delivery or publication is more than 60 days following the date of the contract, no more than one-third of any fee, charge or commission shall be collected by the licensed entertainment agency for its products prior to delivery.

(f) If the entertainment agency fails to deliver products or services by the date of delivery as specified in the contract, the job seeker is entitled to a full refund of monies paid for the promised service and/or product. The job seeker may waive the right to a refund by acknowledging and waiving the right in writing.

13:45B-6.5 Entertainment agency advertising

(a) All advertisements shall contain the name, address as it appears on the license, and license number of the entertainment agency.

(b) Copies of all entertainment agency advertisements shall be maintained by the agency for two years following publication or dissemination in a form suitable for inspection by the Division, and made available for inspection by representative of the Division.

(c) While performing the functions of an entertainment agent, a booking agent shall carry and provide to job seekers and employers a business card containing his or her license number.

13:45B-6.6 Information required

(a) Information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided to the Bureau of Employment and Personnel Services, 124 Halsey Street, Newark, New Jersey 07102 (Mailing address: P.O. Box 45028, Newark, New Jersey 07102) on January 1 of each year. Where the entertainment agency begins operation after January 1, the information required by N.J.S.A. 34:8-43 et seq. and this subchapter shall be provided with the agency's application. Application forms shall be supplied by the Bureau.

(b) Completed forms shall be accompanied by the fee required under N.J.S.A. 34:8-50 and the bond required pursuant to N.J.S.A. 34:8-49.

SUBCHAPTER 7. FEES AND EXPIRATION DATES

13:45B-7.1 Fee schedule

The following fees shall be charged by the Bureau of Employment and Personnel Services:

Employment agency annual license	$250.00
Consulting firm annual registration	$250.00
Career consulting or outplacement firm annual registration	$250.00
Job listing service and registration	$250.00
Prepaid computer job matching service annual registration	$250.00
Temporary help service firm annual registration, primary location	$250.00
Temporary help service firm, permit for operation of each other location	$10.00
Agent's annual license	$25.00
Agent's conditional license	$25.00
Transfer of agent's license	$10.00
Agent-registrants	$25.00
Fee for abstract of law	$5.00
Examination fee	$25.00
Late fee for renewals	$25.00
Special (off-premises) permit	$10.00

13:45B-7.2 License and registration expiration

(a) All licenses shall expire on January 1 of the year following their issuance.

(b) All registrations shall expire on July 1 of each year.

SUBCHAPTER 8. OUT-OF-STATE BUSINESSES

13:45B-8.1 Application

All provisions of N.J.A.C. 13:45B-1 through N.J.A.C. 13:45B-13 shall apply to any person engaging in any of the activities regulated by N.J.S.A. 34:8-43 et seq. in New Jersey including persons whose residence or principal place of business is located outside of this State.

13:45B-8.2 Registered agent

Each out-of-State holder of a New Jersey employment agency license, or out-of-State entity required to be registered under the Act, shall register with the Chief the name and address of a New Jersey agent for service of process and other matters.

SUBCHAPTER 9. REGISTRATION FOR CONSULTING FIRMS

13:45B-9.1 Registration process

(a) The following entities are required to be registered with the Bureau of Employment and Personnel Services in order to operate within New Jersey:

1. Consulting firms, as defined in N.J.A.C. 13:45B-1.2.

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Bureau upon request.

(c) The application form shall include, but not be limited to:

1. The name and business address of each primary location of the registered service and any fictitious or trade name used;

2. The category of registered service and the types of products and employment and personnel services it will offer;

3. The names and home addresses of the principal owners or officers of the service; ***and***

4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service*[; and]***.***

[5. Federal and state tax identification numbers.]

(d) Upon application for registration, a prospective registrant***, except an executive search firm,*** shall file with the Bureau a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Bureau of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.

(g) All firms which are required to be registered and which place persons with private families must require all job seekers to furnish the firm with names and addresses of individuals available as character references and shall communicate orally or in writing with at least one of the individuals given by the job seeker as a character reference. If the job seeker has not furnished the name of any individuals available as character references, or if no favorable statement has been received from a character reference, the agency shall so advise the prospective employer to whom the job seeker is referred. This information shall be given to the prospective employer at the time referral is made. If the employer voluntarily waives, in writing a verification of references, the registered firm shall not be required to make the verification.

SUBCHAPTER 10. REGISTRATION FOR CONSULTING OR OUTPLACEMENT ORGANIZATIONS

13:45B-10.1 Registration process

(a) The following entities are required to be registered with the Bureau of Employment and Personnel Services in order to operate within New Jersey:

1. Career consulting or outplacement organizations, as defined in N.J.A.C. 13:45B-1.2, and every agent authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the organization.

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Bureau upon request.

(c) The application form shall include, but not be limited to:

1. The name and business address of each primary location of the registered service and any fictitious or trade name used;

2. The category of registered service and the types of products and employment and personnel services it will offer;

3. The names and home addresses of the principal owners or officers of the service; ***and***

4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service*[; and]***.***

[5. Federal and state tax identification numbers.]

(d) Upon application for registration, a prospective registrant shall file with the Bureau a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Bureau of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.

(g) Upon initial registration with the Bureau of Employment and Personnel Services and annually thereafter, every career consultant or outplacement organization and every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of $10,000 with a duly authorized surety company as surety, to be approved by the Director. The bond shall be payable

to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed, or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in their name for the recovery of damages sustained by the breach.

1. If at any time, in the opinion of the Director, the surety on any bond shall become fiscally irresponsible, the person holding the license or registration shall, upon notice from the Director, by registered mail, return receipt requested, provide a new bond, subject to the provisions of this section. The failure to provide a new bond within 10 days after such notice shall, at the direction of the Director, operate as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.

2. If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director. The 60 days shall begin to run from the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

3. The bond shall be retained by the Bureau until 90 days after either the expiration or revocation of the registration, as appropriate.

(h) The requirements of this section shall not apply to any person that receives no prepayment for services or products from a job seeker and that:

1. Provides services or products strictly on an hourly basis, with no financial obligation required of the job seeker beyond the hourly fee for services or products rendered; or

2. Provides outplacement services exclusively as part of a job seeker's benefit or severance package with a current or former employer.

SUBCHAPTER 11. PREPAID COMPUTER JOB MATCHING OR JOB LISTING SERVICES

13:45B-11.1 Registration process

(a) The following entities are required to be registered with the Bureau of Employment and Personnel Services in order to operate within New Jersey:

1. Prepaid computer job matching or job listing services, as defined in N.J.A.C. 13:45B-1.2, and every agent authorized and empowered by the owner of the registered organization to solicit business or otherwise act as an agent of the organization.

(b) An application for registration and an abstract of the law, covering statutory requirements for the operation in New Jersey of registered services, shall be supplied by the Bureau upon request.

(c) The application form shall include, but not be limited to:

1. The name and business address of each primary location of the registered service and any fictitious or trade name used;

2. The category of registered service and the types of products and employment and personnel services it will offer;

3. The names and home addresses of the principal owners or officers of the service; ***and***

4. A disclosure statement covering conviction of crime as set forth in N.J.S.A. 34:8-44, if any, of any principal owner or officer or any agent of the service*[; and]***.***

[5. Federal and state tax identification numbers.]

(d) Upon application for registration, a prospective registrant shall file with the Bureau a copy of the form(s) of contract used or to be used by the registrant in providing services to job seekers.

(e) Registrants shall be under a continuing obligation to inform the Bureau of any change or addition in the application information, such as change of address or conviction of a crime, within 30 days of that change or addition.

(f) The registration fee as set forth in N.J.A.C. 13:45B-7.1 shall be due on July 1, 1991, and annually thereafter.

(g) Upon initial registration with the Bureau of Employment and Personnel Services and annually thereafter, every prepaid computer job matching or listing service shall deposit with the Director an original bond in the sum of $10,000 with a duly authorized surety company as surety, to be approved by the Director. The bond shall be payable to the State of New Jersey and shall provide that the person applying for registration will comply with the Act and this chapter and will pay all damages occasioned to any person by reason of any misrepresentation, deceptive or misleading act or practice or any unlawful act or omission of any licensed or registered person, agents, or employees, while acting within the scope of their employment, made, committed, or omitted in the business conducted under the license or registration or caused by any violation of this act in carrying on the business for which the license or registration is granted. In case of a breach of the condition of any bond, application may be made to the Director by the person injured by the breach for leave to sue upon the bond, which leave shall be granted by the Director if it is proven to his or her satisfaction that the condition of the bond has been breached and the person has been injured. The person obtaining leave to sue shall be furnished with a certified copy of the bond and shall be authorized to institute suit on the bond in their name for the recovery of damages sustained by the breach.

1. If at any time, in the opinion of the Director, the surety on any bond shall become fiscally irresponsible, the person holding the license or registration shall, upon notice from the Director, by registered mail, return receipt requested, provide a new bond, subject to the provisions of this section. The failure to provide a bond within 10 days after such notice shall, at the discretion of the Director, operate as revocation of the registration. The 10 days shall begin to run on the day following the surety's receipt of the notice. However, revocation may be stayed at the discretion of the Director.

2. If the surety contemplates cancellation of the bond, the surety shall be withdrawn upon 60 days advance written notice by registered mail to the Director. The 60 days shall begin to run from the day following the Director's receipt of the notice. A provision regarding this notice of withdrawal shall appear in the bond.

3. The bond shall be retained by the Bureau until 90 days after either the expiration or revocation of the registration, as appropriate.

SUBCHAPTER 12. ADVERTISING AND SOLICITATIONS

13:45B-12.1 Advertisements and solicitations

(a) All advertisements offering employment or personnel services or products shall include the advertiser's business name and address as they appear on the license or registration form of the licensed or registered firm. Advertisements for positions within the licensed or registered firm shall also include the advertiser's business name and address as they appear on the license or registration form of the firm.

(b) No person shall misrepresent the identity of an individual or the identity of a company in an advertisement or in a personal, telephoned, telecopied, or mailed solicitation. All advertising and solicitations by any person must disclose the name of the company offering the ***employment*** services or products.

(c) Newspaper advertising pertaining to services offered or provided in this State by career consulting or outplacement organizations appearing within or adjacent to help-wanted advertising shall contain the phrase "not an employment agency" in a clear, conspicuous, prominent manner, and in no less than 10-point bold-face type***, except that a classified advertisement shall contain the phrase in type no smaller than its text, and in all capital letters***.

(d) Any advertising or solicitation for a booking agency shall contain the name, address, and license number of the booking agency.

(e) Copies of all advertisements and solicitations shall be maintained by the licensed or registered firm or entertainment agency in a form suitable for inspection by the Bureau and shall be made available for inspection by the Bureau for two years following publication or dissemination.

(f) A record of all advertisements and solicitations with date and place of publication or dissemination, including identification of media used, shall be maintained in a form suitable for inspection and made available upon request of representatives of the Bureau for two years following publication or dissemination.

(g) In addition to complying with (a) through (e) above, a temporary help service firm shall state its trade name in all advertisements ***for job seekers*** and the words "A Temporary Help Service Firm" or "Temp-No Fee" immediately under or following the name, unless the words "temporary *[help]* ***service*** " are included in the name of the firm.

SUBCHAPTER 13. VIOLATIONS

13:45B-13.1 Violations

(a) A violation of any applicable provision of this chapter by a licensee shall be deemed to be a violation of the Bureau of Employment and Personnel Services Act, N.J.S.A. 34:8-43 et seq. and, if applicable, the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and shall be subject to the penalties and sanctions provided for thereunder.

(b) A violation of any applicable provision of this chapter by a registrant or its agent shall be deemed to be a violation of the Bureau of Employment and Personnel Service Act, N.J.S.A. 34:8-43 et seq. and if applicable, the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and shall be subject to the penalties and sanctions provided for thereunder.

(c) Nothing in this chapter shall be interpreted to prohibit prosecution of any practices by a licensee or registrant which may be unlawful under any other State or Federal law.

(d) N.J.S.A. 34:8-52f is applicable to those firms which charge fees to job seekers***, not potential employers***.

(e) Nothing in the Employment and Personnel Services Act or this chapter shall be construed to prevent qualified members of other professional groups such as members of the clergy, authorized practitioners, school guidance counselors, or psychologists from providing career counseling services consistent with the accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are career counselors or are licensed to practice career counseling.

(f) The Director may refuse to issue, and may revoke, any license or registration for failure to comply with, or violation of, the provisions of the Act and this chapter or for any other good cause shown, within the meaning and purpose of the Act and this chapter. A refusal or revocation shall not be made except upon reasonable notice to, and opportunity to be heard by the applicant or licensee or registrant. The Director may, if he or she finds it to be in the public interest, suspend a license or registration for any period of time that he or she determines to be proper or assess a penalty in lieu of suspension, or both, and may issue a new license or registration, notwithstanding the revocation of a prior license or registration, provided that he or she finds the application to have become entitled to the new license or registration.

(g) To accomplish the objectives and carry out the duties prescribed by the Act, and this chapter the Director may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of investigation or inquiry, promulgate rules and regulations, and prescribe forms as may be necessary.

(h) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice declared to be unlawful by the Act and this chapter, or whenever the Director believes it to be in the public interest that an investigation should be made to ascertain whether a person has engaged in, is engaging in, or is about to engage in, any unlawful practice, the Director may:

1. Require the person to file, on forms prescribed by the Director, a written statement or report, under oath or otherwise, concerning the facts and circumstances regarding the practice which is under investigation;

2. Examine under oath any person in connection with the practice under investigation;

3. Examine any record, book, document, account, contract, or paper as he or she deems necessary; and

4. Pursuant to an order of the Superior Court, impound any record, book, document, account, contract, or paper that is produced in accordance with the Act and this chapter, and retain it until the completion of all proceedings in connection with the materials produced.

(i) Service by the Director of any notice requiring a person to file a statement or report, or of any subpoena upon the person, shall be made personally within this State, but if this cannot be done, substituted service may be made in the following manner;

1. Personal service outside this State;

2. The mailing by registered or certified mail to the last known place of business or residence inside or outside the State of the person;

3. As to any person other than an individual, in accordance with the Rules Governing the Courts of the State of New Jersey pertaining to service of process, provided, however, that service shall be made by the Director; or

4. Any service as the Superior Court may direct in lieu of personal service within the State.

(j) If a person fails or refuses to file any statement or report requested by the Director, or obey any subpoena issued by the Director, the Director may seek and obtain an order from the Superior Court:

1. Adjudging the person in contempt of court;

2. Granting injunctive relief, without notice, restraining any and all acts and practices for which a license is required in the provisions of the Act and this chapter;

3. Directing the payment of reasonable attorneys' fees and costs of the investigation and suit; and

4. Granting any other relief as may be required, until the person files the statement or report, or obeys the subpoena.

(k) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the provisions of the Act and this chapter, the Director may seek and obtain in a summary action in the Superior Court an injunction prohibiting the person from continuing the practices or engaging therein or doing any acts in furtherance thereof.

1. In addition to any other remedy, the court may: enjoin an individual from managing or owning any business organization within this State, and from serving as an officer, director, trustee, member of any executive board of similar governing body, principal, manager, stockholder owning 10 percent or more of the aggregate outstanding capital stock of all classes of any corporation doing business in this State; vacate or annual the character of a corporation created by or under the laws of this State; revoke the certificate of authority to do business in this State of a foreign corporation; and revoke any licenses issued pursuant to law to the person of any unlawful practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practices declared to be unlawful.

(l) Whenever it appears to the Director that a person has engaged in, is engaging in, or is about to engage in, any practice which is a violation of the Act and this chapter, the Director may hold hearings on the violation and upon finding the violation to have been committed, may enter an order:

1. Directing the person to cease and desist or refrain from committing the practice in the future;

2. Directing the person to restore any person in interest any moneys or property, real or personal, which may have been acquired by means of any unlawful practice;

3. Assessing reasonable attorneys' fees and costs of investigation and suit; and

4. Directing the person to reimburse the job seeker for transportation expenses if no employment of the kind applied for exists at the place to which the job seeker is sent and the person did not have a bona fide order, either oral or written, from the prospective employer.

(m) Whenever it appears to the Director that a person against whom a cease and desist order has been entered has violated the order, the Director may bring a summary proceeding in the Superior Court based upon the violation. A person found to have violated a cease and desist order shall be liable for civil penalties in the amount of not less than $1,000 or more than $25,000 for each violation of the order, together with reasonable attorneys' fees and cost of investigation and suit. If any person fails to pay a civil penalty imposed by the court for violation of a cease and desist order, the court imposing the penalty is authorized, upon application of the Director, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

(n) In addition to any other penalty provided by law, a person which violates any of the provisions of the Act or this chapter shall be liable for a penalty of not more than $2,000 for the first offense and not more than $5,000 for the second and each subsequent offense.

(o) In any action or proceeding brought under the Act or this chapter the Director may recover reasonable attorneys' fees and costs of investigation and suit.

(p) Upon the failure of a person to comply within 10 days after service of any order of the Director directing payment of penalties, costs, attorneys' fees, reimbursement, or restoration of moneys or property, the Director may issue a certificate to the Clerk of the Superior Court that the person is indebted to the State for these payments. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, a designation of the statutes under which the payments are imposed, the amount of each payment imposed, and a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry to the docketed judgment in the Superior Court. The entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the final order of the Director.

13:45B-13.2 Standards for issuance and renewal of licenses and registrations.

(a) No license or registration required by the provisions of the Act shall be issued until it has been established to the satisfaction of the Director that all of the provisions of the Act and this chapter relative to the issuance of such license or registration have been fully complied with.

(b) Prior to any suspension, revocation or refusal to renew a license or registration, the licensee or registrant shall have the right to request a hearing which shall be conducted pursuant to the Administrative Procedure Rules, N.J.A.C. 1:1.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Internal Controls

Retention, Storage and Destruction of Books, Records and Documents

Adopted Amendment: N.J.A.C. 19:45-1.8

Proposed: July 6, 1992 at 24 N.J.R. 2348(b).

Adopted: August 19, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: August 21, 1992 as R.1992 d.361, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-96(e).

Effective Date: September 21, 1992.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

Comments were submitted by the Division of Gaming Enforcement (Division), the Sands Hotel and Casino (the Sands) and Caesar's Atlantic City (Caesar's).

COMMENT: The Division endorsed the concept of streamlining the document destruction process by eliminating the petition system and codifying a record retention schedule.

RESPONSE: The Commission agrees that the new rules will so benefit both the casino industry and the regulatory agencies.

COMMENT: The Division commented that the proposed 15-day notice of records destruction "places an undue burden" on the Commission and Division to respond to document destruction requests. The Division stated that the lists of documents pertaining to such requests are often lengthy and comprehensive, and suggested a 30-day notice period. It was also noted that the present petition process allows for a 30-day notice period.

RESPONSE: In adopting the amended rules, the Commission attempted to balance the goal of expediting the records destruction process with the regulatory agencies' need for an adequate period of review. The Commission has determined that a 15-day notice provision will address both the concerns, particularly since the new rules can be expected to simplify the records retention and destruction process.

COMMENT: N.J.A.C. 19:45-1.8(c)1i requires that specified documents be retained indefinitely, unless destruction is requested by the casino licensee and approved by the Commission. The Division suggested that the following be added to this provision: "Corporate records which general business standards dictate should be kept as permanent records," as well as specific references to "documents pertaining to contractual arrangements, documents pertaining to financial transactions, litigation files and filings with other governmental agencies." The Division states that such documents are "critical" to its ability to perform its investigative function.

RESPONSE: The Commission views the suggested regulatory language as too vague and broadly defined, particularly since such documents would be required to be retained indefinitely. Further, it must be emphasized that any records not specified in the rules are subject to the five-year retention schedule. N.J.A.C. 19:45-1.8(c)2iii. Both the Commission and Division will receive prior notice of the destruction of any such documents, with an opportunity to interpose an objection. N.J.A.C. 19:45-1.8(f) and (g). Should it appear necessary, the Division and any other interested person, or the Commission on its own initiative, may pursue additional regulatory amendments to specify other types of documents appropriately included in this and other categories of the retention schedule.

COMMENT: The Division commented that all records of hours worked by employees in gaming-related positions should be retained indefinitely pursuant to N.J.A.C. 19:45-1.8(c)1iv, which as proposed refers to persons employed more than three years.

RESPONSE: As published, this rule has the unintended effect of subjecting records of hours worked by persons employed in gaming-related positions for less than three years to the five-year retention schedule, pursuant to N.J.A.C. 19:45-1.8(c)2iii. There is no logical basis for such a distinction. This is an inadvertent error which is clarified upon adoption.

COMMENT: The Division points out that the Summary statement in the proposal incorrectly states that casino licensees must provide access to all records within 24 hours.

RESPONSE: The Division correctly notes that N.J.A.C. 19:45-1.8(a)3, which requires that all records be immediately available for inspection by the Commission and Division during all hours of operation, has not been amended by this adoption. Although the Summary statement was in error, this standard was correctly stated in the text of the proposal, and is adopted herein.

COMMENT: The Sands objects to N.J.A.C. 19:45-1.8(c)1iii, which requires that all casino employee personnel files be retained indefinitely unless destruction is requested by the casino licensee and approved by the Commission. The Sands argues that personnel records differ in volume and significance from the other categories of records to be retained indefinitely. The comment notes that records of hours worked are otherwise required to be maintained indefinitely, N.J.A.C. 19:45-1.8(c)1iv, and that personnel files contain "routine" documents such as employment applications, disciplinary notices, performance ap-

praisals, and the like. The Sands suggests a new provision to require that personnel records be retained for six years, since casino licensees would otherwise retain personnel records for that length of time in that the State statute of limitations for employment related claims is six years.

RESPONSE: The Commission, in codifying the records retention schedule, made the determination that certain categories of documents must be retained beyond the five-year retention schedule, and that the formal petition process will remain prerequisite to the destruction of such documents. In the past, employment files have always been required to be maintained beyond what was then the minimum seven-year retention period. While the records of hours worked are adequate for the limited purpose of employee license experientials, the Division's investigatory functions with regard to employee licensing require retention of the broader category of employment files. Again, it must be reiterated that the "indefinite" time period is qualified by the opportunity to petition for Commission approval to destroy such documents.

While many factors may impact upon records retention, whether statutes of limitations, Federal and state tax laws, requirements of other regulatory agencies, or general business practices, none of these considerations is determinative of the retention schedules imposed by the Commission for regulatory and investigatory purposes.

COMMENT: Caesar's commented that marketing department records, required to be maintained for three years under N.J.A.C. 19:45-1.8(c)3vi, are "the same as" records concerning junkets, required to be retained for five years under N.J.A.C. 19:45-1.8(c)2i.

RESPONSE: The category of marketing department records is much broader than the category limited to records relating to junkets. By necessity, the rules include a number of broad, inclusive categories such as "gaming-related documents," and "hotel income audit documents." Certain other types of documents are more narrowly specified. Obviously, where a particular type of document is specifically referenced, for example, "records relating to junkets," the specific reference governs.

COMMENT: Likewise, Caesar's comments that "accounts receivable from store rentals and travel wholesalers," subject to five-year retention under N.J.A.C. 19:45-1.8(c)2ii, is "the same as" the "accounts receivable and other records of transactions in which the licensee is a vendor," requiring three years retention under N.J.A.C. 19:45-1.8(c)3ii.

RESPONSE: "Accounts receivable from store rentals and travel wholesalers" is more specific than the broader category of "accounts receivable and other records of transactions in which the casino licensee is a vendor." Again, the more specific reference governs.

COMMENT: Caesar's maintains that purchasing department records, to be retained for five years under N.J.A.C. 19:45-1.8(c)2ii, are the same as "records relating to gaming-related casino service industries", also a five-year retention period under N.J.A.C. 19:45-1.8(c)2i.

RESPONSE: N.J.A.C. 19:45-1.8(c)2i refers to "gaming-related documents" including "records concerning gaming-related casino service industries." N.J.A.C. 19:45-1.8(c)2ii refers to "hotel-related documents which pertain to the purchasing department and accounts payable department." Certainly, some, but not all, records which relate particularly to gaming-related CSI's may also fall within the broader category of "purchasing department records." Nonetheless, these two categories are not one and the same, and at any rate impose the same three-year retention schedule.

COMMENT: Caesar's objects to N.J.A.C. 19:45-1.8(c)2iii, which subjects any document not otherwise specified to the five-year retention schedule, as too broad. Caesar's comments that this "leads to the result that any document not specifically listed ... automatically falls under the five-year retention requirement."

RESPONSE: This is exactly the result that was intended by the Commission in drafting N.J.A.C. 19:45-1.8(c)2iii. By codifying the retention schedules for various types of documents, the amended rules eliminate the need for individual requests for records destruction. While these lists of documents are as comprehensive as possible, it must be recognized that, as a practical matter, it is simply not possible to draft a completely exhaustive list of documents or to foresee new types of documents which may be created subsequent to this adoption. Were N.J.A.C. 19:45-1.8(c)2iii to be deleted, the implication would be that documents not specified are not subject to any retention schedule whatsoever. The retention schedules adopted herein may certainly be amended in the future so as to impose a lesser retention period where justifiable.

COMMENT: Caesar's comments that it has, in the past, received approval to destroy the following after six months: cashier reports, room tally reports, telephone call records/charges, over/short reports, rate variations and missing check reports. All of these records are to be retained for three years under the adopted amendment.

RESPONSE: In codifying the retention schedule, an attempt was made to accurately reflect all prior Commission decisions. The Commission agrees that it should consider whether these types of documents might appropriately be included in the six month retention category. The detailed and comprehensive nature of the record retention schedules will require this and similar refinements of the document lists through subsequent regulatory amendments.

COMMENT: Caesar's argues that deposit envelopes and drop envelopes, to be retained for three years under N.J.A.C. 19:45-1.8(c)3i, are the same as hotel cashier envelopes, retained for six months under N.J.A.C. 19:45-1.8(c)4ix.

RESPONSE: This duplication of terms is an inadvertent error which is corrected upon adoption. The six month provision for hotel cashier envelopes correctly reflects prior Commission decisions.

COMMENT: Caesar's comments that register tapes, to be retained three years under N.J.A.C. 19:45-1.8(c)3i, are the same as cashier journal rolls, which have no minimum retention period pursuant to N.J.A.C. 19:45-1.8(c)5xiv.

RESPONSE: Again, this is an inadvertent duplication of terms that is corrected upon adoption. Again, in the context of subsequent amendments, the Commission will consider whether to add a provision, consistent with prior Commission decisions, which would allow such records to be destroyed on an ongoing basis if the daily information is maintained in some other form.

COMMENT: Caesar's comments that room service checks, to be retained for three years under N.J.A.C. 19:45-1.8(c)3i, are the same as room charge settled guest checks, retained for six months under N.J.A.C. 19:45-1.8(c)4v.

RESPONSE: Room service checks are a more specific subset of room charge settled guest checks. Nevertheless, through subsequent rulemaking to further refine the codified schedule, the Commission will consider whether such a distinction merits different retention schedules.

COMMENT: Caesar's argues that signature cards of terminated employees should be retained only for a six-month period, rather than the five years required by the proposal. Caesar's contends that signature cards are maintained for the purpose of having signature samples of employees who sign casino documents, which purpose is no longer valid once the employee is terminated.

RESPONSE: While the casino licensee's need for the signature cards is terminated with the employee, this is not determinative of the retention period necessary for regulatory and investigatory purposes. Destruction of these cards has, in the past, been subject to a three-year minimum retention period, since signature cards are utilized in, among other things, conducting gross revenue audits.

COMMENT: Caesar's comments that it does not destroy any of its surveillance records. N.J.A.C. 19:45-1.8(c)3ix and x permit surveillance department visitor logs, duty logs, VCR/tape logs, and equipment malfunction reports to be destroyed after six months. Caesar's likewise comments that it no longer uses zeroed-out countercheck envelopes.

RESPONSE: An individual casino licensee's business practices are not determinative of the uniform retention period imposed by the Commission for regulatory and investigatory purposes.

COMMENT: Caesar's suggests that guest check control sheets, to be retained for six months under N.J.A.C. 19:45-1.8(c)4vii, should not be subject to any minimum retention period.

RESPONSE: Guest check control sheets have, in the past, been subject to a six-month retention schedule, and the Commission has determined that this retention schedule it is appropriate retain the control sheets for the same time period as the checks themselves.

COMMENT: Caesar's comments that bus coupons, required to be maintained for six months under N.J.A.C. 19:45-1.8(c)4i, should only be retained for two months, the time necessary for the casino licensee to perform its own audit. Caesar's comments that "if a problem is discovered during the routine audit, those specific coupons implicated are set aside for the relevant regulatory agency." Caesar's further comments that unused coupons should be permitted to be destroyed immediately. The commenter notes that the disposition of the coupon destruction issue has a significant cost/operations impact on the casino industry, and suggests that it be examined carefully and apart from the current adoption.

RESPONSE: The Commission agrees that the area of coupon retention merits further examination. The Commission will consider the possibility of additional regulatory amendments to address the issues

raised by the commenter, as well as the investigatory concerns raised in the past by the Division in support of the six month retention period.

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

19:45-1.8 Retention, storage and destruction of books, records and documents

(a) All original books, records and documents pertaining to the casino licensee's operations and approved hotel shall be:

1. (No change.)

2. Retained on the site of the approved hotel building or at another secure location approved in accordance with (d) below for the time period specified in (c) below;

3. Held immediately available for inspection by agents of the Commission and Division during all hours of operation;

4. Organized and indexed in such a manner so as to provide immediate accessibility to agents of the Commission and Division; and

5. Destroyed only after:

i. Expiration of the minimum retention period specified in (c) below; and

ii. Written notice to the Commission and Division in accordance with (f) below.

(b) For the purposes of this section, "books, records and documents" shall be defined as any book, record or document pertaining to, prepared in or generated by the operation of a casino or an approved hotel including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records. This definition shall apply without regard to the medium through which the record is generated or maintained, for example, paper, magnetic media or encoded disk.

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1. The following original books, records and documents shall be retained indefinitely unless destruction is requested by the casino licensee and approved by the Commission:

i. Corporate records required by N.J.A.C. 19:45-1.4;

ii. Records of corporate investigations and due diligence procedures;

iii. Casino employee personnel files;

iv. Records of hours worked by persons employed in gaming-related positions *[for more than three years]*, in an abstract or other readily accessible format; and

v. A record of any original book, record or document destroyed, identifying the particular book, record or document, the period of retention and the date of destruction.

2. The following original books, records and documents shall be retained by a casino licensee for a minimum of five years:

i. All gaming-related documents, including, without limitation, casino cage documents; patron gaming records; records concerning junkets; and records concerning gaming-related casino service industries;

ii. Hotel-related documents which pertain to the purchasing department and accounts payable department; accounts receivable documents from store rentals and travel wholesalers; petty cash documentation and general ledgers and supporting journals; and

iii. Any other original book, record or document not otherwise specified in this subsection.

3. The following original books, records and documents shall be retained by a casino licensee for a minimum of three years:

i. Hotel income audit documents, including, without limitation, cashier reports, room tally reports, *[deposit envelopes,]* telephone call records and charges, register tapes, room service checks, laundry charges, over/short reports, *[drop envelopes,]* rate variations and missing check reports;

ii. Non-gaming hotel-related documents, including, without limitation, records concerning hotel guests; records concerning banquets; food and beverage documents; records of retail stores, accounts receivable and other records of transactions in which the casino licensee is a vendor; advertising records; and entertainment records;

iii. Files and workpapers used to prepare budgets;

iv. Payroll records, except as provided in (c)1 above;

v. Signature cards of terminated employees;

vi. Marketing department records;

vii. Returned check aging reports, except for year-end reports;

viii. Card and dice transaction and inventory reports;

ix. Surveillance department visitor logs;

x. Complimentary settled guest checks;

xi. Security incident reports;

xii. Insurance department records relating to guest claims and copies of arrest records;

xiii. Credit union records; and

xiv. Any gaming-related document for which the casino licensee can demonstrate that the information contained thereon is duplicative or less than that recorded on another document retained in accordance with (c)1 and 2 above.

4. The following original books, records and documents shall be retained by a casino licensee for a minimum of six months:

i. Coupons entitling patrons to cash or slot tokens, including unused, voided and redeemed coupons;

ii. Documents relating to promotions, such as entry forms and game tickets;

iii. Load count arrival forms;

iv. Credit card settled guest checks pertaining to restaurant and bar charges;

v. Room charge settled guest checks pertaining to restaurant and bar charges;

vi. Credit card vouchers used to settle guest checks in restaurants and bars;

vii. Guest check control sheets used to control the issuance and return of guest checks to cashiers, bartenders and food servers;

viii. Credit applications with unused lines of credit;

ix. Hotel cashier envelopes;

x. Surveillance employee duty logs, VCR/tape logs, and equipment malfunction reports; and

xi. Zeroed-out countercheck envelopes.

5. The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, and may be destroyed without notice otherwise required by (f) below:

i. Parking ticket stubs;

ii. Coat check tickets;

iii. Housekeeping reports;

iv. Maintenance department records;

v. Patron mailing lists;

vi. Blank entry forms;

vii. Bellman and baggage forms;

viii. Cash settled guest checks;

ix. Food credit and complimentary beverage coupons;

x. Drink chits;

xi. Food and beverage order slips;

xii. Bottle sales slips;

xiii. Showroom starter slips;

[xiv. Cashier journal rolls;]

*[xv.]***xiv.*** Communication department records; and

*[xvi.]***xv.*** Unsolicited resumes or letters requesting employment.

(d) A casino licensee may petition the Commission at any time for approval of a facility off the site of the approved hotel building to be used to generate or store original books, records and documents. Such petition shall include:

1. A detailed description of the proposed off-site facility, including security and fire safety systems; and

2. (No change in text).

(e) A casino licensee may petition the Commission at any time for permission to copy and store original books, records and documents on a microfilm, microfiche or other suitable media system approved by the Commission. A microfilm, microfiche or other

media system shall be approved if it contains the following elements to the satisfaction of the Commission:

1.-4. (No change.)

(f) A casino licensee shall notify the Commission and the Division in writing at least 15 days prior to the scheduled destruction of any original book, record or document. Such notice shall list each type of book, record and document scheduled for destruction, including a description sufficient to identify the books, records and documents included; the retention period; and the date of destruction. Each casino licensee shall retain this record of destruction in accordance with (c)1 above.

(g) The Commission or the Division may prohibit the destruction of any original book, record or document by so notifying the casino licensee in writing within 15 days of the receipt of notice of destruction pursuant to (f) above. Such original book, record or document may thereafter be destroyed only upon notice from the Commission or Division, or by order of the Commission upon the petition of the casino licensee or by the Commission on its own initiative.

(h) The casino licensee may utilize the services of a disposal company for the destruction of any books, records or documents except those related to credit. Any cash complimentary coupons to be destroyed by a disposal company shall be cancelled with a void stamp, hole punch or similar device, or must contain a clearly marked expiration date which has expired.

(i) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Cashiers' Cage; Master Coin Bank; Coin Vaults
Adopted Amendment: N.J.A.C. 19:45-1.14

Proposed: June 15, 1992 at 24 N.J.R. 2136(b).
Adopted: August 19, 1992 by the Casino Control Commission, Steven P. Perskie.
Filed: August 21, 1992 as R.1992 d.358, **without change**.

Authority: N.J.S.A. 5:12-69(a), 70(g), (j) and (l); 99(a)4 and 9.

Effective Date: September 21, 1992.
Expiration Date: March 24, 1993.

Summary of Public Comment and Agency Response:

COMMENT: Harrah's Casino Hotel and the Sands Hotel and Casino supported the proposed amendment.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement opposes the proposed amendment because it believes that coin vaults should continue to be equipped with two locks, rather than one. The Division contends that since money stored within a master coin bank must be secured by two different locks, money stored outside a master coin bank should also be secured by no less than two locks. It further argues that elimination of the lock controlled by the Security Department would hinder the ability of Security to perform its mandated functions, and would fail to provide appropriate internal controls over the funds, since two different departments would no longer be involved in gaining access to a coin vault. It also stresses that maximum security is needed because the money stored in coin vaults is not imprest funds, that is, kept at a predetermined level.

RESPONSE: Rejected. Although the monies stored in coin vaults are imprest funds, the crucial point is that they are not gross revenue monies, in which the State would have a financial stake by virtue of the eight percent tax due thereon. In areas where gross revenue monies are involved, such as auxiliary slot hopper storage areas, slot cash storage boxes, drop boxes and count rooms, the Commission has not hesitated to require double locks, mantraps, the involvement of Security personnel, closed circuit television coverage, and any other devices which it believes are necessary to insure the integrity and the security of such funds. However, because gross revenue funds will not be stored in coin vaults, the Commission does not believe that the same level of security is needed in this particular instance, and that one lock should suffice to adequately protect any monies stored therein.

Finally, it should be noted that the proposed amendment does not prohibit a casino licensee from utilizing more than one lock and the Security Department in its coin vault operations, if it so desires; it simply provides that the minimum requirement is one lock.

Full text of the adoption follows.

19:45-1.14 Cashiers' cage; master coin bank; coin vaults

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

(f) Each coin vault shall be designed, constructed and operated to provide maximum security for the materials housed and activities performed therein, and shall include at least the following:

1. (No change.)

2. A metal door with one key that shall be maintained and controlled by the casino accounting department, which shall establish a sign-in and sign-out procedure for removal and replacement of that key;

3.-4. (No change.)

(g) (No change.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Drop Boxes and Slot Cash Storage Boxes
Drop Boxes, Transportation to and from Gaming Tables; Slot Cash Storage Boxes, Transportation to and from Bill Changers; Storage and Count Room
Slot Machines and Bill Changers; Coin and Slot Token Containers; Slot Cash Storage Box Compartments; Keys
Adopted Amendments: N.J.A.C. 19:45-1.16, 1.17, 1.36 and 19:46-1.25

Proposed: April 20, 1992 at 24 N.J.R. 1472(b).
Adopted: August 19, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: August 21, 1992 as R.1992 d.359, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(e), 70(l), 99(a)(10) and 11, and 100(c).

Effective Date: September 21, 1992.
Expiration Date: March 24, 1993, N.J.A.C. 19:45;
April 28, 1993, N.J.A.C. 19:46.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement and the Sands Hotel and Casino indicated that they had no objection to the proposed amendments.

RESPONSE: Accepted.

Full text of the adoption follows.

19:45-1.16 Drop boxes and slot cash storage boxes

(a) (No change.)

(b) Each bill changer in a casino shall have contained in it a secure metal container known as a "slot cash storage box" in which shall be deposited all cash inserted into the bill changer. Each slot cash storage box shall:

1. Have two separate locks securing the contents of the slot cash storage box, the keys to which shall be different from each other, and shall also comply with the requirements of N.J.A.C. 19:45-1.36;

2. Have a slot opening through which currency can be inserted into the slot cash storage box;

3. Have a mechanical arrangement or device that prohibits removal of currency from the slot opening at any time that the slot cash storage box is removed from the bill changer;

4. Be fully enclosed, except for such openings as may be required for the operation of the bill changer or the slot cash storage box; provided, however, that the location and size of such openings shall

not affect the security of the slot cash storage box, its contents or the bill changer, and shall be approved by the Commission and the Division; and

5. Have an asset number at least two inches in height, permanently imprinted, affixed or impressed on the outside of the slot cash storage box which corresponds to the asset number of the slot machine to which the bill changer has been attached, except that emergency slot cash storage boxes may be maintained without such number, provided the word "emergency" is permanently imprinted, affixed or impressed thereon, and when put into use, are temporarily marked with the asset number of the slot machine to which the bill changer is attached, and provided further, that the casino obtains the express written approval of a Commission inspector before placing an emergency slot cash storage box into use.

(c) The key utilized to unlock the drop boxes from the gaming tables shall be maintained and controlled by the security department.

(d) The key to one of the locks securing the contents of a drop box and to one of the locks securing the contents of a slot cash storage box shall be maintained and controlled by the accounting department. The key to the second lock securing the contents of the drop boxes and slot cash storage boxes shall be maintained and controlled by Commission inspectors.

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage in count room

(a) Each casino licensee shall place on file with the Commission and the Division a schedule setting forth the specific times at which the drop boxes will be brought to or removed from the gaming tables and slot cash storage boxes will be brought to or removed from the bill changers. Each casino licensee shall also maintain and make available to the Commission and the Division upon request, the names and license numbers of all employees participating in the transportation of such drop boxes and slot cash storage boxes. No drop box shall be brought to or removed from any gaming table and no slot cash storage box shall be brought to or removed from any bill changer at other than the time specified in such schedule except with the express written approval of a Commission inspector.

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

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage box compartments; keys

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

(d) The area in which the slot cash storage box is located shall be secured by two separate locks, the design, location, and operation of which shall be approved by the Commission, and the keys to which shall be different from each other.

(e) The key to one of the locks securing the area where the slot cash storage box is located shall be maintained and controlled by a Commission inspector, and the key to the second lock to such area, which key shall also be different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the security or the slot department in a secure area within that department, and access to the key may be gained only by a supervisor in that department. A sign-out procedure shall be established for all keys removed from that department, in accordance with N.J.A.C. 19:46-1.25.

(f) Keys to each slot machine or any device connected thereto which may affect the operation of the slot machine, with the exception of the keys to the compartments housing the drop bucket and to the locks securing the area where the slot cash storage box is located, shall be maintained in a secure place and controlled by the slot department.

(g) Unless a computer which automatically records the information specified in (g)1, 2 and 3 below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee:

1.-2. (No change.)

3. With the exception of the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a), whenever it is required that a bill changer, other than a separate slot cash storage box compartment, be opened, the entry shall be made on a form to be entitled "Bill Changer Log." The entry shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of the authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and a manufacturer's serial number or asset number.

(h)-(i) (No change.)

19:46-1.25 Slot machines and bill changers; coin and slot cash storage box compartment; keys

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

(d) The area in which the slot cash storage box is located shall be secured by two separate locks, the design, location, and operation of which shall be approved by the Commission, and the keys to which shall be different from each other.

(e) The key to one of the locks securing the area where the slot cash storage box is located shall be maintained and controlled by a Commission inspector. The key to the second lock to such area, which key shall also be different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the security or the slot department in a secure area within that department. Access to this key may be gained only by a supervisor in that department. Removal of keys from this area may be undertaken only for use and return no later than the end of the shift of the department member to whom the key was issued, and upon the approval of a supervisor of that department and entry of the following information into a log:

1. The signature of the department member to whom the key was issued; provided however, that if the slot department controls the key in accordance with the above, the supervisor of the slot department may issue the key to a security department supervisor, who may give it to appropriate security department personnel only for the purpose of participating in the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a).

2. The signature of the supervisor authorizing such issuance;

3.-4. (No change.)

(f) Keys to each slot machine or any device connected thereto which may affect the operation of the slot machine, other than the keys to the compartments housing the drop bucket and to the locks securing the area where the slot cash storage box is located, shall be maintained in a secure place and controlled by the slot department.

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

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Slot Machines and Bill Changers; Location; Movements
Procedures for Filling Payout Reserve Containers of Slot Machines and Hopper Storage Areas
Hopper Storage Areas
Adopted New Rules: N.J.A.C. 19:45-1.36A
Adopted Amendments: N.J.A.C. 19:45-1.1, 1.38 and 1.141

Proposed: June 15, 1992 at 24 N.J.R. 2137(a).
Adopted: August 19, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: August 21, 1992 as R.1992 d.360, **without change**.

Authority: N.J.S.A. 5:12-69(a), 70(l), 99(a)10 and 11.

Effective Date: September 21, 1992.
Expiration Date: March 24, 1993.

Summary of Public Comment and Agency Response:
COMMENT: The Division of Gaming Enforcement and the Sands Hotel and Casino supported the proposal.
RESPONSE: Accepted.

COMMENT: Merv Griffin's Resorts Casino Hotel indicated it objected to the proposal because of the requirement that the hopper storage areas be secured with two locks, one maintained by security and the other by slot operations. Resorts contends that a second lock controlled by security is not necessary, since under the present system, slot operations has sole access to the slot machine hopper. Because the proposed hopper storage area would be an extension of the slot machine hopper, and the transfer of accountability has already occurred, no more key control should be required for access to the hopper storage areas than for the slot hopper itself.

RESPONSE: Rejected. It is true that the slot machines are presently secured with only one key, which is under the sole control of the slot department. However, there are security and integrity concerns which dictate that two locks, each controlled by two different departments, one of which must be the security department, should be required for a hopper storage area, as recommended by the Division of Gaming Enforcement.

COMMENT: Harrah's Casino Hotel, Showboat Casino-Hotel and TropWorld Casino and Entertainment Resort indicated that although they supported the basic concept of the proposal, they strongly objected to the requirement that a security department representative must be present when the bags of coin or tokens are removed from the hopper storage area and placed into the corresponding slot machine hopper. They stated that the requirement of security for every such transfer would, in their view, eliminate the customer service and personnel benefits originally contemplated by the proposal.

RESPONSE: Rejected. The proposed procedure is consistent with N.J.A.C. 19:45-1.41(g), which presently requires all slot hoppers to be filled in the presence of a security guard, who must obtain the funds for the fill, accompany them to the slot machine, observe the fill and the closing and locking of the machines, and have the slot attendant sign off on the transaction. As in the case of a hopper fill, the involvement of the security department in this transaction is needed in this instance, to provide the division of control and responsibility which is the basis for proper internal controls over the transfer of funds from the hopper storage area to the hopper of the slot machine. It is presently the most effective way to insure that all of the hopper fill monies are actually deposited into the slot machine hopper by the slot attendant.

This is of particular concern to the State because hopper fills directly affect gross revenue monies and the eight percent State tax on gross revenue. Because the coins or tokens in a slot hopper are eventually used to pay slot jackpots, such payments are deductible from gross revenue under section 24 of the Act, and therefore reduce gross revenue and the tax monies collected on that gross revenue. Any diversion or loss of hopper fill funds represents a loss not only to the casino licensee, but also to the tax revenues collected by the State. An increased level of security is therefore appropriate in this situation, to protect the integrity of these hopper fills as well as the State's interest in them.

Finally, the use of these proposed slot hopper storage areas is optional, not mandatory. As noted above, Harrah's would still need security guards for every hopper fill, even if it did not choose to utilize the hopper storage areas permitted by this proposal. The proposed arrangement is intended to simplify and expedite the hopper fill process without eliminating the necessary role of the security department in it. The Commission believes that the proposed optional arrangement is no more complicated than the present one, and may in fact be simpler. Accordingly, the Commission sees no reason to delete this requirement at this time.

COMMENT: Boardwalk Regency Corporation (Caesars) concurred with Harrah's comments, and also indicated that if the Commission did require a second person at hopper transfers, it should give the casino licensee the flexibility to select a person with "no in compatible functions," rather than simply mandating a security officer.

RESPONSE: Rejected. In light of the response to Harrah's comments, the Commission believes that the only appropriate person to have present at these fills is a security officer.

COMMENT: Resorts also suggested that instead of requiring an individual Hopper Fill Slip to fill each hopper storage area, a multipart "fill log" could be used to document the loading of numerous storage areas.

RESPONSE: Rejected. The fill log as proposed by Resorts does not offer the necessary precise control and documentation over fills of hopper storage areas that can be obtained with the individual Hopper Fill Slips now used for hopper fills and proposed for fills of hopper storage areas. Since the filling of hoppers and hopper storage areas does not involve gross revenue monies in which the State has a stake, as noted above, an enhanced level of internal control is appropriate and necessary. The Resorts proposal simply would not provide the same level of control as the existing procedures, using individual Hopper Fill Slips.

Full text of the proposal follows:

19:45-1.1 Definitions

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

...

"Hopper storage area" is defined in N.J.A.C. 19:45-1.36A.

...

"Slot Machine Win" means the amount determined by subtracting the hopper fills, other than initial hopper fills and initial fills of hopper storage areas, and cash payouts pursuant to N.J.A.C. 19:45-1.40 from the slot machine drop.

...

19:45-1.36A Slot machines; hopper storage areas

(a) A hopper storage area may be used in connection with the operation of a slot machine, for the purpose of temporarily storing coins or slot tokens, to be deposited only into that corresponding slot machine's payout reserve container ("hopper").

(b) A hopper storage area shall be a secure compartment located adjacent to, but separate from, any compartment of its corresponding slot machine, or the drop bucket compartment of such slot machine, and shall:

1. Be constructed so as to provide maximum security for the coins or tokens stored in it;

2. Be secured by two separate locks, the keys to which shall be different from each other. One of the keys, which may be the same as the key which opens the slot machine corresponding to that hopper storage area, shall be maintained and controlled by the slot department. The other key, which shall be different from the key securing the corresponding slot machine, shall be maintained and controlled by the casino security department, in a secure area within that department, and access to that key may be gained only by a supervisor in that department. Removal of the key from this area may be undertaken only for use and return no later than the end of the shift of the department member to whom the key was issued, and upon the approval of a supervisor of that department, and entry of the following information into a log:

i. The signature of the department member to whom the key was issued;

ii. The signature of the supervisor authorizing such issuance;

iii. The date and time issued; and

iv. The date and time replaced; and

3. Include a device that indicates when the door of the hopper storage area is open.

(c) Hopper storage areas shall be filled and utilized in accordance with the procedures in N.J.A.C. 19:45-1.41 and a casino licensee's system of internal controls.

19:45-1.38 Slot machines and bill changers; location; movements

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

(d) Prior to removing a slot machine from the gaming floor, the drop bucket shall be removed and transported to the count room and all meters shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42. Any coins or tokens in the payout reserve container and the corresponding hopper storage area shall be removed, transported, and counted with the drop bucket contents; however, a slot machine may be removed from the casino with coins or tokens contained therein when removal of such coins is precluded by mechanical or electrical difficulty. Immediately upon opening the slot machine, the removal and transportation to the count room of such coins or tokens must be completed.

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

19:45-1.41 Procedure for filling payout reserve containers of slot machines and hopper storage areas

(a) The payout reserve container ("hopper") of a slot machine may be filled by requesting coin or tokens with a Hopper Fill Slip,

or by utilizing coin or tokens stored in its corresponding hopper storage area pursuant to N.J.A.C. 19:45-1.36A.

(b) The filling of a hopper or a hopper storage area by means of a Hopper Fill Slip shall be accomplished as follows:

1. Whenever a slot supervisor, attendant or mechanic requests coins or tokens to fill a payout reserve container ("Hopper") or a hopper storage area of a slot machine, a slot booth cashier ("Slot Cashier") shall prepare a Hopper Fill Slip ("Hopper Fills").

Recodify existing (b)-(d) as 2.-4. (No change in text.)

5. On originals, duplicates and triplicates, or in stored data, the preparer shall record, at a minimum, the following information:

Recodify existing 1.-4. as i.-iv. (No change in text.)

v. The slot booth number, if applicable, from which the coins are distributed;

vi. The signature, or if computer prepared, the identification code of the preparer; and

vii. Whether the coins are to be placed in the slot machine's hopper or in its corresponding hopper storage area.

Recodify existing (f) as 6. (No change in text.)

7. All coins or tokens distributed from a slot booth to a slot machine or its corresponding hopper storage area shall be transported in pre-wrapped secured bags containing loose coin or tokens directly to the slot machine or its corresponding hopper storage area by a casino security department member who shall at the same time transport the duplicate Hopper Fill for signature. The casino security department member shall observe the deposit of the coins or tokens in the slot machine hopper or the slot machine's corresponding hopper storage area, and the closing and locking of the slot machine or its corresponding hopper storage area by the slot mechanic or slot attendant before obtaining the signature of the slot mechanic or attendant on the duplicate copy of the Hopper Fill.

Recodify existing (h)-(k) as 8.-11. (No change in text.)

(c) The filling of the hopper of a slot machine from its corresponding hopper storage area shall be accomplished as follows:

1. Whenever a slot machine's hopper requires coin or tokens, a slot attendant or mechanic may, in the presence of a member of the casino security department, transfer the necessary coin or tokens from that slot machine's hopper storage area directly to the hopper of the corresponding slot machine. The casino security department member shall observe the deposit of the coins or tokens in the slot machine hopper and the closing and locking of the slot machine and its corresponding hopper storage area by the slot mechanic or attendant.

2. After transferring the coins or tokens to the slot machine's hopper, the slot attendant or mechanic shall make the entries required on the slot machine's log, indicating the date, time and amount of coins or tokens placed in the hopper, as well as his or her name and license number.

(d) Hopper storage areas shall be filled by using Hopper Fill Slips, in accordance with the procedures in (b) above.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Blackjack Tables; Physical Characteristics
Adopted Amendment: N.J.A.C. 19:46-1.10

Proposed: July 6, 1992 at 24 N.J.R. 2350(a).
Adopted: August 19, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: August 21, 1992 as R.1992 d.362, **without change.**

Authority: N.J.S.A. 5:12-63(c) and 70(f).

Effective Date: September 21, 1992.
Expiration Date: April 28, 1993.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement supported adoption of this amendment.

RESPONSE: Accepted.

Full text of the adoption follows.

19:46-1.10 Blackjack table; physical characteristics

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

(d) Notwithstanding the requirements of (c) above, if a casino licensee offers blackjack rule variations in accordance with the requirements of N.J.A.C. 19:47-2.6(k), the cloth covering the blackjack table shall be approved by the Commission and have imprinted on it, at a minimum, the following inscriptions:

1. Blackjack pays 1 to 1;
2. Dealer must draw to 16 and stand on all 17's; and
3. Dealer's hole card dealt face up.

Recodify existing (d)-(e) as (e)-(f) (No change in text.)

(b)

CASINO CONTROL COMMISSION

Gaming Equipment
Slot Machine Area; Density; Arrangement; Floor Plans; Slot Stools
Adopted Amendment: N.J.A.C. 19:46-1.27

Proposed: June 15, 1992 at 24 N.J.R. 2138(a).
Adopted: August 19, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: August 21, 1992 as R.1992 d.363, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69 and 100.

Effective Date: September 21, 1992.
Expiration Date: April 28, 1993.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement supported adoption of these amendments and Greate Bay Hotel and Casino, Inc. had no objection to adoption of these amendments.

RESPONSE: Accepted.

COMMENT: Adamar of New Jersey, Inc. (TropWorld Casino and Entertainment Resort) commented that including the entire aisle width area as part of the 45 percent calculation of N.J.A.C. 19:46-1.27(e) will have an adverse effect on those casino licensees which strive to create gracious playing environments by maintaining wider aisle widths. TropWorld suggests that the proposal be amended to distinguish between "slot aisle or walkway" space and "slot support and circulation" space.

RESPONSE: Rejected. TropWorld's suggested changes would necessitate the submission of detailed, complicated architectural drawings which would require specific delineation of the space considered to be "slot aisle or walkway" from the space considered to be "slot support and circulation space." This is precisely the situation that the Commission was trying to eliminate. To the extent that there is room for regulatory interpretation, it was the Commission's intention to establish generic standards, N.J.A.C. 19:46-1.27(a), as well as specific standards, N.J.A.C. 19:46-1.27(b) through (g), because recent amendments to the Casino Control Act, N.J.S.A. 5:12-100(h)(2), include a number of policy concerns which must be considered by the Commission when requiring and approving casino floorplans. Further, in developing standards for approval, it is impossible to specifically cover every conceivable casino floor layout, necessitating adoption of some generic standards. Although many requests for approval are handled by the Commission staff pursuant to delegated authority, any casino licensee that does not agree with a staff decision has ample opportunity to have the matter considered by the full Commission. Finally, the Commission feels that the regulation, as adopted, gives casino licensees the ability to utilize many slot machines while still requiring that a casino licensee maintain a gracious playing environment.

Full text of the adoption follows.

19:46-1.27 Slot machine areas; density; arrangement; floor plans; slot stools

(a) Slot machines used in the conduct of gaming shall be located and arranged in such a manner so as to:

1. Promote optimum security for the casino operation;
2. Avoid deception or frequent distraction to players at gaming tables;
3. Maximize the comfort of patrons;

4. Create and maintain a gracious playing environment in the casino; and

5. Encourage and preserve competition in casino operations by assuring that a variety of gaming opportunities is offered to the public.

(b) Each casino licensee shall be permitted to install and operate one slot machine for every 10 square feet of its casino floor space which may be allocated to slot machines and walkways between them, as determined in accordance with (e) below.

(c) Each casino licensee shall comply with the following design requirements in arranging its floor plan:

1. The slot aisle or walkway between any two rows of slot machines facing each other in a casino shall be at least six feet in width. A slot aisle or walkway shall be defined as the space between a row of slot machines and any obstruction, including other slot machines, immediately opposite that row;

2. Whenever a row of slot machines without slot stools faces an obstruction other than the front of another slot machine, there shall be a walkway between the slot machines and the obstruction of at least three feet in width;

3. Whenever one row of slot machines in a casino is lined up back to back with another row of machines, the two rows shall be separated by a metal grating or other type of barrier, as approved by the Commission, that will prohibit a person from placing his or her hand between the rows of machines;

4. The placement of slot stools on the casino floor shall comply with the following requirements:

i. Slot stools shall only be located on one side of a slot aisle between two rows of slot machines that measures less than seven feet in width;

ii. Slot stools shall only be located in every other slot aisle, unless the width of each slot aisle is seven feet or greater;

iii. Slot stools shall only be located in slot aisles where there is a distance of at least four feet between the back of each slot stool and the slot machine or other obstruction immediately opposite that stool; and

iv. Slot stools shall only be of the spindle-type and must be securely fastened to the floor or the slot base.

(d) Each casino licensee may, in furtherance of the objectives identified in (a) above, allocate additional casino floor space to provide adequate slot machine support space and circulation space in excess of the floor space authorized for slot machines and the walkways between them. For the purposes of this section, "slot machine support space and circulation space" shall include slot booths; change booths; change machines; slot carousels; walls, columns or other architectural structures, and any other structures or areas which are reasonably related to, and contained within casino floor space which is dedicated to, the use of slot machines.

(e) The total amount of casino floor space that a casino licensee may utilize for slot machines and the walkways between them shall not exceed 45 percent of the total amount of casino floor space. The total amount of casino floor space that a casino licensee may utilize for slot machine support space and circulation space shall not exceed 30 percent of the total amount of casino floor space. The total of these two areas shall be known as the "Slot Area." An example of the Slot Area calculation is as follows:

For a casino hotel operating an authorized casino room of 60,000 square feet, there may be a maximum of 2,700 slot machines located within a total slot area that does not exceed 45,000 square feet, computed as follows:

slot machines and walkways between them	45 percent of 60,000 = 27,000
slot machine support and circulation space	+30 percent of 60,000 = 18,000
maximum permissible slot area	45,000 square feet
calculation of the number of slot machines	27,000 divided by 10 square feet = 2,700 Maximum Number of Slot Machines Permitted

(f) The total amount of casino floor space dedicated to the Slot Area, which includes slot machines, the walkways between them and slot support and circulation space shall be measured by identifying the perimeter of each such area on the casino floor plan.

(g) Any casino floor space which may not be used for slot machines, the walkways between them or slot support or circulation space pursuant to (f) above shall be dedicated to table games and table game support and circulation space.

(h) Each casino licensee or applicant shall submit to the Commission a detailed floor plan, drawn to scale, depicting its proposed arrangement of slot machines, slot stools and table games. Such plan shall indicate all relevant floor space square footage; density information; and aisle dimensions, including the dimensions of aisles between rows of slot machines facing each other, of distances in front of slot machines not directly facing another slot machine, and of distances between slot stools and other obstructions or slot machines. Each casino licensee shall maintain on file with the Commission a current floor plan certified as to its accuracy.

(i) Each casino licensee or applicant seeking approval for a proposed arrangement of slot machines shall submit to the Commission a detailed floor plan, drawn to scale, depicting its proposed arrangement of slot machines, slot stools and table games and shaded to include all areas covered by (f) above. Such plans or attachments thereto shall indicate the amount of casino floor space by slot zone, or other subdivision of the total area included in the calculation required by (f) above, as approved by the Commission, and the total of such areas. Each casino licensee shall maintain on file with the Commission a current shaded floor plan certified as to its accuracy.

(j) Any floor plan submission that satisfies the requirements of this section shall be deemed approved by the Commission unless the casino licensee is notified in writing to the contrary within three days of filing.

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

County Psychiatric Facilities

Adopted New Rules: N.J.A.C. 10:35

Proposed: January 21, 1992 at 24 N.J.R. 208(a).
Adopted: August 13, 1992 by William Waldman, Deputy Commissioner, Department of Human Services.
Filed: August 17, 1992 as R.1992 d.339, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12.

Effective Date: September 21, 1992.
Expiration Date: September 21, 1997.

Summary of Public Comment and Agency Responses:

Comments were received from the Department of the Public Advocate's Division of Mental Health Advocacy, Meadowview Hospital and Bergen Pines County Hospital. A summary of comments and responses follows:

COMMENT: Bergen Pines County Hospital objected to the inclusion of inter or intra-regional consolidation of services as a permitted basis for patient transfers to their facility since the admission of many of these patients would violate their licensure status, mission statement or long range plan.

RESPONSE: The inclusion of this factor as a potential basis for patient transfers was not intended to imply that such transfers might be required regardless of a county psychiatric facility's licensure status, mission statement or long range plan. Again the inclusion of this factor merely serves to permit such transfers in exceptional situations after a full discussion between State and county officials intended to identify the least disruptive response to a compelling multi-county problem.

COMMENT: Bergen Pines County Hospital objected to the application of provisions at N.J.A.C. 10:35-4.3(c)1 and 3, regarding promoting

patient and family input into transfer decisions and notice of pending transfer to patients and families, to forensic patients who are also subject to custody within the criminal justice system.

RESPONSE: The Department believes that the transfer of such patients between State and county psychiatric facilities would be pursuant to either a judicial order or an emergency as defined at N.J.A.C. 10:35-4.2(c)4 and, in either case, notice would not be required. Input into transfer decisions by patients or their family may, in some instances, be possible and, therefore, promotable, even for forensic patients. The final decision, of course, would not rest with either patient or family in such instances since either judicial order or emergency would be involved.

COMMENT: Meadowview Hospital objected to the provision described at N.J.A.C. 10:35-3.1(h) which specifies that affiliation agreements be completed within 180 days of the adoption of these rules. Meadowview Hospital requests that the deadline be extended to at least one year.

RESPONSE: The Department concurs that the development of affiliation agreements can be a lengthy process and has amended the rule to extend the required time period for completion of the affiliation agreement to June 8, 1993, nine months from the effective date of these rules.

COMMENT: Meadowview Hospital also suggests that boilerplate agreements be developed so as to hasten this affiliation agreement development process.

RESPONSE: The Department further agrees to explore ways to facilitate and shorten the affiliation agreement development process.

COMMENT: Meadowview Hospital and Bergen Pines County Hospital objected to the provision described at N.J.A.C. 10:35-3.2(d) and requested its elimination. Meadowview Hospital commented that county facilities do not currently review private health care facility agreements, and questioned why county facilities be subject to review by County Systems Review Committees. Bergen Pines County Hospital suggested that providing County Systems Review Committees with the opportunity to review county hospital affiliation agreements, might offer members of the County Systems Review Committees an opportunity to influence unfairly these agreements to their own advantage.

RESPONSE: The involvement of the County Systems Review Committee in the review process described at N.J.A.C. 10:35-3.2 is intended to take place subsequent to the completion of the affiliation agreements themselves. The role of the County Systems Review Committee is to review the operational aspects of the psychiatric facility agreement, such as the number of transfers to facilities and the types of transfers taking place.

The Department believes this review is consistent with the role and mission of the Systems Review Committees which is to monitor the flow of client activity and resource availability in the mental health system. The Systems Review Committees currently review client transfers or admissions between Screening Centers and State and county psychiatric facilities and the Department believes their further review of transfers between State and county psychiatric facilities does not represent a significant expansion of their duties nor an additional hardship to the county psychiatric facilities. The Department believes that public funding requires a public process and that public knowledge of such affiliation agreement provisions is an appropriate part of that process.

COMMENT: Meadowview Hospital recommended that a Unified Services Agreement be developed in each county including all service providers.

RESPONSE: The Department believes that the development of affiliation agreements would most effectively assure the linkage of a county psychiatric facility's services to the other countywide services. Which service providers are appropriate signatories to an affiliation agreement may be discussed and negotiated locally between State and county representatives.

COMMENT: Meadowview Hospital requested that, in addition to clinical considerations serving as the paramount basis for transfer decisions, the hospital's licensure status regarding bed capacity and type of patient also needs to be considered when making transfer decisions.

RESPONSE: N.J.A.C. 10:35-4.2 is intended to be utilized within the existing parameters of a specific hospital's bed capacity and approved admission criteria. The Department will respect these administrative parameters when considering the basis for all patient transfers.

COMMENT: Meadowview Hospital and Bergen Pines County Hospital objected to the dispute resolution provision at N.J.A.C. 10:35-4.3(c)6, since judges' orders to commit a patient to a specific facility would always take precedence over this provision.

RESPONSE: This provision was intended to apply regarding patient placements which were not precluded by any specific judge's order. The provision is not intended to override any valid judicial orders. Clarifying language to this effect has been added to N.J.A.C. 10:35-4.1(a).

COMMENT: Bergen Pines County Hospital commented that, in addition to the transfer process, the conditions when specific patients should be transferred between State regional and county psychiatric facilities should also be specified within their affiliation agreements. (N.J.A.C. 10:35-4.1(b))

RESPONSE: The Department agrees with the comment and intended the term transfer process to include the conditions when specific patients should be transferred to be decided locally by State regional and county psychiatric facilities on a case by case basis within the parameters of their affiliation agreements.

COMMENT: Bergen Pines County Hospital objected to N.J.A.C. 10:35-4.2(a)4 permitting overcrowding at a State regional facility to serve as a basis for proposed transfers to a county psychiatric facility. Diverting new admissions to another facility would be a better response to problems associated with overcrowding than disrupting the treatment of patients already in treatment would be by transferring them.

RESPONSE: The Department agrees that transferring patients already hospitalized would be less preferable in most situations to admissions diversions as a response to overcrowding. The provision would merely permit transfers in very exceptional circumstances. The best response to specific overcrowding issues, should they occur, would still be identified by discussion between State and county officials and involve the identification of the least disruptive response considered to be in the best interests of all patients involved.

COMMENT: The Department of the Public Advocate commented that, at N.J.A.C. 10:35-2.2(a)2, county plan submissions must comply with State and Federal standards, defined only as New Jersey Department of Health licensure requirements and Federal Medicare certification requirements respectively. Since N.J.S.A. 30:4-78.1 requires facility compliance with all State and Federal standards, these definitions are too narrow and exclude other laws which are applicable to county psychiatric facilities.

RESPONSE: The statutory and regulatory provisions cited refer to standards. Of course, county psychiatric facilities need to comply with all applicable statutory and regulatory provisions but in the sections cited the plan is pegged to established governmental standards. The Department believes that the two sets of defined standards are the most relevant standards for inpatient psychiatric care.

COMMENT: The Department of the Public Advocate commented that the proposed rules should be amended to insure that a voluntary patient's objection to a proposed transfer will be respected, adding that comparable State patient procedures at N.J.A.C. 10:36-3 only apply to involuntary patients.

RESPONSE: The proposed rules only permit the transfer of a patient over their objection when a clinical determination has concluded that the decision is in the transferee's clinical best interest or necessary for the safety of other patients or specified administrative reasons. The Department believes these standards are reasonable for both voluntary and involuntary patients. Voluntary patients receive the benefit of special review procedures at N.J.A.C. 10:35-4.4 as do involuntary patients. The procedures at N.J.A.C. 10:36-3 apply to involuntary patients in response to statutory language referring to involuntary patients only.

COMMENT: The Department of the Public Advocate commented that, unlike rules governing patient transfers between State psychiatric facilities, the proposed rules omit necessary prohibitions against non-emergency transfers prior to a patient's initial commitment hearing and postponement of such hearings beyond 20 days after the patient's admission.

RESPONSE: The Department agrees and has amended N.J.A.C. 10:35-4.1 to include these prohibitions.

COMMENT: The Department of the Public Advocate commented that a clarification should be added to the rules specifying that, when a patient and family members disagree on a proposed transfer based on proximity to family members, a clinical determination regarding the proposed transfer shall be made based solely on the clinical best interest of the patient. This clarification exists in rules governing transfers between State psychiatric facilities.

RESPONSE: The Department agrees and has amended N.J.A.C. 10:35-4.2 to include this clarification.

COMMENT: The Department of the Public Advocate commented that two criteria contained in rules regarding transfers between State psychiatric facilities requiring administrators to consider a patient's stated transfer preference and to balance the facility's transfer purpose with potential harm to the patient from the transfer were omitted from these rules and should be added. Similarly, standards prohibiting involuntary transfers where the transferring facility is capable of meeting the need which is said to justify the transfer and where the receiving facility would not be the least restrictive setting necessary to achieve the transfer's purpose were omitted from the proposed rules.

RESPONSE: The Department agrees and has amended N.J.A.C. 10:35-4.2 to include these guidelines.

COMMENT: The Department of the Public Advocate commented that, unlike the rules governing transfers between State psychiatric facilities, these proposed rules do not provide guidance concerning which of its enumerated transfer factors could constitute an emergency transfer.

RESPONSE: The Department agrees and has clarified that the functional equivalents of the two factors which may serve as the basis for emergency transfers between State psychiatric facilities also qualify for emergency transfers for the purpose of these rules, namely N.J.A.C. 10:35-4.2(a)3 and 5. The Department further clarifies that N.J.A.C. 10:35-4.2(a)3 is included because it serves the same purpose as N.J.A.C. 10:36-3.3(a)4, which the commenter did not understand in their analysis.

COMMENT: The Department of the Public Advocate commented that the proposed rules omitted an objecting patient's right to present statements by other individuals at a review of the proposed transfer, which is contained in the rules governing transfers between State psychiatric facilities.

RESPONSE: The Department agrees and has amended N.J.A.C. 10:35-4.4 to include this right.

Summary of Agency-Initiated Change:

In order to clarify N.J.A.C. 10:35-2.5(b), the Department has reworded the subsection to more succinctly state the responsibility of the governing body of a county to address the outstanding issues of a conditionally approved plan within 90 days of approval notification. Within this period, plan modifications may be discussed and negotiated with the Director or the Director's designee; the requirement for a written negotiation request has been eliminated as unnecessary.

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

CHAPTER 35
COUNTY PSYCHIATRIC FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

10:35-1.1 Scope

These rules shall apply to the operation of the five current county psychiatric facilities at Bergen Pines Hospital; Buttonwood Hospital; Camden County Health Services Center Hospital; Essex County Hospital Center; and Meadowview Hospital. These rules shall also apply to any additional county psychiatric facilities which may be so designated by the Commissioner in the future.

10:35-1.2 Purpose

The purpose of these rules is to promote efficiency, accessibility, and high-quality services within the county psychiatric facilities as part of a publicly funded well-coordinated and integrated Statewide system of mental health services. In order to best accomplish this purpose, the Commissioner hereby delegates certain authority granted by P.L. 1990, c.73 to the Director as detailed throughout this chapter.

10:35-1.3 Definitions

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

"Commissioner" means the Commissioner of the Department of Human Services.

"Compliance with Federal standards" means meeting the Medicare certification requirements in units for patients who require a level of care consistent with such Medicare certification.

"Compliance with State standards" means meeting the applicable licensure requirements of the New Jersey Department of Health.

"County psychiatric facility" means a psychiatric hospital or unit which is operated by the governing body of a county and which participates in the State Aid Program of the Department of Human Services, Division of Mental Health and Hospitals.

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

"Director" means the Director of the Division of Mental Health and Hospitals.

"Division" means the New Jersey Division of Mental Health and Hospitals within the Department of Human Services.

"Governing body of a county" means the office of the county executive. In those counties without a county executive it shall mean the county board of chosen freeholders.

"Plan" means financial and management plan submitted by the governing body of a county.

"Regional State psychiatric facility" means those State psychiatric hospitals listed in N.J.S.A. 30:1-7 which are being utilized by the Division of Mental Health and Hospitals to treat adult psychiatric patients within designated regions of the State. Currently, these facilities are Ancora Psychiatric Hospital, Greystone Park Psychiatric Hospital, Marlboro Psychiatric Hospital and Trenton Psychiatric Hospital.

SUBCHAPTER 2. FINANCIAL AND MANAGEMENT PLAN

10:35-2.1 Purpose and deadline of plan

The governing body of each county that operates a county psychiatric facility shall submit to the Director a plan no later than December 31 of each calendar year so that the purpose articulated at N.J.A.C. 10:35-1.2 above may be achieved. In addition to the information listed at N.J.A.C. 10:35-2.2, the plan may need to include additional program or fiscal information deemed essential by the Director to fulfill the duties mandated by P.L. 1990, c.73. If any such additional information is needed, it shall be so requested in writing by the Director.

10:35-2.2 Content of plan

(a) The plan from each county facility shall minimally include the following information:

1. A statement of whether the governing body of the county intends to continue to operate a county psychiatric facility for the next calendar year;

2. A statement of any financial obligations that must be incurred in order to bring the facility into compliance with State and Federal standards, including any applicable plan of correction;

3. A statement of mission and the role of the facility within local and regional mental health systems;

4. A description of any program and facility deficiencies cited by State, Federal or private licensing, certifying or accrediting bodies and corrective action plans related to the cited deficiencies;

5. A description of target populations served, projected annual admissions and anticipated average daily population;

6. A description of admissions and discharge policies;

7. A description of hours of operation, number and types of beds licensed and in use for psychiatric services;

8. A description of methodologies and/or data utilized to determine the need for current, modified or new programs;

9. A description of current and projected use of buildings and land for mental health and/or other purposes;

10. An identification of proposals or plans external to the psychiatric facility which may impact on the facility's ability to provide services; and

11. A description, in a format specified by the Director, of budgetary information and personnel listings sufficient to reasonably identify facility, staffing and program operational costs, expected revenues, and associated financial aspects of planned facility services.

10:35-2.3 Annual Certification Process

On or before December 31 of each year, the governing body of each county shall submit written certification to the Director as to

the accuracy of information submitted and that information contained in the previously submitted plan remains in effect without change, if that is so.

10:35-2.4 Modifications to the plan

(a) If changes to the plan are anticipated for the next year, the governing body of each county shall submit written notification and description of the modifications to the Director on or before December 31 of the preceeding year.

(b) If modifications occur subsequent to the annual certification, these changes must be reported immediately, in writing, to the Director.

(c) Facility or program modifications which would require a Certificate of Need (CN) as established by rules promulgated by the New Jersey Department of Health must be specified in a letter of intent to the Director, concurrent with the notification to the Department of Health.

(d) Modifications that do not require a CN but that would have an impact on the provision of services within the New Jersey mental health system, require six months advance notice to the Director prior to implementing any program or facility modification.

(e) The governing body of each county shall immediately inform the Director, in writing, of any changes in the status of the psychiatric facility's licensure, accreditation or certification, as these occur during the year.

10:35-2.5 Division review of initial and modified plans and annual certification

(a) The Director shall complete the review of each facility's plan and notify in writing the governing body of the county of his or her decision to approve, or approve with conditions, the county's plan guiding the operations of its respective psychiatric facility within 90 days of the plan's receipt.

(b) If the county's plan receives conditional approval, the governing body of the county *[may modify the plan or may request in writing to enter into negotiations with the Director to satisfy those conditions. The modifications made to the plan and/or the completion of negotiations shall be concluded within 90 days of notification of conditional approval]* ***shall satisfactorily address the outstanding issues within 90 days of notification. Proposed modifications to the plan may be discussed and negotiated with the Director or the Director's designee within this 90 day period***.

SUBCHAPTER 3. AFFILIATION AGREEMENT DEVELOPMENT

10:35-3.1 Affiliation agreement development

(a) Each county psychiatric facility shall negotiate and develop affiliation agreements with designated screening programs (as defined at N.J.A.C. 10:31-1.3), community based short term care facilities (as defined at N.J.A.C. 10:31-1.3), Division contracted community mental health services, (for example liaison, case management, partial care, residential) and State psychiatric facilities.

(b) The purpose of these agreements shall be to effectively link the facility's services to these other services so that accessible, high quality mental health care is provided in the most clinically appropriate, least restrictive service environment consistent with an individual's needs.

(c) These agreements shall be consistent with the county psychiatric facility's mission statement, plan and license.

(d) Minimally, affiliation agreements shall include a description of each party's program components, as well as the referral and admissions process. The admission process shall specify inclusionary and exclusionary criteria. A section providing a description of the treatment planning process, length of stay objectives and the discharge planning process shall also be included in the affiliation agreement.

(e) Case managers and community mental health aftercare liaison staff shall be credentialled and privileged to participate in treatment team and discharge planning processes.

(f) Each affiliation agreement shall contain a section identifying a problem resolution process agreed to by the signatories.

(g) The process and general procedures for referrals to and transfers among affiliating system components should be specified within the agreements.

(h) Affiliation agreements, as stipulated above, shall be completed within 180 days of the adoption of these rules.

10:35-3.2 Review process

(a) The county psychiatric facility affiliation agreements and any subsequent modifications should be developed in consultation with the county mental health board's professional advisory committee.

(b) The signed affiliation agreement shall be provided to the county mental health board on an annual basis.

(c) The signed affiliation agreement(s) as approved by the county psychiatric facility or their governing body shall be submitted to the Division.

(d) County systems review committees shall review the operational aspects of the psychiatric facility affiliation agreements.

(e) Both County and Regional State psychiatric facility representatives shall attend the system review committee meetings.

SUBCHAPTER 4. TRANSFERS BETWEEN REGIONAL STATE AND COUNTY PSYCHIATRIC FACILITIES

10:35-4.1 Scope

(a) The rules within this subchapter shall apply to patients residing at county psychiatric facilities being considered for transfer to a regional State psychiatric facility and to patients residing at a regional State psychiatric facility being considered for transfer to county psychiatric facilities. ***No provision within these rules is intended to override or replace provisions within valid judicial orders regarding patient placement or transfer.***

(b) Within the parameters set out within this subchapter, the specific process for transfers between Regional State and county psychiatric facilities shall be specified within their affiliation agreement.

(c) Prior to a patient's initial commitment hearing, only emergency transfers may be made. Postponement of such hearings beyond 20 days after admission may not be requested by hospital staff due to the emergency transfer of a patient.

10:35-4.2 Basis for transfers

(a) Clinical considerations shall always be paramount in any transfer decision. Any of the factors described below may serve as a basis for the transfer of a patient:

1. To place him or her in closer proximity to family members;

i. If a patient and his or her family members disagree on a transfer request based on proximity to family members, a clinical determination shall be made by the hospital staff based solely on the clinical best interest of the patient;*

2. To place the patient in the appropriate facility according to the patient's residence (catchment area);

3. To participate in a specialized psychiatric service that is offered in another psychiatric facility or in the community that is more accessible from the receiving facility;

4. To spare patients the consequence of overcrowding in a specific psychiatric facility;

5. In response to a natural catastrophe, fires or other life safety concerns which necessitate transfer;

6. As a consequence of inter-regional or intra-regional consolidation of services; or

7. In response to the request of the patient.

(b) A patient's stated preference for treatment at a particular State psychiatric facility shall always be a relevant consideration in transfer decisions. Transfers over the objection of a patient are permitted, however, when a clinical determination has concluded that the transfer is in the transferee's clinical best interest or necessary for the safety of other patients or administratively necessary due to a factor listed in (a) above. A transfer is permitted only when, in the judgment of the treatment team, the transfer's permissible purpose outweighs any potential harm to the patient from the transfer.

1. When a transferring facility is capable of meeting the clinical or administrative purpose for a proposed transfer as contained in the factors at (a) above, an objecting patient shall not be transferred.

2. Transfers shall be the least restrictive available treatment alternative necessary to achieve the purposes of the transfer request as contained in the factors at (a) above.*

10:35-4.3 General transfer policies and procedures

(a) Transfers over the objection of a patient are permitted when a clinical determination has concluded that the decision is in the transferee's clinical best interest or necessary for the safety of other patients or administratively necessary due to a factor listed in N.J.A.C. 10:35-4.2.

(b) Transfers occurring as a result of overcrowding, life safety concerns, natural catastrophes or consolidation of services shall require the approval of the Director.

(c) The following procedures shall be in effect for transfers of patients between facilities:

1. Facility staff should actively promote patient and family input into transfer decisions.

2. The designated sending psychiatric facility must discuss the transfer with the designated receiving psychiatric facility. If the parties agree to the transfer, they will arrange for a specific date and time for the transfer to occur.

3. Both the patients scheduled to be transferred, and their families, shall be notified by the sending psychiatric facility as soon as possible after the transfer decision has been made, but no later than 72 hours prior to the transfer. When a patient requests transfer, staff shall notify him or her of their decision promptly.

4. In the event of an emergency transfer, defined as imminent danger of serious bodily harm to self or others which less restrictive placement alternatives other than transfer cannot adequately address, the 72 hour notification requirement shall be waived. ***Only factors listed at N.J.A.C. 10:35-4.2(a)3 and 5 may serve as the basis for an emergency transfer.***

5. The psychiatric facility initiating the transfer shall make the arrangements for the transfer, including transportation.

6. If the two psychiatric facilities do not agree on the transfer, the matter shall be referred to the chief executive officers, or their designee, of the respective facilities for resolution. The patient's attorney shall be notified of the disagreement. If the chief executive officers are unable to resolve the matter, the Director or a designee shall finally resolve the matter.

7. All transfers are to be handled in a timely manner as specified in the affiliation agreement.

10:35-4.4 Specific procedures when patients object to transfer

(a) When a patient objects to the transfer, the following procedures shall apply:

1. Each patient and their attorney shall receive notice of the proposed transfer as soon as possible but in no instance less than 72 hours prior to the proposed transfer date;

2. If a patient objects to such a transfer, he or she shall be provided an opportunity to state the basis for the objection and present any relevant facts***, including statements by other individuals***, with or through a representative as so desired before an individual who is not a member of the treatment team seeking transfer. This individual may be a member of the office of the facility's clinical director or other facility staff member capable of providing an independent review of the need for the proposed transfer; and

3. The individual who reviews the proposed transfer shall have the authority to approve or disapprove the proposed transfer.

SUBCHAPTER 5. SANCTIONS AND APPEALS PROCESS

10:35-5.1 Sanctions

(a) If the Director determines that any of the provisions of this chapter have been violated by the governing body of a county or a county psychiatric facility, administrative and financial sanctions may be imposed in writing by the Director upon the violators as warranted by the specific situation.

(b) Administrative sanctions may include, but not be limited to, notices or letters of warning to the governing body of a county and a county psychiatric facility.

(c) Financial sanctions may include, but not be limited to, fines and the withholding of funds from the governing body of a county and the county psychiatric facility.

(d) N.J.S.A. 30:4-78.4 provides that in the event a county continues to operate and maintain a county psychiatric facility, the Commissioner shall have the power to replace the chief executive officer, the chief financial officer, the medical director and other appropriate administrative personnel upon the Commissioner's determination that financial expenditures of the facility are repeatedly and substantially in excess of similar expenditures in other State and county psychiatric facilities or the quality of care provided in the facility is repeatedly and substantially below State and Federal standards.

10:35-5.2 Appeals process

(a) The governing body of a county or a county psychiatric facility may appeal any sanction imposed by the Director except that sanctions related to the plan review and approval process may only be appealed by the governing body of a county.

(b) Appeal requests must be received by the Director within 30 days of receipt of the written sanctions by the governing body of the county or the county psychiatric facility.

(c) The Director shall schedule the appeal for review within 60 days of receipt of the appeal request.

(d) The appellant may present all relevant information for consideration by the Director at the review and the Director shall communicate a determination in writing to the appellant within 30 days of the review.

(e) The appellant may appeal the Director's determination to the Commissioner in writing within 60 days of receipt of the Director's determination.

(f) The Commissioner, or a Departmental designee, shall schedule the Departmental appeal for review within 60 days of receipt of the Department appeal request.

(g) The appellant may present all relevant information for consideration by the Commissioner or Departmental designee at the review and the Commissioner or Departmental designee shall communicate a determination in writing to the appellant within 30 days of the review.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Readoption with Amendments: N.J.A.C. 10:72

Proposed: June 15, 1992 at 24 N.J.R. 2145(a).
Adopted: August 21, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: August 24, 1992 as R.1992 d.364, **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. 30:4D-3, 30:4D-7, 7a, b and c.

Effective Date: August 24, 1992, Readoption;
September 21, 1992, Amendments.
Expiration Date: August 24, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Between Proposal and Adoption:
The Division is amending N.J.A.C. 10:72-2.1(a) to delete a redundant reference. The proposed amendment contained a reference to Form PA-1G which was already in the existing text. The Division is deleting the reference in the amended text while retaining the same requirement that has already been codified.

This change will not enlarge or curtail the burden upon aged, blind or disabled recipients because they are already required to sign the PA-1G form.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:72.

Full text of the adopted amendments follows (deletion from proposal indicated in brackets with asterisks *[thus]*).

10:72-1.5 Confidentiality of information

(a) No member, officer, or employee of the county welfare agency shall produce or disclose any confidential information to any person except as authorized below.

1.-3. (No change.)

4. If a court issues a subpoena for a case record or any other confidential information or for any agency representative to testify concerning an applicant or eligible person, the county welfare agency shall make a statement substantially as follows:

i. (No change.)

5.-6. (No change.)

10:72-1.7 Nondiscrimination

(a) Title VI of the Federal Civil Rights Act of 1964 (P.L.88-352) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b) and the Americans with Disabilities Act, P.L.101-336, codified as 42 U.S.C. 12101 et seq. prohibits discrimination on the ground of race, color, national origin, or handicap in the administration of any program for which Federal funds are received. Strict compliance with the provisions of these Acts and any regulations based thereon is required as a condition to receive Federal funds for the assistance programs administered by the county welfare agencies. These principles apply to the Medicaid program in New Jersey.

1.-2. (No change.)

3. All persons seeking or receiving medical assistance shall be afforded an opportunity to file a complaint alleging discrimination on the ground of race, color, national origin, or handicap. Such complaints may be filed directly with the Regional Manager, U.S. Department of Health and Human Services, Office of Civil Rights, Federal Plaza, New York, New York 10007, or with the Director, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625-0712.

4.-5. (No change.)

10:72-2.1 Application

(a) Application for Medicaid benefits for pregnant women and children shall be accomplished by the completion and signing of Form FD-335 for pregnant women and children *[and Form PA-1G for the aged, blind, or disabled,]* as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services. Application for Medicaid benefits for aged, blind, or disabled individuals shall be accomplished by the completion and signing of Form PA-1G as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services.

1. The application for the program shall be executed by:

i. The pregnant woman (regardless of age);

ii.-iii. (No change.)

2.-3. (No change.)

(b) The county welfare agency, under policies and procedures established by the Division of Medical Assistance and Health Services, has the direct responsibility in the application process to:

1.-4. (No change.)

5. Assure the prompt and accurate submission of eligibility data to the Medicaid Eligibility File for eligible persons and prompt notification to ineligible persons of the reason for their ineligibility.

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

(e) The following actions on an application qualify as disposition of an application for purposes of the processing standard:

1.-2. (No change.)

3. Dismissed: A decision by the county welfare agency that the application process need not be completed because:

i.-iii. (No change.)

iv. The applicant has moved out of the State during the application process and there are no unpaid bills for the time period beginning with the retroactive eligibility period up to the date of relocation.

4. (No change.)

10:72-2.4 Case transfer

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

(c) Applicant cases: For persons who move from the county in which application for Medicaid is made prior to the determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

i. (No change.)

ii. If determined eligible for the Medicaid program, accrete the eligible person(s) to the Medicaid Eligibility File with the correct effective date of Medicaid eligibility and the new address in the receiving county; and

iii. (No change.)

2. (No change.)

(d) Eligible cases: For cases which are determined eligible for the Medicaid program:

1. The county of origin has the responsibility to:

i. Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and most recent application form (including all verification), Social Security number(s), and the new address in the receiving county;

ii.-iv. (No change.)

2. The receiving county has the responsibility to:

i.-v. (No change.)

vi. Update the Medicaid Eligibility File as necessary including entry of a new case number. If the case is determined eligible for Medicaid in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for Medicaid in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person terminated on the Medicaid Eligibility File; and

vii. (No change.)

10:72-2.5 Redetermination of eligibility

(a) (No change.)

(b) The county welfare agency shall reassess program eligibility as follows:

1. (No change.)

2. Promptly after information is obtained by the county welfare agency which indicates changes in the case circumstances that may affect program eligibility or post-eligibility treatment of income.

10:72-2.7 Retroactive eligibility

(a) (No change.)

(b) Determination of retroactive eligibility is the responsibility of the Division of Medical Assistance and Health Services. If the applicant has unpaid medical bills from the retroactive eligibility period, the county welfare agency shall provide the applicant with an Application for Payment of Unpaid Medical Bills (FD-74) and instruct the applicant to forward it to the Division of Medical Assistance and Health Services, Retroactive Eligibility Unit, CN-712, Trenton, New Jersey 08625-0712. An application for retroactive eligibility must be received by the Retroactive Eligibility Unit within six months of the date of application for Medicaid at the county welfare agency.

10:72-4.1 Income eligibility limits

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

(d) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a), (b), or (c) above as applicable.

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, will continue eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy

whether or not the pregnancy results in a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.

i. The child resulting from the pregnancy will be eligible for Medicaid without regard to changes in the household unit's income for a period of not less than 60 days and up to a period of one year, so long as the mother remains eligible for Medicaid, or would remain eligible if pregnant, and the child remains in the mother's custody.

ii. (No change.)

2. (No change.)

10:72-4.3 Countable income; pregnant women and children

(a) Except as specified below, countable income for pregnant women and children under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:72-3.5(a)1 and 2, and shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1.-3. (No change.)

4. The deeming of an alien sponsor's income at N.J.A.C. 10:82-3.13 does not apply.

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

10:72-4.5 Resource eligibility

(a) (No change.)

(b) Aged, blind, or disabled persons must meet resource eligibility criteria as specified below in order to be eligible for benefits under this chapter. Eligibility for benefits does not exist in any month in which the countable resources of an aged, blind, or disabled person exceeds the limits of $4,000 for an individual and $6,000 for couple.

1.-2. (No change.)

3. For aged, blind, or disabled persons, the policy concerning transfer of resources within 30 months of the date of application see N.J.A.C. 10:71-4.7), applies equally to eligibility under this chapter.

10:72-5.2 Fair hearings

(a) (No change.)

(b) Any request for a fair hearing shall be forwarded to the Division of Medical Assistance and Health Services, Office of the Legal and Regulatory Liaison, CN-712, Trenton, New Jersey 08625-0712.

10:72-6.3 Responsibility of the Division of Medical Assistance and Health Services

(a) Upon receipt of a properly completed Certification of Presumptive Eligibility (FD-334) from the qualified provider, Division staff shall:

1. (No change.)

2. Create an eligibility record on the Medicaid Eligibility File;

3.-4. (No change.)

10:72-6.4 Responsibility of the county welfare agency

(a) Upon receipt of the Certification of Presumptive Eligibility (FD-334) and a properly completed New Jersey Care Pregnant Women and Infants Application Referrals (FD-335) from the qualified provider, the county welfare agency shall:

1. Check the Medicaid and Medically Needy Eligibility File for existing Medicaid eligibility.

i.-iii. (No change.)

2.-3. (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Family Development Program, Exclusions from the Eligible Unit, Stepparents, AFDC-N Payment Standard Equalization

Adopted Amendments: N.J.A.C. 10:81-1.6, 1.11, 1.12, 2.1, 2.2, 2.4, 2.7, 2.8, 3.8, 3.9, 3.18, 3.19, 4.2, 4.23, 5.2, 5.7, 5.8, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 14.1, 14.18, 14.20 and 14.21

Proposed: June 15, 1992 at 24 N.J.R. 2147(a).

Adopted: August 25, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: August 25, 1992 as R.1992 d.366, **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. 44:10-3; 44:10-13; 44:10-1 et seq.; 30:4B-2; P.L. 1991, c.523, 525, 526 and 527.

Effective Date: September 21, 1992.

Operative Date: October 1, 1992.

Expiration Date: August 24, 1994.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on July 10, 1992 in the cities of Camden, East Orange, and Trenton. The hearing officers were David Heins, Assistant Director; Pearl Elias, Assistant Director; and Aletha Wright, Assistant Director, respectively. The hearing officers did not provide any recommendations. The hearing records may be reviewed by contacting Miguel Mendez, Administrative Practice Officer, Division of Family Development, CN 716, Trenton, N.J. 08625.

Summary of Public Comments and Agency Responses:

A list of commenters follows:

1. David Weiner, Communication Workers of America, Local 1081;
2. Michelle Joy Munsat, Esq., National Organization for Women;
3. Ann Saboe, Burlington County Welfare Board; and
4. Regina Purcell, New Jersey Catholic Conference.

The following comments pertain to the proposed amendments and to the proposal at 24 N.J.R. 2155(a), with respect to similar subject matter. Specifically, the comments pertain to revisions at: 1) N.J.A.C. 10:81-3.8(c) and N.J.A.C. 10:82-1.3, 1.4, 1.5, and 1.11, concerning the denial of incrementally increased benefits to an AFDC recipient family as a result of the birth of a child; and 2) N.J.A.C. 10:81-3.9(a) and N.J.A.C. 10:82-1.3(a)2, 1.4, 2.9 and 2.10 concerning procedures for non-needy stepparents marrying a natural or adoptive AFDC-C parent on or after October 1, 1992.

COMMENT: The commenter expressed support for the rules as proposed and indicated "... it's time to begin to remove the shackles of dependency and foster instead client responsibility and self-determination."

RESPONSE: The Department acknowledges support.

COMMENT: The commenter indicated that the above cited amendments are a "... racist and sexist attack on poor women, predominantly women of color, and an officious attempt by the State at social engineering."

RESPONSE: The Department does not concur with the observations of the commenter. The rules and the legislation upon which the amendments are based, are intended to encourage parental responsibility, promote the value of work and encourage the development of nuclear families through marriage. The rules are not intended nor should they be viewed as discriminatory, but rather a positive step forward in the evolution of public assistance programs which lead to self-reliance and self-determination.

COMMENT: The commenter indicated that the above cited amendments concerning denial of the incremental increase in AFDC benefits due to the birth of a child are likely to result in increased homelessness and foster care placements.

RESPONSE: It is not envisioned that eliminating the automatic entitlement to increased public assistance benefits as a result of the birth

of a child will result in homelessness and foster care placements. Rather, it is expected that these rules will foster parental responsibility by permitting public assistance recipients to deal with the same constraints faced by employed families where there is no automatic increase in salary when another child is born into the household. In addition, this amendment is part of a holistic approach to welfare reform which includes expanded education and participation in employment-directed activity, as well as establishment of a new State earned income disregard for families impacted by the cited amendments. It is because of these other enhancements that the increased homelessness and foster care placements are not expected.

COMMENT: The commenter indicated that above cited amendments concerning denial of the incremental increase in AFDC benefits due to the birth of a child are inappropriate when an AFDC recipient mother becomes pregnant because of rape, incest or failed birth control.

RESPONSE: The Department recognizes the need for individual exemptions from the rules in extraordinary circumstances, such as rape or incest. The Department will explore this area further and, if appropriate, issue additional guidance.

COMMENT: The commenter takes exception to the premise that the denial of incrementally increased AFDC benefits due to the birth of a child is offset by the State earned income provisions at N.J.A.C. 10:82-2.8(c). The commenter notes that the premise that a woman who has just given birth to a child can immediately start working to make up for the absence of increased AFDC benefits is not realistic, and also points out that New Jersey has a significant portion of its workforce unemployed. The commenter believes that if denial of increased benefits due to the birth of a child must be effected, a grace period after childbirth should be "... allowed for caring for the needs of a newborn child which will ensure the necessary bonding between mother and child."

RESPONSE: In accordance with enabling legislation, adult public assistance recipients must be held responsible for decisions which affect their family circumstances. These rules encourage that parental responsibility and promote the value of work. The Department does acknowledge that a period after childbirth for newborn care is necessary; however, it must be pointed out that the State earned income disregard is applicable to all employed eligible unit members, not just the mother.

COMMENT: The commenter takes exception to the concept that the new rules concerning stepparents marrying natural or adoptive AFDC parents will serve to stabilize and maintain the family unit.

RESPONSE: The Department disagrees. The need for a two-parent household with appropriate role models is well documented. Encouraging marriage without the attendant financial burden heretofore levied on stepparents who marry into an AFDC household will encourage and promote the expansion in the number of two-parent families. Such expansion can only lead to more children experiencing life in a stable home environment which, hopefully, they will carry forward to their own family life.

COMMENT: The commenter indicated the need for computer support to track cases impacted by all the above cited amendments.

RESPONSE: The Department acknowledges the need for computer support to track such cases and is proceeding accordingly.

COMMENT: The commenter takes exception to the concept that the new rules concerning stepparents marrying natural or adoptive AFDC parents may only be applied to marriages which take place on or after October 1, 1992. The commenter believes that all cases should be treated equally, regardless of the date of marriage.

RESPONSE: The Department does not concur with the observation, as the rules are based on the legislative intent of the law. The Department notes that any provision which allowed all cases to be treated equally, regardless of the date of the marriage, would require verification procedures which would not be cost-effective. Any specific date other than the operative date of the rules, would create inequities.

COMMENT: The commenter expressed concern that the rules concerning denial of the incremental increase in AFDC benefits due to the birth of a child and new rules concerning stepparents marrying natural or adoptive AFDC parents will result in "... quality control errors and only add to the workload of an Income Maintenance staff already overburdened by the increased caseload."

RESPONSE: The Department acknowledges that additional variables have been added to the processing of AFDC cases. It is the Department's belief, however, that the benefits to be derived through implementation of these amendments far outweigh any increase in errors and workload.

COMMENT: The commenter observes that the amendments concerning denial of the incremental increase in AFDC benefits due to the birth of a child will undermine and destroy families and coerce pregnant women into difficult decisions regarding supporting her family on limited available resources versus termination of pregnancy.

RESPONSE: It is the Department's position that the implementing law requires adult public assistance recipients be held responsible for decisions which affect their family circumstances. AFDC recipients are only being asked to make the same difficult decisions which self-sufficient employed families must also make.

Summary of Changes Between Proposal and Adoption:

As noted in the Summary of the concurrently proposed new rules pertaining to the Family Development Program (N.J.A.C. 10:86), which appeared at 24 N.J.R. 2161(a), implementation of these rules was subject to Federal approval of waivers of AFDC policies impacted. As such, they were subject to change dependent upon Federal criteria for approval. Accordingly, modification of the amendments at N.J.A.C. 10:81-3.8(c) and 3.9(a) was required, as indicated in the cited Summary, to establish a control group population for evaluation purposes, a Federally mandated condition for approval of the waiver (1) to remove automatic entitlement of incrementally increased AFDC benefits as a result of the birth of a child, and (2) to establish procedures for non-needy stepparents marrying a natural or adoptive AFDC-C parent on or after October 1, 1992. The amendments being included as part of this adoption provide that the identified provisions do not apply to AFDC families who have been randomly assigned to a control group for purposes of evaluation.

The language at N.J.A.C. 10:81-3.8(c)1 was added for clarification purposes, in order to ensure that AFDC recipient cases were correctly evaluated for eligibility purposes. The language clarifies that while a child may be excluded for purposes of determining the amount of cash assistance, he or she must still be included in the eligible unit for initial eligibility determinations and all other related benefits.

A technical amendment was made at N.J.A.C. 10:81-7.20(d) changing "EDP" to "FDP" to correct a printing error.

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

10:81-1.6 Confidential nature of information

(a) Information about applicants or recipients will be used or disclosed only for purposes directly connected with the administration of public assistance and related services which cannot be offered without such information.

1. Such safeguards shall not apply to the furnishing of recipient address information to State and local law enforcement officers attempting to locate a fugitive felon in accordance with the provisions at N.J.A.C. 10:81-7.31 and 7.32.

10:81-1.11 Income maintenance programs

(a) This manual describes policy for the income maintenance programs which are:

1.-2. (No change.)

3. The Family Development Program (FDP) coordinates services and emphasizes educational opportunities for all family members (including remedial education and tutoring programs, and access to higher educational opportunities) and fosters the economic achievement and self-sufficiency of families. In those counties operating an FDP program, participation in FDP is required of AFDC individuals who meet the criteria established at N.J.A.C. 10:86. The FDP brings together the existing social, health, and educational/vocational resources in the State and offers a one-stop approach to meeting an AFDC family's needs. In those counties operating under the FDP, references in this chapter to REACH/JOBS shall be interpreted as FDP (see N.J.A.C. 10:86).

4. (No change in text.)

(b) (No change.)

10:81-1.12 Other programs

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

1.-5. (No change.)

6. The Family Development Program (FDP) enhances New Jersey's JOBS program by promoting self reliance, offering intensified and coordinated services, emphasizing educational op-

portunities for all family members and by fostering economic achievement of families. The FDP brings together the existing social, health, and educational/vocational resources in the State and offers a one-stop approach to meeting an AFDC family's needs. The objective of the FDP is to enable public assistance recipients to secure permanent full-time unsubsidized jobs with wages and benefits that are adequate to support their families by ensuring that family members obtain the necessary educational skills and vocational training to secure those kinds of jobs, in addition to other health-related, social, educational and vocational services that may be necessary to assist the family. In those counties operating under the FDP, references in this chapter to REACH/JOBS shall be interpreted as FDP (see N.J.A.C. 10:86).

7. (No change in text.)

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

10:81-2.1 General provisions

(a) This subchapter describes briefly the steps followed by the income maintenance (IM) worker in determining an applicant's eligibility to receive public assistance. The objective of eligibility determination is to assist all eligible persons in qualifying for AFDC and participating in the Family Development Program (FDP) or Realizing Economic Achievement (REACH) program. Detailed information regarding eligibility factors is in N.J.A.C. 10:81-3, 10:81-14, N.J.A.C. 10:86 and N.J.A.C. 10:82.

(b)-(d) (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 orientation to the FDP or REACH program to each applicant for assistance in accordance with N.J.A.C. 10:86 or N.J.A.C. 10:81-14, respectively. The IM worker will determine the need for each individual to participate in FDP or REACH as a condition of eligibility for AFDC (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3). Further, the IM worker shall:

i. Determine if AFDC applicants or recipients are exempt from FDP or REACH participation in accordance with N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3(b);

ii. Refer AFDC applicants and recipients who do not meet the exemption criteria at N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3A to case management for initial FDP or 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. Perform other related functions concerning the FDP or REACH program as described in N.J.A.C. 10:86 or N.J.A.C. 10:81-14.

10:81-2.4 Eligibility for Aid to Families with Dependent Children (AFDC)

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

(f) Payment standards for persons eligible under the AFDC-C, -F and -N appear in schedule II or III, as appropriate, at N.J.A.C. 10:82-1.2(b).

10:81-2.7 Deprivation of parental support in AFDC-C

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

(c) Physical or mental incapacity of a parent shall be deemed to exist when both parents are in the home and one has a physical or mental defect, illness or impairment. The incapacity shall be supported by competent medical testimony and must be of such a nature as to reduce substantially or eliminate the parent's ability to support or care for the eligible child and be expected to last for at least 30 days:

1.-2. (No change.)

Recodify existing 4. through 6. as 3. through 5. (No change in text.)

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

10:81-2.8 FDP or REACH participation in AFDC-C, -F, and -N segments

(a) The IM worker has responsibility for determining each AFDC-C, -F and -N family member's need to participate in FDP or REACH (the AFDC work/training program) as a condition of eligibility for AFDC (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14), unless exempt. The FDP or REACH exemptions as described in N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3A will be explained to each applicant.

1. (No change.)

2. Those individuals not exempt from FDP or REACH shall be informed that they must participate in the FDP or REACH program (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3 and 14.8 for failure to participate in FDP or REACH).

i. The IM worker shall immediately refer all individuals who wish to volunteer for participation in FDP or REACH to case management.

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

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

2. Determine the participant status for FDP or REACH;

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

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

5. Establish FDP or REACH participant's target group category in accordance with N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3(j); and

6. Refer FDP or 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. 10:86 or 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.

10:81-3.8 Applicant in all segments

(a) The eligible unit shall be comprised of those family members who apply for and are eligible to receive public assistance. It shall include one or more eligible children unless such child is a recipient of SSI or is excluded from the eligible unit in accordance with (c) below.

1. (No change.)

(b) (No change.)

(c) ***The provisions in this subsection do not apply to AFDC families who have been randomly assigned to a control group for purposes of evaluation requirements pertaining to federally approved waivers.*** AFDC recipient parents shall not be entitled to incrementally increased AFDC benefits as a result of the birth of a child(ren). Any such child(ren) shall be excluded from the eligible unit, for cash assistance purposes only, until the requirement in (c)3 below applies. This provision is applicable to parents who have been in receipt of AFDC cash benefits for a period of one or more calendar months within 10 consecutive calendar months immediately preceding the birth of a child. This 10-month time frame is inclusive of any periods of ineligibility or case closure, either initiated on the part of the recipient or imposed by the county welfare agency, including the past-AFDC benefit periods for FDP or REACH/JOBS participation.

1. For families in receipt of assistance on October 1, 1992, a child born to the AFDC parent recipient on or after August 1, 1993 shall not be included in the eligible unit for the provision of AFDC cash assistance only, in accordance with (c) above. ***Such child shall, however, be included in the eligible unit for initial eligibility purposes as well as for the determination of all other categorically related benefits.***

2. For families which apply for AFDC benefits on or after October 1, 1992, the 10-month timeframe specified in (c) above shall be applied from the date of application. For example, if the date of application is November 12, 1992 and the case was determined

eligible for the benefits, any child born to that adult recipient on or after September 12, 1993 shall not be included in the eligible unit, for the provision of AFDC cash assistance only, in accordance with (a) above.

3. Beginning October 1, 1992, the 10-month timeframe addressed in (c) above shall be binding upon any family for any subsequent reapplications or reopenings of the case and any child(ren) born into that family shall not be included in the eligible unit, for cash assistance purposes only, until such time as (c)4 below applies.

i. Any child included in AFDC eligible unit who subsequently becomes a parent-minor and either establishes his or her own separate AFDC eligible unit or remains in the eligible unit of the parent or caretaker relative shall be entitled to the 10-month timeframe specified in (c) above from the date of the birth of the parent-minor's first child. The parent-minor's first newborn child shall, therefore, be entitled to AFDC cash assistance.

4. Beginning October 1, 1992, when a parent(s) reapplies for AFDC benefits and no member of the eligible unit has been in receipt of AFDC-C, -F or -N benefits for a minimum of 12 consecutive months immediately preceding the date of application, that family is eligible for a new 10-month grace period from the date of reapplication. In such situations, any child(ren) previously excluded from the eligible unit in accordance with (c) above shall now be included in the eligible unit for cash assistance purposes.

i. When an AFDC-C, -F or -N family becomes ineligible for AFDC for any of the reasons listed in (c)4i(1) through (3) below, remains employed for a minimum of 90 days therafter and subsequently reapplies for AFDC prior to expiration of the 12 consecutive month period in (c)4 above due to the loss of employment through no fault of their own, any child(ren) previously excluded from the eligible unit in accordance with (c) above shall now be included in the eligible unit for cash assistance purposes. Such families, however, are not entitled to a new 10-month grace period and any child(ren) born subsequent to the reapplication shall not be included in the eligible unit as set forth in (c)3 above.

(1) Earnings or increased earnings from employment, including earnings from new employment;

(2) Loss of the $30.00 or one-third disregards of earned income (see N.J.A.C. 10:82-4) because of the time-limited application of those disregards; or

(3) Increased hours of employment.

Recodify existing (c) through (e) as (d) through (f) (No change in text.)

10:81-3.9 Applicant in AFDC-C and -F

(a) AFDC-C: The term applicant in AFDC-C refers to the parent(s) or parent-person(s) who makes an affirmative decision to apply for financial assistance or, when the applicant is incapacitated or alleged incompetent, someone acting responsibly for him or her (see N.J.A.C. 10:81-2.3(b)1) in order to maintain and provide for one or more dependent children of eligible age who are in his or her care or custody. It shall also include the stepparent when the natural or adoptive parent designates the stepparent as an individual whose presence in the home is essential to his or her well being and elects that such person shall be included (see N.J.A.C. 10:82-2.9). If the AFDC-C recipient parent marries a non-needy individual on or after October 1, 1992 and the provisions of N.J.A.C. 10:82-2.10 apply, the AFDC-C recipient natural or adoptive parent, the stepparent and that stepparent's own natural or adoptive child(ren) shall be excluded from the eligible unit ***, unless the family has been randomly assigned to a control group for purposes of evaluation***.

1.-5. (No change.)

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

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

(a) (No change.)

(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.-3. (No change.)

4. The principal earner will participate or apply for participation in FDP or 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 FDP or REACH Program, unless exempt (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14) or, is exempt at the time due to the reason of remoteness and refuses to register with the State Employment Service, the principal earner and the second parent (if that individual does not participate in FDP or 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. 10:86 or N.J.A.C. 10:81-14.8.

5. (No change.)

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

i. (No change.)

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 FDP or REACH) ineligible for assistance; and

7. The principal earner has six or more quarters of work (as described in (b)7i below), no more than four of which may be quarters of work over his or her lifetime as defined in (b)7i(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)-(3) (No change.)

(4) The individual participated in the Community Work Experience Program, WIN (Work Incentive Program) or the Job Opportunities and Basic Skills Training Program (JOBS/REACH or FDP in New Jersey).

(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 FDP or REACH at N.J.A.C. 10:86 or 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. 10:86 or 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.-ii. (No change.)

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. 10:86 or 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 FDP or 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. 10:86 or N.J.A.C. 10:81-14.8.

3. If the applicant or recipient principal earner in an AFDC-N segment is exempt from FDP or REACH participation due to the reason of remoteness as set forth at N.J.A.C. 10:86 or 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 FDP or REACH) by the CWA as set forth at N.J.A.C. 10:86 or 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 FDP or 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 FDP or REACH unless otherwise exempt.

10:81-3.19 Employment and training requirements

(a) FDP or REACH/JOBS requirement: Each individual who does not satisfy exemption criteria for either FDP or REACH/JOBS set forth at N.J.A.C. 10:86 or N.J.A.C. 10:81-14.3A shall participate in one of those respective programs to satisfy the AFDC work and training requirements. If, because of Federal AFDC requirements which prohibit payment of a cash assistance benefit of $10.00 or less, the individual is eligible for only Medicaid, that individual shall participate in FDP or REACH/JOBS unless exempt. If an individual applies for only Medicaid with no request for AFDC cash assistance (that is, the Medicaid eligibility is determined based on AFDC financial eligibility criteria), then the individual is not required to participate in FDP or REACH/JOBS.

(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. Similar information for FDP is set forth in N.J.A.C. 10:86.

(c) Penalties for failure to participate in FDP or REACH: If a mandatory individual fails to participate in FDP or REACH, the penalties set forth at N.J.A.C. 10:86 or N.J.A.C. 10:81-14.8(i) and (j) shall apply. Any appeals resulting from failure to participate in FDP or 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 FDP or 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 FDP or REACH participation:

1. (No change.)

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

3. If the principal earner refuses or fails to participate in FDP or REACH, as appropriate, the penalty specified in N.J.A.C. 10:86 or N.J.A.C. 10:81-14.8(i) shall be imposed.

4. When the principal earner is participating in FDP or REACH, the other parent shall be exempt from participation in FDP or REACH for the reason set forth in N.J.A.C. 10:86 or 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 FDP or REACH may request a fair hearing (see N.J.A.C. 10:81-6 and 14.7).

(f) Voluntary participation in FDP or REACH: "volunteers in FDP or REACH" are defined as those individuals who meet the FDP Education and Employment Directed Activities (EEDA) Component or REACH exemption criteria at N.J.A.C. 10:86-3 or N.J.A.C. 10:81-14.3A and decide to participate in FDP or 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 FDP or REACH and of their right to stop participation at any time without loss of assistance payments. During county phase-in to the FDP, that individual who voluntarily agrees to participate in FDP and who is not a member of a required county phase-in group shall be treated as FDP mandatory, unless the individual satisfies FDP exemption criteria. If that individual is found to be exempt from FDP and decides to participate, then the individual is a "volunteer in FDP".

1. If an exempt individual "volunteers" to participate in FDP/EEDA or REACH, he or she is not subject to sanctioning due to nonparticipation (see N.J.A.C. 10:86-8 or N.J.A.C. 10:81-14.8).

i. In determining the priority of participation within the FDP or REACH target populations (see N.J.A.C. 10:86-3 or 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 FDP or REACH" stops participation in FDP/EEDA or 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 FDP or REACH mandatory.

(g) Individuals exempt from FDP/EEDA or 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 State only 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 FDP or REACH participant fails to appear for a scheduled evaluation interview with case management or for assessment with the appropriate county entity, 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 reduce the assistance payments by a reduction in the benefits in accordance with N.J.A.C. 10:86-8 or to remove the needs of that individual, in accordance with N.J.A.C. 10:81-14.8, subject to Title IV-A notice requirements.

10:81-4.2 Federal participation in AFDC-C, -F and -N

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

(f) Criteria used for determining Federal matching in the AFDC-N segment is based upon the principal earner of the family not meeting the employment requirements as set forth at N.J.A.C. 10:81-3.18.

10:81-4.23 Basis for recovery of overpayments

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

(d) Procedures to recover any overpayments of FDP or REACH child care benefits, post-AFDC child care benefits and FDP or REACH transportation and related supportive service payments made to a FDP or REACH participant or service provider are set forth at N.J.A.C. 10:86 or N.J.A.C. 10:81-14.24(b) and (c), respectively.

10:81-5.2 Requirements for periodic redetermination

(a) (No change.)

(b) Frequency of redetermination: For recipients of AFDC, all factors of eligibility shall be redetermined at least every six months except for cases covered by an approved error-prone profiling system.

1. (No change in text.)

(c) Face-to-face redetermination: Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once every 12 months. A face-to-face redetermination is conducted once in every six months for cases not in error-prone profiling.

(d) (No change.)

10:81-5.7 Marriage or remarriage

In AFDC-C, when eligibility is based on the absence of one parent and the remaining parent marries or remarries, such marriage or remarriage does not in and of itself terminate eligibility but does

require prompt redetermination of financial need and eligible unit composition in accordance with N.J.A.C. 10:82-2.9 or 2.10, as applicable.

10:81-5.8 Special condition relating to parent(s) in AFDC-F and -N

(a)-(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 no later than the effective date of action when:

1.-7. (No change.)

Recodify existing 9. through 11. as 8. through 10. (No change in text.)

11. 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 FDP or REACH child care benefits are not subject to timely notice requirements unless they result in a discontinuance, suspension, reduction or termination of benefits, or they force a change in child care arrangements (see N.J.A.C. 10:86-10 or 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 FDP or REACH child care and supportive service benefits, benefits shall be received as follows until a written decision is rendered:

1. If the individual has been receiving FDP or REACH child care or transportation benefits and is awaiting a hearing because such benefits were reduced, the individual is not entitled to receive FDP or 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 FDP or REACH supportive service benefit, as delineated at N.J.A.C. 10:86-9 and 10 or N.J.A.C. 10:81-14.18 and 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 FDP or 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 FDP or REACH child care benefit received and is awaiting a hearing, he or she shall continue to receive the FDP or 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 FDP or 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, social services and FDP or REACH case management services

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

(c) FDP or REACH case management services are those activities directed toward fulfilling the education/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 FDP pursuant to the Laws of New Jersey, P.L. 1991, c.523 or REACH program. FDP or REACH case management assists individuals by providing evaluation for FDP or REACH, making referrals to the county assessment entity, in completing FDP or REACH family plans or employability plans and agreements, in obtaining necessary supportive services for participation in FDP or REACH and in monitoring the individual and other family members during FDP or REACH participation.

(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 *[EDP]* **FDP** or REACH participation. The 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 FDP or REACH referral. The units will share information adequately to fulfill these requirements.

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

i.-iii. (No change.)

iv. FDP or REACH program (see N.J.A.C. 10:86 or N.J.A.C. 10:81-14);

v.-vi. (No change.)

2.-3. (No change.)

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

i. FDP or REACH exemption status;

ii. FDP or REACH target group assignment;

iii. (No change.)

iv. Sanctions of individuals for noncooperation in FDP or REACH;

v.-vi. (No change.)

10:81-8.22 Persons eligible for medical assistance

(a) All children and their parents or needy parent-persons who are eligible for AFDC money payments (-C, -F and -N segments), or no money payments due to the provisions of N.J.A.C. 10:82-1.11, are eligible for Medicaid benefits. If an eligible unit chooses not to receive a money payment, members are eligible for Medicaid Only. Medicaid coverage commences with the date that eligibility is established.

1. When a family becomes ineligible for AFDC cash assistance due to the deeming of income from a sibling(s) or stepparent, or the deeming of an alien's sponsor's income and resources, the Medicaid eligibility of the other eligible family members shall be determined without consideration of the deemed income or resources. Any child eligible for AFDC as a result of the provisions of N.J.A.C. 10:82-2.10 shall also be eligible for Medicaid.

2. (No change.)

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection unless such families fall within the provisions of N.J.A.C. 10:86-11, the Family Development Program, in which case Medicaid eligibility continues for a period of 24 months beginning with the month in which the family is no longer eligible for AFDC.

1. (No change.)

2. New members added to the eligible family during the 12 month extension period, or 24 month FDP extension period, as appropriate, are not included under the extended coverage with the exception of a child born to the family during the 12 or 24 month extension period. For children born during this period, the child and the mother may be eligible for additional coverage if the 60-day postpartum period continues beyond the termination of the extension period applicable to the remainder of the household, or if the child's 12-month guaranteed period of Medicaid eligibility continues beyond that termination date (see N.J.A.C. 10:81-8.22(e)). In either case, Medicaid eligibility terminates at the end of the guaranteed eligibility period, if that termination date is later than the termination date of the 12 or 24 month Medicaid extension.

3.-4. (No change.)

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

10:81-8.24 Determination of eligibility; Medicaid Special

(a) All appropriate regulations in the Assistance Standards Handbook regarding income shall apply in determining financial eligibility. Requirements related to the FDP or 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.

...

"FDP" means Family Development Program. The FDP replaces REACH/JOBS and the General Assistance Employability Program (GAEP) as the education/work/training program for AFDC and GA respectively when a county implements FDP. The FDP is New Jersey's initiative to help public assistance individuals and families overcome barriers to employment to become members of the productive work force employed in full-time unsubsidized jobs with wages and benefits at adequate levels to support themselves and their families.

...

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

...

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 and N.J.A.C. 10:82, 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- or N.J.A.C. 10:82, with the exception of N.J.A.C. 10:86, The Family Development Program Manual, such material is superseded by this subchapter.

2.-3. (No change.)

4. The FDP will be phased into the respective counties of the State on a schedule developed by the Division of Economic Assistance (DEA), Department of Human Services. FDP participation requirements shall apply to AFDC applicants and recipients in accordance with that schedule. Rules in N.J.A.C. 10:86 shall supersede any contradictory or conflicting rules or policies established at N.J.A.C. 10:81 or 10:82.

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

10:18-14.18 REACH/JOBS support services: child care

(a) 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. 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 participate 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 based on the individual needs of each family.

i. REACH child care benefits and post-AFDC child care benefits are guaranteed for the following children:

(1) (No change.)

(2) A child age 13 or older, as determined on a case by case basis, due to extenuating circumstances (for example, environmental conditions or maturity level of child), which shall be documented in the case record, through State funds only;

(3) 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; and

(4) A child who meets the requirements of (a)1i(1), (2) or (3) above but who is excluded from the eligible unit for cash assistance purposes in accordance with N.J.A.C. 10:81-3.8(c) and who would otherwise be a dependent child.

ii. (No change.)

2.-7. (No change.)

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

(e) Post-AFDC child care pertains to child care available to families whose eligibility for AFDC has ceased due to increased earnings, increased hours of employment (including new employment) which result in increased earnings, or as a result of the loss of earned income disregards due to the expiration of time limits at N.J.A.C. 10:82-4.

1. Availability of post-AFDC child care: Post-AFDC child care is available to the extent that post-AFDC child care is necessary to permit a member of an AFDC family to accept or retain employment.

i.-ii. (No change.)

iii. Post-AFDC child care is available for a child who meets the requirements of (e)1i or ii above but who is excluded from the eligible unit for cash assistance purposes in accordance with N.J.A.C. 10:81-3.8(c) and who would otherwise be a dependent child.

2.-9. (No change.)

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

10:81-14.20 REACH/JOBS support services: medical assistance

(a) Post-assistance Medicaid coverage: When an AFDC-C, -F or -N family 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, unless such family falls within the provisions of N.J.A.C. 10:86, the Family Development Program.

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

10:81-14.21 Need and amount of assistance in REACH

(a) General: Determination of need and amount of assistance for REACH participants shall be made in accordance with established regulations and policy at N.J.A.C. 10:81 and N.J.A.C. 10:82, with the exceptions set forth below.

(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 (b)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, 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 based on the eligible family size.

2. Prospective needs test: In determining prospective need 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 payment standard at N.J.A.C. 10:82-1.2, Schedule II, for the eligible family size to determine if the family is prospectively eligible.

3. Determination of calculated earned income—AFDC-C, -F and -N: In determining the calculated earned income for the AFDC-C, -F and -N 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 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, or for the Federal and State disregards as set forth at N.J.A.C. 10:82-2.8 and 4.4.

4. If a child(ren) is born to the participant and the provisions of N.J.A.C. 10:82-1.11 are applicable, then the participant shall have the option of having income budgeted in accordance with N.J.A.C. 10:86-5.8(a) and 10:81-14.21(b) or may have the earned income disregards applied as set forth at N.J.A.C. 10:82-2.8 and 4.4.

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

(a)

DIVISION OF FAMILY DEVELOPMENT

Assistance Standards Handbook
Stepparents, Exclusions from the Eligible Unit, State Earned Income Disregard
Adopted Amendments: N.J.A.C. 10:82-1.2, 1.3, 1.4, 1.5, 2.7, 2.8, 2.9, 2.11, 4.4 and 4.8
Adopted New Rules: N.J.A.C. 10:82-1.11 and 2.10

Proposed: June 15, 1992 at 24 N.J.R. 2155(a).
Adopted: August 25, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: August 25, 1992 as R.1992 d.367, **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. 44:10-3; 30:4B-2; P.L. 1991, c.525 and 526.

Effective Date: September 21, 1992;
Operative Date: October 1, 1992.
Expiration Date: August 24, 1994.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on July 10, 1992 in the cities of Camden, East Orange, and Trenton. The hearing officers were David Heins, Assistant Director; Pearl Elias, Assistant Director; and Aletha Wright, Assistant Director, respectively. The hearing officers did not provide any recommendations. The hearing records may be reviewed by contacting the Division's Administrative Practice Officer, Miguel Mendez, at the Division of Family Development, CN 716, Trenton, NJ 08625.

Summary of Public Comments and Agency Responses:

A list of commenters follows:

1. David Weiner, Communication Workers of America, Local 1081;
2. Michelle Joy Munsat, Esq., National Organization for Women;
3. Ann Saboe, Burlington County Welfare Board;
4. Patricia Bogert, Bergen County Board of Social Services; and
5. Regina Purcell, New Jersey Catholic Conference

The following comments pertain to the proposed amendments and to the proposal at 24 N.J.R. 2147(a) with respect to similar subject matters. Specifically, the comments pertain to revisions at: 1) N.J.A.C. 10:81-3.8(c) and N.J.A.C. 10:82-1.3, 1.4, 1.5, and 1.11 concerning the denial of incrementally increased benefits to an AFDC recipient family as a result of the birth of a child; and 2) N.J.A.C. 10:81-3.9(a) and N.J.A.C. 10:82-1.3(a)2, 1.4, 2.9 and 2.10, concerning procedures for non-needy stepparents marrying a natural or adoptive AFDC-C parent on or after October 1, 1992.

COMMENT: The commenter expressed support for the rules as proposed and indicated "... it's time to begin to remove the shackles of dependency and foster instead client responsibility and self-determination."

RESPONSE: The Department acknowledges support.

COMMENT: The commenter indicated that the above cited amendments are "... racist and sexist attack on poor women, predominantly women of color, and an officious attempt by the State at social engineering."

RESPONSE: The Department does not concur with the observations of the commenter. The rules and the legislation upon which the amendments are based are intended to encourage parental responsibility, promote the value of work and encourage the development of nuclear families through marriage. The rules are not intended, nor should they be viewed, as discriminatory, but rather as a positive step forward in the evolution of public assistance programs which lead to self-reliance and self-determination.

COMMENT: The commenter indicated that the above cited amendments concerning denial of the incremental increase in AFDC benefits due to the birth of a child are likely to result in increased homelessness and foster care placements.

RESPONSE: It is not envisioned that eliminating the automatic entitlement to increased public assistance benefits as a result of the birth of a child will result in homelessness and foster care placements. Rather, it is expected that these rules will foster parental responsibility by permitting public assistance recipients to deal with the same constraints faced by employed families where there is no automatic increase in salary when another child is born into the household. In addition, this amendment is part of a holistic approach to welfare reform which includes expanded education and employment-directed activity participation and establishment of a new State earned income disregard for families impacted by the cited amendments. It is because of these other enhancements that the increased homelessness and foster care placements are not expected.

COMMENT: The commenter indicated that above cited amendments concerning denial of the incremental increase in AFDC benefits due to the birth of a child are inappropriate when an AFDC recipient mother becomes pregnant because of rape, incest or failed birth control.

RESPONSE: The Department recognizes the need for individual exemptions from the rules in extraordinary circumstances such as rape or incest. The Department will explore this area further and, if appropriate, issue additional guidance.

COMMENT: The commenter takes exception to the premise that the denial of incrementally increased AFDC benefits due to the birth of a child is offset by the State earned income provisions at N.J.A.C. 10:82-2.8(c). The commenter notes that the premise that a woman who has just given birth to a child can immediately start working to make up for the absence of increased AFDC benefits is not realistic, and also points out that New Jersey has a significant portion of its workforce unemployed. The commenter believes that if denial of increased benefits due to the birth of a child must be effected, a grace period after childbirth should be "... allowed for caring for the needs of a newborn child which will ensure the necessary bonding between mother and child."

RESPONSE: In accordance with enabling legislation, adult public assistance recipients must be held responsible for decisions which affect their family circumstances. These rules encourage that parental responsibility and promote the value of work. The Department does acknowledge that a period after childbirth for newborn care is necessary, however, it must be pointed out that the State earned income disregard is applicable to all employed eligible unit members, not just the mother.

COMMENT: The commenter takes exception to the concept that the new rules concerning stepparents marrying natural or adoptive AFDC parents will serve to stabilize and maintain the family unit.

RESPONSE: The Department disagrees. The need for a two-parent household with appropriate role models is well documented. Encouraging marriage without the attendant financial burden heretofore levied on stepparents who marry into an AFDC household will encourage and promote the expansion in the number of two-parent families. Such expansion can only lead to more children experiencing life in a stable home environment which hopefully they will carry forward to their own family life.

COMMENT: The commenter indicated the need for computer support to track cases impacted by all the above cited amendments.

RESPONSE: The Department acknowledges the need for computer support to track such cases and is proceeding accordingly.

COMMENT: The commenter takes exception to the concept that the new rules concerning stepparents marrying natural or adoptive AFDC parents may only be applied to marriages which take place on or after October 1, 1992. The commenter believes that all cases should be treated equally, regardless of the date of marriage.

RESPONSE: The Department does not concur with the observation, as the rules are based on the legislative intent of the law. The Department believes that equity is better served by the provisions as proposed. Additionally, the necessary verification of marriages, going back indefinitely in time, would not be cost-effective.

COMMENT: The commenter expressed concern that the rules concerning denial of the incremental increase in AFDC benefits due to the birth of a child and new rules concerning stepparents marrying natural or adoptive AFDC parents will result in "... quality control errors and only add to the workload of an Income Maintenance staff already overburdened by the increased caseload."

RESPONSE: The Department acknowledges that additional variables have been added to the processing of AFDC cases. It is the Department's belief, however, that the benefits to be derived through implementation of these amendments far outweigh any increase in errors and workload.

COMMENT: The commenter makes specific reference to the rules at N.J.A.C. 10:82-2.10 and 2.11 concerning stepparents marrying natural or adoptive AFDC parents on or after October 1, 1992 and Medicaid eligibility. The commenter questioned whether the natural parent excluded from the eligible unit when total family income is below Schedule

VII is considered part of the eligible unit for Medicaid purposes when total family income exceeds Schedule VII.

RESPONSE: The Department acknowledges that under current Medicaid provisions, a natural parent and his or her children may be eligible for Medicaid benefits even though no family member is eligible for cash assistance under the AFDC program. This occurs because deeming of the stepparent's income to the natural parent and his or her children is not applicable under Title XIX for only Medicaid purposes.

COMMENT: The commenter observed that the reference to Schedule III, concerning countable income, in N.J.A.C. 10:82-2.10(e)3 appears to be inappropriate inasmuch as countable income is not displayed in Schedule III.

RESPONSE: The Department agrees with the commenter's observation and the appropriate amendment, that is, deletion of reference to Schedule III, effected.

COMMENT: The commenter observes that the amendments concerning denial of the incremental increase in AFDC benefits due to the birth of a child will undermine and destroy families and coerce pregnant women into difficult decisions regarding supporting her family on limited available resources versus termination of pregnancy.

RESPONSE: It is the Department's position that the implementing law requires adult public assistance recipients be held responsible for decisions which affect their family circumstances. AFDC recipients are only being asked to make the same difficult decisions which self-sufficient employed families must also make.

Summary of Changes Between Proposal and Adoption:

As noted in the Summary of the concurrently proposed new rules pertaining to the Family Development Program (N.J.A.C. 10:86), which appeared at 24 N.J.R. 2161(a), implementation of these rules was subject to Federal approval of waivers of AFDC policies impacted. As such, they were subject to change dependent upon Federal criteria for approval. Accordingly, modification of the amendments at N.J.A.C. 10:82-1.2(a)4, 1.3(a)1 and 2, 1.3(d), 1.4(a)1 and 2, 1.4(d), 1.5(b), 1.11(a), 2.7(a)2 and 2.10(a) were required, as indicated in the cited Summary, to establish a control group population for evaluation purposes, a Federally mandated condition for approval of the waiver 1) to remove automatic entitlement of incrementally increased AFDC benefits as a result of the birth of a child, and 2) to establish procedures for non-needy stepparents marrying a natural or adoptive AFDC-C parent on or after October 1, 1992. The amendments being included as part of this adoption provide that the identified provisions do not apply to AFDC families who have been randomly assigned to a control group for purposes of evaluation.

The language at N.J.A.C. 10:82-2.7(a)1i was revised for clarification purposes in order to ensure that AFDC recipient cases were correctly evaluated for initial eligibility purposes. The language clarifies that while a child may be excluded for purposes of determining the amount of cash assistance, he or she must be included in the eligible unit for initial eligibility determinations.

A technical amendment was made at N.J.A.C. 10:82-1.5(b) to correct a typographical error (that is, deletion of the redundant word "only").

N.J.A.C. 10:82-2.10(e)3 is being amended to delete an incorrect reference to Schedule III.

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

10:82-1.2 Income limits and assistance payment standards

(a) AFDC eligibility shall not exist for any month if the total income of the eligible unit exceeds the amount indicated in Schedule I for the appropriate eligible unit size. For this purpose, total income shall include all income of the eligible unit (without benefit of the disregards in N.J.A.C. 10:82-4.4 or 4.5) including the income of stepparents (exception: see (a)4 below concerning non-needy stepparents who marry an AFDC-C recipient parent on or after October 1, 1992) and alien sponsors determined available to the eligible unit in N.J.A.C. 10:82-2.9 and 3.13. Total income includes the earned income of the AFDC children except for earnings disregarded by provisions of N.J.A.C. 10:82-4.7(g). Child support payments, except for the first $50.00 monthly current child support received on behalf of the eligible unit, whether received directly by the household or collected through the Child Support and Paternity (CSP) process, shall be counted in the determination of total income. See N.J.A.C. 10:82-2.13(f) for companion cases.

1.-3. (No change.)

4. ***The provisions in this paragraph do not apply to AFDC families who have been randomly assigned to a control group for purposes of evaluation requirements pertaining to Federally approved waivers.*** If a natural or adoptive AFDC-C recipient parent marries a non-needy individual who is not the natural or adoptive parent of one or more of the recipient parent's children on or after October 1, 1992, the stepparent, the stepparent's natural or adoptive children and the AFDC-C recipient parent shall be excluded from the eligible unit. Eligibility for the AFDC children shall be established in accordance with the regulations at N.J.A.C. 10:82-2.10 and Schedule VII, Maximum Income Limits for Non-Needy Stepparents Marrying AFDC-C Recipient Parents on or after October 1, 1992.

(b)-(g) (No change.)

10:82-1.3 Eligible unit; all segments

(a) The eligible unit shall be comprised of those family members who apply for and are eligible to receive public assistance. It shall include one or more eligible children unless such child is a recipient of SSI benefits.

1. The eligible unit for AFDC-C or -F shall include any blood-related or adoptive brothers and/**or** sisters living in the same household and who are otherwise eligible for AFDC-C or -F. This requirement does not apply to stepbrothers and stepsisters, in circumstances in which assistance is sought for -N segment children only, or to a child(ren) excluded in accordance with N.J.A.C. 10:82-1.11***, unless the family has been randomly assigned to a control group for purposes of evaluation****.

2. A stepparent of the children for whom assistance is sought may be included in the eligible unit if the provisions of N.J.A.C. 10:82-2.9 apply. If the non-needy stepparent marries the AFDC-C recipient parent on or after October 1, 1992 and the provisions of N.J.A.C. 10:82-2.10 apply, the stepparent and his or her natural or adoptive children, as well as the natural or adoptive AFDC-C recipient parent shall be excluded from the eligible unit***, unless the family has been randomly assigned to a control group for purposes of evaluation****.

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

(d) The eligible unit shall include the parent(s) and/or needy parent-person(s) with whom the eligible children live, unless such parent has incurred a penalty of ineligibility (see N.J.A.C. 10:82-2.4), is an SSI recipient, is an illegal alien (see N.J.A.C. 10:81-3.9(c)) or ***, unless the family has been randomly assigned to a control group for purposes of evaluation,*** is an AFDC-C recipient parent who marries on or after October 1, 1992 and is excluded from AFDC eligibility in accordance with the provisions of N.J.A.C. 10:82-2.10.

10:82-1.4 Eligible unit; AFDC-C and -F segments

(a) The AFDC-C segment shall include:

1. The natural or adoptive parent(s) of one or more of the eligible child(ren) unless the AFDC-C recipient parent marries on or after October 1, 1992 and is excluded from AFDC eligibility in accordance with the provisions of N.J.A.C. 10:82-2.10 ***(the provisions of N.J.A.C. 10:82-2.10 do not apply if the family has been randomly assigned to a control group for purposes of evaluation)****;

2. The stepparent (the spouse of a natural or adoptive parent) of the children for whom assistance is sought may be included in the eligible unit if the provisions of N.J.A.C. 10:82-2.9 apply. If a non-needy stepparent marries the AFDC-C recipient parent on or after October 1, 1992 and the provisions of N.J.A.C. 10:82-2.10 apply, the stepparent, the stepparent's natural or adoptive children as well as the natural or adoptive parent of the AFDC-C recipient children are excluded from the eligible unit***, unless the family has been randomly assigned to a control group for purposes of evaluation****;

3.-4. (No change.)

(b) (No change.)

(c) A child not meeting AFDC age requirements is not eligible for AFDC-C or -F and shall not be included in the eligible unit. For determination of Medicaid eligibility for such children under the age of 21, see N.J.A.C. 10:82-2.11.

(d) ***Unless the family has been randomly assigned to a control group for purposes of evaluation,*** *[A]* ***a*** child born to an AFDC-C, -F or -N family in accordance with the provisions of N.J.A.C. 10:82-1.11 shall not be included in the eligible unit. (See N.J.A.C. 10:82-2.11(g) concerning Medicaid eligibility.)

Recodify (d)-(e) as (e)-(f). (No change in text.)

10:82-1.5 Eligible unit; AFDC-N segment

(a) (No change.)

(b) ***Unless the family has been randomly assigned to a control group for purposes of evaluation,*** *[Any]* ***any*** child(ren) to whom the provisions of N.J.A.C. 10:82-1.11 apply shall not be included in the eligible unit *[only]* for purposes of AFDC cash assistance only.

(c) (No change in text.)

10:82-1.11 AFDC eligible family on assistance on or after October 1, 1992 with newborn child(ren)

(a) ***The provisions in this section do not apply to AFDC families who have been randomly assigned to a control group for purposes of evaluation requirements pertaining to Federally approved waivers.*** Adult AFDC recipient parents shall not be entitled to incrementally increased AFDC benefits as a result of the birth of a child(ren). Any such child(ren) shall be excluded from the eligible unit, for cash assistance purposes only, until the requirement in (c) below applies. This provision is applicable to adults who have been in receipt of AFDC cash benefits for a period of one or more calendar months within 10 consecutive calendar months immediately preceding the birth of a child. This 10-month timeframe is inclusive of any periods of ineligibility or case closure, either initiated on the part of the recipient or imposed by the county welfare agency including the post-AFDC benefit period for REACH/JOBS or FDP participation.

1. For families in receipt of assistance on October 1, 1992, a child born to the AFDC adult recipient on or after August 1, 1993 shall not be included in the eligible unit for the provision of AFDC cash assistance only, in accordance with (a) above.

2. For families who apply for AFDC benefits on or after October 1, 1992, the 10-month timeframe specified in (a) above shall be applied from the date of application. For example, if the date of application is November 12, 1992 and the case was determined eligible for benefits, any child born to that adult recipient on or after September 12, 1993 shall not be included in the eligible unit for the provision of AFDC cash assistance only, in accordance with (a) above.

3. Any child excluded from the AFDC eligible unit in accordance with the provisions of (a) above shall be categorically eligible for Medicaid benefits.

(b) Beginning October 1, 1992, the 10-month timeframe addressed in (a) above shall be binding upon any family for any subsequent reapplications or reopenings of the case and a family shall not be entitled to an increased benefit allowance for the birth of any child(ren) until such time as (c) below applies.

1. Any child included in the AFDC eligible unit who subsequently becomes a parent-minor and either establishes his or her own separate AFDC eligible unit or remains in the eligible unit of the parent or caretaker relative shall be entitled to the 10-month timeframe specified in (a) above from the date of the birth of the parent-minor's first child. The parent-minor's first newborn child shall, therefore, be entitled to AFDC cash assistance.

(c) Beginning October 1, 1992, when an adult parent(s) reapplies for AFDC benefits and no member of the eligible unit has been in receipt of AFDC-C, -F or -N benefits for a minimum of 12 consecutive months immediately preceding the date of application, that family is eligible for a new 10-month grace period from the date of reapplication. In such situation, any child(ren) previously excluded from the eligible unit in accordance with (a) above shall now be included in the eligible unit for cash assistance purposes.

1. When an AFDC-C, -F or -N family becomes ineligible for AFDC for any of the reasons listed in (c)1i through iii below, remains employed for a minimum of 90 days, and subsequently reapplies for AFDC prior to expiration of the 12 consecutive month period in (c) above due to the loss of employment through no fault of their own, any child(ren) previously excluded from the eligible unit in accordance with (a) above shall now be included in the eligible unit for cash assistance purposes. Such families, however, are not entitled to a new 10-month grace period and any child(ren) born subsequent to the reapplication shall not be included in the eligible unit as set forth in (b) above.

i. Earnings or increased earnings from employment, including earnings from new employment;

ii. Loss of the $30.00 or one-third disregards of earned income (see N.J.A.C. 10:82-4) because of the time-limited application of those disregards; or

iii. Increased hours of employment.

(d) AFDC adult recipient parents whose child(ren) is excluded from the eligible unit in accordance with (a) above, shall have deducted from the monthly earned income of each employed person in that family the additional State earned income disregard specified in N.J.A.C. 10:82-2.8(c).

10:82-2.7 Initial eligibility; AFDC-C, -F and -N procedures

(a) The procedures regarding initial income eligibility are:

1. (No change.)

i. A child(ren) born to an AFDC recipient family to which the provisions of N.J.A.C. 10:82-1.11 apply shall be included in the eligible unit for purposes of the initial eligibility determination.

2. Determine the total monthly income (including gross earned income) available to the eligible unit and compare it to the maximum income level in N.J.A.C. 10:82-1.2(a). (Exception: For a non-needy stepparent who marries an AFDC-C recipient parent on or after October 1, 1992, ***unless the family has been randomly assigned to a control group for purposes of evaluation,*** eligibility for the AFDC children shall be determined in accordance with the regulations at N.J.A.C. 10:82-2.10.) If total income equals or is less than the maximum for the appropriate eligible unit size, maximum income eligibility has been established and the grant amount shall be determined in accordance with N.J.A.C. 10:82-2.8. If total income exceeds the appropriate maximum for any month, the family is not eligible for assistance.

10:82-2.8 Determination of calculated earned income: AFDC-C, -F and -N procedures

(a) From the total gross earnings of each employed person in the AFDC-C, -F and -N segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3) and proceed as follows:

1.-4. (No change.)

5. If applicable, deduct from the monthly earned income of each employed person in that family the State earned income disregard, which shall be determined in accordance with N.J.A.C. 10:82-2.8(c).

(b) (No change.)

(c) Each employed person residing in a family in which a child is excluded from the eligible unit in accordance with N.J.A.C. 10:82-1.11 shall have deducted from his or her monthly earned income the additional State earned income disregard specified below.

1. The State earned income disregard is equal to the sum total of the applicable Federal disregards determined in accordance with (a)1 through 4 above, subtracted from 50 percent of the payment standard indicated in Schedule II for the appropriate eligible unit size. The State earned income disregard shall be recalculated periodically whenever the Federal disregards change as illustrated in (c)1i(1) through (3) below. Eligible unit size shall include, for purposes of developing the State earned income disregard, all members of the AFDC eligible unit plus the child(ren) excluded in accordance with N.J.A.C. 10:82-1.11.

i. To illustrate the procedure addressed in (c)1 above, if the AFDC household consists of three AFDC recipients and one child

excluded pursuant to N.J.A.C. 10:82-1.11, the agency would proceed as follows to establish the amount of the State earned income disregard:

(1) For the first four months in which the earned income is considered in the determination of grant amount, subtract the sum total of the disregards specified in (a)1, 2 and 4 above (if applicable) from 50 percent of the payment standard amount in Schedule II for an eligible unit of four.

(2) For the following eight consecutive months, subtract the sum total of the disregards specified in (a)1, 3 and 4 above (if applicable) from 50 percent of the payment standard in Schedule II for an eligible unit of four.

(3) For the remainder of time that the family remains eligible for AFDC, subtract the disregards specified in (a)1 and 4 above (if applicable) from 50 percent of the payment standard in Schedule II for an eligible unit of four.

10:82-2.9 AFDC-C procedures for stepparents who have married an AFDC recipient prior to October 1, 1992, who marries on or after October 1, 1992 but prior to application or reapplication for AFDC, or who is a needy stepparent who marries an AFDC-C recipient on or after October 1, 1992

(a) When a stepparent marries the natural or adoptive AFDC-C recipient parent on or after October 1, 1992, the rules applicable to treatment of income and eligible unit composition at (a)1 below shall be applied; if financial eligibility does not exist upon application of the provisions specified in (a)1 below, the stepparent shall be considered non-needy and the rules at N.J.A.C. 10:82-2.10 shall be applied to determine if eligibility exists for the AFDC children. When a stepparent of eligible AFDC-C children is in fact a member of the household and has married the natural or adoptive AFDC recipient parent prior to October 1, 1992 or who marries on or after October 1, 1992 but prior to application or reapplication for AFDC benefits, the natural or adoptive parent who is applying for or receiving assistance shall be afforded the following elective options:

1.-2. (No change.)

(b) (No change.)

(c) When the stepparent who has married the AFDC-C recipient parent before October 1, 1992, or who marries the natural or adoptive parent on or after October 1, 1992 but prior to application or reapplication for AFDC benefits and is not included in the eligible unit, the eligible unit shall consist of the natural or adoptive parent and the eligible children.

1. (No change.)

2. The eligible unit's assistance payment shall be computed in accordance with N.J.A.C. 10:82-1.2(c) through (g). The countable income of the stepparent to the eligible unit, as determined in (d) below, shall be deducted as a countable income source.

(d) When a stepparent of eligible AFDC-C children lives in the same home as the children, has married the AFDC-C recipient parent before October 1, 1992, or who marries the natural or adoptive parent on or after October 1, 1992 but prior to application or reapplication for AFDC benefits, 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.-6. (No change.)

10:82-2.10 Procedures for non-needy stepparents marrying a natural or adoptive AFDC-C recipient parent on or after October 1, 1992

(a) ***The provisions in this section do not apply to AFDC families who have been randomly assigned to a control group for purposes of evaluation requirements pertaining to Federally approved waivers.*** If the non-needy stepparent marries a natural or adoptive AFDC-C recipient parent on or after October 1, 1992, the stepparent, the stepparent's natural or adoptive children and the AFDC-C recipient parent shall be excluded from the eligible unit. Eligibility for the AFDC children shall be established provided that the gross income of the household does not equal or exceed the maximum income limits for the applicable household size in Schedule VII in (d) below, and the countable income of the eligible children (excluding any income deemed from the natural or adoptive parent) does not equal or exceed the limits referenced in (b) below.

(b) AFDC eligibility shall not exist for any month in which the countable income of the AFDC children (excluding the deemed income from their natural or adoptive parent) equals or exceeds the maximum payment amount indicated in Schedule II for the appropriate number of AFDC children in the eligible unit.

(c) AFDC eligibility shall not exist for any month if the total income of the household exceeds the amount indicated in Schedule VII for the appropriate number of persons in the household. The household shall include the natural or adoptive parent, his or her children, the non-needy stepparent and the stepparent's children residing in the same household who are claimed or could be claimed by the stepparent as dependents for Federal personal income tax liability and who are not recipients of AFDC or SSI benefits.

1. The income of the household shall be determined by counting the gross income of all members of the household (with the exclusion of SSI recipients) which shall be reduced only by any amounts paid as alimony or child support to individuals not living in the household.

2. The gross income derived from the computation procedures in (c)1 above shall be compared to the maximum income limits in Schedule VII. Provided the household's gross income does not equal or exceed the limit in Schedule VII for the appropriate household size, initial AFDC-C eligibility shall be established for the children of the natural or adoptive parent (excluding children who are recipients of SSI benefits). If the household's gross income does equal or exceed the applicable amount in Schedule VII, all members of the household shall be ineligible for AFDC benefits.

i. The parent of the eligible children shall sign the application for assistance and fulfill all obligations contained therein.

ii. The grant for the eligible children shall be:

(1) The appropriate allowance payment on Schedule II less any income to the eligible unit, including the countable income of the natural or adoptive parent as determined in (e) below, or the payment maximum in Schedule III, whichever is less.

(2) In no event shall the AFDC payment for the eligible children be reduced below $10.00 until such time as gross income of the household equals or exceeds the maximum income limit in Schedule VII for the appropriate household size, and the countable income of the eligible children (excluding any income deemed from the parent) does not equal or exceed the payment standard amount indicated in Schedule II for the appropriate eligible unit size.

3. Any case where AFDC eligibility does not exist because total income of the household, including that of the stepparent, exceeds the applicable amount in Schedule VII shall have its Medicaid eligibility evaluated without regard to that stepparent's income (see N.J.A.C. 10:82-2.11(f)).

(d) Maximum income limits for non-needy stepparents marrying AFDC-C recipient parents on or after October 1, 1992 are as follows:

Schedule VII
Maximum Income Limits for Non-Needy Stepparents
Marrying AFDC-C Recipient Parents on or after October 1, 1992

Household Size	Maximum Income Limit
1	$ 758
2	1149
3	1446
4	1744
5	2041
6	2339
7	2636
8	2991
9	3198
10	3405
Each Additional Person	Add $ 207

(e) Countable income to the AFDC-C eligible children in situations where the non-needy stepparent marries the AFDC-C recipient

parent on or after October 1, 1992 and the parent and the stepparent are excluded from the eligible unit shall be determined in accordance with the following procedures:

1. The income of the non-needy stepparent shall be totally excluded.

2. Any earned income of the AFDC-C parent shall be reduced by $90.00 and the result added to any unearned income received by that parent. The result of this calculation is further reduced by the payment standard for an eligible unit of one in Schedule II at N.J.A.C. 10:82-1.2(b). All remaining income of the natural or adoptive parent shall be considered as unearned income and shall be added together with any other countable income of the children (see N.J.A.C. 10:82-4.7 concerning earned income exclusion for students) to determine the total countable income available to the eligible unit. Total countable income shall be deducted from the payment standard for the appropriate eligible unit size in Schedule II and either the remainder or the corresponding amount in Schedule III, whichever is less, shall be the AFDC benefit payable to the eligible children. In the event that the AFDC benefit calculation results in a benefit of less than $10.00, the rule in (e)3 below shall apply.

3. So long as the countable income of the child(ren) does not exceed the appropriate payment standard for the eligible unit size in Schedule II *[or III]*, in no event shall the AFDC payment for the eligible children be reduced below $10.00 until such time as the gross income of the household equals or exceeds the maximum income limit in Schedule VII for the appropriate household size.

10:82-2.11 Medicaid eligibility; AFDC-C and -F procedures

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

(f) Any family who has been denied or terminated from AFDC because the total income of the household, including that of the stepparent, exceeds the applicable amount in Schedule VII (see N.J.A.C. 10:82-2.10(d)) shall have its Medicaid eligibility evaluated without regard to that stepparent's income. In this instance, Medicaid eligibility shall be evaluated for the natural or adoptive parent and that parent's children only.

(g) Any child excluded from the AFDC eligible unit in accordance with the provisions of N.J.A.C. 10:82-1.11 shall be categorically eligible for Medicaid benefits.

10:82-4.4 Disregard of earned income in AFDC-C, -F and -N segments

(a) (No change.)

(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.-2. (No change.)

3. Any month for which the individual loses the $30.00 and one-third disregard because of the provision in (f) below shall be considered as one of the four consecutive months.

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

(e) If applicable, deduct from the monthly earned income of each employed person in the family the State earned income disregard, which shall be determined in accordance with N.J.A.C. 10:82-2.8(c).

(f) None of the disregards above shall apply to the earned income of the individual for any month in which one of the following conditions apply to him or her:

1. (No change.)

2. Refused without good cause, within 30 days prior to that month, to accept employment in which he or she is able to engage which is offered through the State Division of Employment Security or any other bona fide offer of employment. The good cause provisions of (f)1i above apply.

3. (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 Family Development Program (FDP) or REACH initiative which has designated 600 child care provider slots Statewide as a FDP or REACH activity for participants of those programs. The self-employment income earned by those clients participating in that initiative is budgeted according to procedures set forth at N.J.A.C. 10:86-5.8(a) and 10:81-14.21(b) in most instances. Those special budgeting procedures at N.J.A.C. 10:86-5.8(a) and 10:81-14.21(b) 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. However, if a child(ren) is born to the participant and the provisions of N.J.A.C. 10:82-1.11 are applicable, then the participant shall have the option of having income budgeted in accordance with N.J.A.C. 10:86-5.8(a) and 10:81-14.21(b) or may have the earned income disregards applied as set forth at N.J.A.C. 10:82-2.8 and 4.4 to include applications of the State earned income disregard.

(a)

DIVISION OF FAMILY DEVELOPMENT

General Assistance Manual Work Requirement

Adopted Amendments: N.J.A.C. 10:85-3.2 and 10.1

Proposed: June 15, 1992 at 24 N.J.R. 2160(b).

Adopted: August 25, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: August 25, 1992 as R.1992 d.368, **without change.**

Authority: N.J.S.A. 44:111(d) and P.L. 1991, c.523 (Approved January 21, 1992).

Effective Date: September 21, 1992.

Operative Date: October 1, 1992.

Expiration Date: December 20, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Concerning the effective date of these amendments, the Department notes that fiscal constraints imposed by the reduced New Jersey Budget for State Fiscal Year (SFY) 1993 may delay implementation of the Family Development Program for General Assistance recipients. The Department of Human Services will commence General Assistance program integration into the FDP as funding becomes available.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on July 10, 1992 in the cities of Camden, East Orange, and Trenton. The hearing officers were David Heins, Assistant Director; Pearl Elias, Assistant Director; and Aletha Wright, Assistant Director, respectively. The hearing officers did not provide any recommendations. The hearing records may be reviewed by contacting the Division's Administrative Practice Officer, Miguel Mendez, at the Division of Family Development, CN 716, Trenton, N.J. 08625.

Full text of the adoption follows.

10:85-3.2 Application process

(a)-(f) (No change.)

(g) Work requirement: Eligibility for public assistance in New Jersey is directly related to an individual's willingness to work when he or she is able to do so. It is, therefore, a part of the application process to explain the work requirement to the applicant and to record in the case file the reasons for any exemption from this requirement. If not exempt from the work training requirement, GA recipients shall participate in the work requirements of this subsection or N.J.A.C. 10:86 which delineates the Family Development Program (FDP), which replaces the requirements of this subsection in those counties that have been phased into that enhanced work/training initiative.

1. (No change.)

2. Elements of the work requirement: Unless specifically exempt, all recipients of General Assistance benefits must comply with all parts of this section unless participating in the FDP in accordance with N.J.A.C. 10:86:

i.-vi. (No change.)
3.-9. (No change.)
(h)-(i) (No change.)

10:85-10.1 Work assignments: "Workfare"

(a) All employable recipients of General Assistance shall participate in work assignments, sometimes referred to as "workfare", in accordance with the provisions of this subchapter, unless participating in the work training requirements of the Family Development Program in accordance with N.J.A.C. 10:86. See N.J.A.C. 10:85-3.2(g) regarding registration.

1. (No change.)
(b) (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Family Development Program (FDP) Manual
Family Development Act Requirements for FDP Components Including Education and Employment-Directed Activities

Adopted New Rules: N.J.A.C. 10:86

Proposed: June 15, 1992 at 24 N.J.R. 2161(a).
Adopted: August 25, 1992, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: August 25, 1992 as R.1992 d.369, **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. 44:10-1 et seq.; and 44:10-3; Family Support Act, Public Law 100-485; Family Development Act approved January 21, 1992, P.L. 1991, c.523. The Department is relying upon the authority also granted by waivers issued pursuant to Federal demonstration authority.

Effective Date: September 21, 1992.
Operative Date: October 1, 1992.
Expiration Date: September 21, 1997.

Summary of Hearing Officer's Recommendations and Agency Responses:

Public Hearings were held on July 10, 1992 in the cities of Camden, East Orange, and Trenton. The Hearing Officers were David Heins—Assistant Director, Division of Family Development (DFD); Pearl Elias—Assistant Director, DFD; Aletha Wright—Assistant Director, DFD, respectively. The hearing officers did not provide any recommendations. The public hearing records may be reviewed by contacting Miguel Mendez, Administrative Practice Officer, Division of Family Development, CN 716, Trenton, N.J. 08625.

Summary of Public Comments and Agency Responses:

A list of commenters follows:
William Curry, Camden County REACH/FDP
William MaGuire, Camden County FDP Director
Judi Palombi, Camden County Division of Human Services
Maria Marquez, Camden County College
Nidia Sinclair, Camden County REACH/FDP
Gwen McKnight, Camden County Community Resource Network
Theresa Meredith, Haddon Township Welfare Department
Laura Hernandez Paine, Hispanic Family Center of Southern New Jersey
Carol Dann, Camden County College
Cora Rivera, REACH Case Manager
Judi Whitney, REACH Child Care
Kerman Pitman, REACH Case Manager
Phyllis Sanders, Division for Children, Adolescent Resource Network
Nettei Padres, Camden County Office of Economic Opportunity
Mitchell Munsat, Esq., National Organization for Women
David Weiner, Communication Workers of America, Local 1081
Barbara Federoff, Executive Director—Programs for Parents
Leighton Holness, Legal Services of New Jersey
Ann Saboe, Burlington County Welfare Board
Dorothy Netta, Princeton Borough Welfare Department

NOTE: Twenty individuals who are REACH/JOB participants or homeless assistance recipients whose identities are confidential pursuant to 45 CFR 205.50 also made comments.

The majority of commenters providing testimony, including REACH/JOBS participants and the President of Local 1081, representing employees of the Essex County Division of Welfare, favored the concepts of the Family Development Program (FDP) proposed at N.J.A.C. 10:86. FDP provisions are viewed as an investment in the future in that the program provisions promote self-reliance on the part of public assistance families through extended educational programs (including higher educational opportunities) and program supports. Noted also were the positive alternative choices offered through FDP for family members, to help them overcome the environmental barriers which prohibit economic opportunity. The concept of the Family Plan was praised and its impact on the entire family viewed as critical to the family becoming self-sufficient. The extension of Medicaid benefits for an additional 12 months (for a total of 24 months) was also looked upon as advantageous for families. Finally, the provisions at N.J.A.C. 10:86-5.4(d) are considered reassuring to an employee union representative in that those provisions concern the prescribed requirement of maintenance of regularly established employee positions, while creating separate positions for FDP participants who are participating in Work Supplementation activities.

COMMENT: Supportive services through the FDP are not adequately funded and will not be made available for all counties for several years.

RESPONSE: The commenter's concern, as expressed in relation to the provisions of N.J.A.C. 10:82-1.11 (newborn rules), is noted. The Department of Human Services continues to advocate for revenues to adequately support the education and work/training opportunities needed by public assistance families. Both the REACH/JOBS and Family Development programs seek to identify resources to provide for the necessary training and educational programs needed by Aid to Families with Dependent Children (AFDC) eligible family members.

COMMENT: Income maintenance technicians are not included in the composition of the FDP planning council.

RESPONSE: Although the income maintenance function was not specified by name as a representative body on the FDP planning council, the provisions do not exclude such representation. In fact, the Director of the County Welfare Board, as the State's Title IV-A (AFDC) or income maintenance designee is, by Federal mandate under the JOBS program, a required participant to any education/work/training planning entity established to serve AFDC recipients. The Council, at the discretion of the Planning Chairperson and its representatives, may decide to include additional representation by income maintenance.

COMMENT: Expanded social service requirements of FDP are not attainable with present agency staffing levels in Essex County. The issue of inadequate staffing must be addressed; otherwise current staffing levels will undermine the success of FDP.

RESPONSE: The Division of Family Development and the Essex County Division of Welfare shall address the staffing requirements in subsequent meetings concerning FDP implementation. Staffing levels are not contained in these rules.

COMMENT: Strong opposition was expressed to the use of control groups in the FDP counties. It is felt that control groups are a hardship and discriminatory to those selected for participation in the control group. A suggestion was made that control groups be used in counties that are not implementing FDP at this time and, therefore, are not eligible for FDP benefits. Additionally, clients who are motivated and want to participate in FDP may be deprived as a result of being part of a control group.

RESPONSE: A control group is mandated by Federal requirement in order for the State to receive approval to conduct the FDP. The State requested waivers of Title IV-A provisions to implement the FDP. As such, a random sample of families in the control group (for evaluation purposes of the FDP initiative) shall not be subject to certain of the FDP provisions which required waiver approval. Families selected from both FDP and REACH/JOBS counties will form the control group. FDP will eventually be extended to all 21 counties; therefore, any attempt to draw the sample from non-FDP counties would defeat the premise of the evaluation and bias the results. The JOBS allowable work/training/education opportunities shall be made available in FDP counties to AFDC eligible unit members in the control group in accordance with N.J.A.C. 10:86; likewise, those activities shall be made available to AFDC

eligible unit members in control families in REACH/JOBS counties in accordance with N.J.A.C. 10:81-14 until such time as those counties implement FDP.

COMMENT: The 1993 New Jersey State budget does not contain adequate funding to ensure that proposed support services, education, and/or job training will be made available to FDP participants.

RESPONSE: The 1993 State budget did limit the allocation of funds to the FDP. As such, the program severely impacts on the implementation of the FDP for General Assistance employable individuals. Through the identification of existing resources that may be used by AFDC family members, DHS will move forward with the program and provide services to AFDC families as resources permit.

COMMENT: FDP case managers will need training.

RESPONSE: Training shall be provided for staff at all levels who are involved in the FDP. An intensive training program has been developed to address training needs of FDP staff.

COMMENT: Clarification is needed as to whether an individual who is receiving treatment for substance and/or alcohol abuse is exempt or is considered participating in FDP.

RESPONSE: An adult individual in the AFDC eligible unit or an individual who is the GA employable individual who is in a treatment program for substance abuse may be temporarily exempt from participation in education or training component activities until the treatment is completed. However, each family's circumstances will be considered on a case by case basis and a determination made as to the appropriate path and sequencing of activities based on available resources and case circumstances. If such individual does not participate in treatment then this temporary exemption status shall be re-evaluated and he or she will be expected to participate in other activities of the FDP.

COMMENT: Concern was expressed at the recidivism of individuals who were trained through REACH/JOBS. People are coming back onto AFDC because they were not adequately trained for jobs that pay wages sufficient to maintain self-reliance. Training for jobs with upward mobility is needed.

RESPONSE: The FDP has provided for a job development component to address employment opportunities for FDP participants. The job developer(s) in the respective county shall work closely with the planning council to ensure that training and education programs are suitable to the job market needs. The FDP also uses post-secondary educational and training programs to a greater extent to help develop participants for employment positions which require skills, and pay commensurately better salaries, to avoid recidivism.

COMMENT: The question was raised to the possibility of extending child care to accommodate individuals participating in a four-year college program.

RESPONSE: Child care is provided to participants in need of such services based on the type of activity. As resources permit, individuals enrolled in four-year college programs shall be considered for child care assistance through the FDP while a member of the AFDC eligible family. As family members lose eligibility for AFDC, the FDP will provide linkages to other child care resources provided through Departmental child care programs to help such individuals complete educational programs of study.

COMMENT: Concern was expressed that FDP regulations grant a 24 month post-AFDC extension of Medicaid but do not extend child care to 24 months. The 12-month period of REACH/JOBS post-AFDC child care makes it difficult for individuals to accept the burden of child care costs after only one year in entry level jobs with the salaries that are received.

RESPONSE: The FDP has not extended child care beyond a 12 month post-AFDC period. However, DHS shall prioritize child care resources through its other child care assistance programs (such as the New Jersey Cares for Kids Programs) to meet the needs of families at the conclusion of the post-AFDC transitional child care period.

COMMENT: A question was raised as to whether Federal regulations prohibit prospective payments for child care as provided for in the New Jersey Cares for Kids program.

RESPONSE: Federal regulations do not prohibit prospective payments for child care through Title IV-A monies.

COMMENT: A commenter noted that the sanctioning process at N.J.A.C. 10:86 does not provide adequate time to determine the reason for non-compliance with an FDP requirement. The participant is not afforded due process before the CWA initiates the sanctioning process.

RESPONSE: The participant is entitled by Federal JOBS provisions to timely and adequate notice before a reduction or termination of AFDC assistance occurs. Participants shall be provided with upfront warning of the consequences of non-compliance with FDP requirements at the time of application and at the time of completion of each FDP agreement for activities and supportive services. The program emphasizes the responsibility of the participant to contact the case manager immediately concerning his or her ability to keep appointments or attend activities. The burden of proof rests with the participant, and if "good cause" exists for his or her nonparticipation, then he or she must notify the case manager with the reason for non-compliance. The Department notes the participant is afforded due process as entitled by Federal JOBS provisions through timely and adequate notice.

COMMENT: A commenter noted that in light of the more immediate application of sanctions required by FDP, the State should ensure that maximum emphasis is placed upon advance notification to participants of the sanctions they may face.

RESPONSE: As stated previously, warnings are contained in the application for AFDC, in various notices provided to FDP participants and in the context of agreements signed by the recipient with the case manager for participation in FDP activities or for receipt of FDP supportive services.

COMMENT: A commenter states that the preparatory educational activities described at N.J.A.C. 10:86-5.2(b)2 do not include basic literacy level training. By incorporating basic literacy training in preparatory educational activities, participating counties would meet the objectives of FDP.

RESPONSE: Basic and remedial educational activities do include courses designed to provide basic literacy training as delineated at N.J.A.C. 10:86-5.2(b)2iii.

COMMENT: Payment for child care transportation costs are not sufficient to cover expenses, such as vehicle maintenance, and so forth.

RESPONSE: The transportation allowance for actual costs of an AFDC/FDP participant's child(ren) to and from a licensed child care center or day camp up to a limit of $10.00 per week per child must be included in the cost of care, since the child care provider provides the transportation service. DHS realizes that such funds do not cover actual expenses involved for the provider offering such services; however, in this time of economic concern, monies are not available to support an increase in this allowance.

COMMENT: Child care center providers should not be penalized as receiving overpayments if the center has provided care for the child of an individual later found to be ineligible for that care. Also, child care payments should be contingent upon a child's participation in a child care facility, be it a family day care arrangement or a center.

RESPONSE: Child care center providers should not be penalized if the center has provided care for the child of an individual later found to be ineligible for the care. In such situations, the child care provider must be paid for the services. Likewise, a family day care provider should also be reimbursed for services rendered. The parent may be responsible in most situations for overpayments in child care based on non-attendance of the child on a particular day for care. The Federal JOBS provisions require that hours of care coincide with participation in FDP activities.

COMMENT: It was viewed as unfair that the same payment is made for care provided for over 30 hours, as is made for 30 hours which is considered full-time child care.

RESPONSE: The payment for full-time child care at the same rate to one provider for 30 or more hours per week is the current standard practice in all of the Department's child care programs. Any suggestions for revisions should be addressed to the DHS, Office of Child Care Development.

COMMENT: Current amounts of payment for child care for special needs children are not sufficient.

RESPONSE: Suggestions for revision of the "Special Needs" child care rates are likewise best addressed through the DHS, Office of Child Care Development.

COMMENT: The 8.9 literacy level as well as the 20 hour participation rate were questioned and perceived as standards being dictated solely by funding rules.

RESPONSE: The literacy level parallels the recommendation of the JOBS provisons. The 8.9 level provides a benchmark minimum skill level for JOBS or FDP purposes. The literacy level is not linked to Federal funding rules; however, the commenter is correct in stating that the 20 hours average participation rate is related to maximizing Federal funding through the JOBS provisions.

COMMENT: It was requested that the needs of persons with learning disabilities be addressed in the way of an in-depth assessment to determine barriers that are preventing them from employment because the completion rate and success rate is dropping off from the enrollment rate.

RESPONSE: The assessment process should help to identify the learning disabled. Other referrals to agencies or activities which serve those with learning disabilities shall be made through the FDP.

COMMENT: The needs of the Hispanic population must be addressed in that they should be evaluated/assessed and tested in Spanish. The tests in Spanish should be used at the time of evaluation and individuals should be placed in GED courses given in Spanish. Such a process would require less time in educational components to achieve the attainment of the GED. Then, English can be offered either at the same time or after completion of GED. It was also suggested that the GED test for high school be in Spanish to assure success first of such individuals in their own language by eliminating the GED barrier.

RESPONSE: Each county is responsible for establishing the educational and training courses. As such, the aforementioned approach to the delivery of such activities to the Hispanic population is left to the discretion of the county, its FDP Director, and the county FDP planning council.

COMMENT: Adult participants in FDP should have the option of working and attending school.

RESPONSE: The option to attend school and work at the same time is available to any participant in the FDP when it is appropriate and compatible with his or her Family Plan for employability.

COMMENT: Emphasis should be placed on funding for educational purposes, that is, to extend programs beyond GED.

RESPONSE: The intent of the FDP is to expand post-secondary education and opportunities as resources permit.

COMMENT: Objection was raised concerning the requirement at N.J.A.C. 10:86-3.7 that a high school diploma or GED may not be warranted in some instances.

RESPONSE: The rule at N.J.A.C. 10:86-3.7 follows the Federal language of the JOBS provisions and provides for an alternative path other than completion of the high school diploma or GED in certain situations. This option will remain, as situations occur when some individuals cannot be expected to achieve the goal of attainment of the GED or high school diploma. Individuals with certain functional disabilities may, for example, not be able to achieve this end.

COMMENT: A college student enrolled full-time, which is usually 12 credit hours or more, should be considered as fulfilling the 20-hour participation rate.

RESPONSE: DHS requested a waiver for FDP purposes of the 20 hour rule for persons enrolled in full-time college programs as defined by the educational institutions. That waiver was not approved. Proposed amendments at the Federal level to the JOBS provisions may modify this rule in the near future. Once the amendments are finalized, the revisions will be made to REACH/JOBS and FDP provisions.

COMMENT: Will funding be available to implement the FDP for General Assistance (GA) due to the 1993 State Budget constraints?

RESPONSE: The 1993 State Budget did reduce funding and deferred the implementation of the FDP for GA. DHS shall pursue other avenues to, at a minimum, offer a demonstration project for this population in the City of Trenton. Efforts shall continue in this regard to restore the necessary resources for this purpose. Text has been added at N.J.A.C. 10:86-1.1(a) to address the fiscal constraints for GA.

Summary of Changes upon Adoption:

These rules, which comprise the Family Development Program Manual, and concurrent regulatory adoptions to N.J.A.C. 10:81 and 10:82 published elsewhere in this issue of the New Jersey Register, were dependent upon Federal approval of waivers to policies in the Aid to Families with Dependent Children (AFDC) program. As noted in the proposal which appeared at 24 N.J.R. 2161(a), these rules comply with the Federal criteria for approval of the aforementioned waivers. As such, the Department of Human Services, Division of Family Development, shall establish a control group population as Federally required for the program evaluation process. Those AFDC families randomly selected for the control group will not be subject to certain provisions of the FDP as delineated with added text at N.J.A.C. 10:86-1.1(a)1.

Fiscal constraints imposed by the reduced New Jersey Budget for State Fiscal Year (SFY) 1993 may delay implementation of the Family Development Program for GA recipients. The Department of Human Services will commence GA program integration into the FDP as funding becomes available and, as such, language has been added to N.J.A.C. 10:86-1.1(a) to explain this situation.

At N.J.A.C. 10:86-1.1(d), the FDP implementation date has been changed from July 1, 1992 to October 1, 1992 for county operational purposes since Federal waiver approval was necessary prior to commencement of the program.

Language has been expanded at N.J.A.C. 10:86-1.3(b)3 and 1.4 to include a reference to individuals with disabilities in the overall provision of FDP assistance and services, in accordance with Federal disability requirements as noted in the review of the proposed rules by the DFD's affirmative action officer. The reference is added in order to comply with the Americans with Disabilities Act (P.L. 101-336).

At N.J.A.C. 10:86-1.6(b)4, additional language has been added to clarify that the FDP Director's responsibility is in exercising administrative control of the FDP services and the overall functions of the program, rather than supervision of specific staff.

The changes at N.J.A.C. 10:86-1.6(b)14, 1.6(c) and 1.7(a)6 are merely language adjustments to clarify and delete conflicting statements concerning appointment of the FDP Director and the Planning Council by the Commissioner, as stipulated in P.L. 1991, c.523. N.J.A.C. 10:86-1.6(c)1 was amended to include a representative from the DFD to the Council since it was inadvertently omitted in the proposed language.

N.J.A.C. 10:86-1.8 has been amended to clarify, under FDP Act provisions, that AFDC eligible unit members and, if applicable, the GA spouse, when such individuals are not exempt from FDP, shall be referred to the case management component.

The definition of "compliance" at N.J.A.C. 10:86-2.1 has been revised and language added to clarify what comprise "cooperation" with FDP requirements for members of the AFDC or GA eligible unit, since eligible unit "family" members are required by Federal Job Opportunities and Basic Skills Training Program (JOBS) provisions and the Family Development Act provisions (P.L. 1991, c.523) to comply. Compliance is affected by the expanded definition of "family member" as described below.

The definition of "family member" at N.J.A.C. 10:86-2.1 has been expanded to specifically define the "other" family members for AFDC purposes, and separately for GA, as intended by Family Development Act provisions. As indicated in P.L. 1991, c.523, paragraph 2, the Family Development Program is intended as "a new initiative which offers intensified and coordinated services that go beyond the parameters of the REACH program ... to address the educational, vocational and other needs of the **public assistance recipient's family, rather than the recipient alone.**" Family members are persons not in the AFDC or GA eligible unit, who reside in the home of the AFDC or GA eligible unit, who meet the specific criteria of the definition and who are referred to FDP if the problems experienced by that individual create a barrier to the AFDC or GA eligible unit's becoming self-sufficient.

"Family plan" as defined at N.J.A.C. 10:86-2.1 has been expanded to include text from N.J.A.C. 10:86-4.2(d)1. Additionally, the definition of a FDP participant has been amended to clarify that FDP participants in both AFDC and GA are eligible unit members who are not otherwise exempt from FDP participation, in accordance with the intent of the FDP Act provisions and for Federal funding purposes. Again, because of the change definition of "family member," added text was needed here to clarify that a "participant" is defined as eligible unit members only, who are not otherwise exempt.

Under the definition of "FDP education and employment-directed activities," the phrase "vocational assessment and counselling" have been deleted because these are not education and employment directed activities.

Text has been added at N.J.A.C. 10:86-3.2(b)1viii to clarify that additional criteria at N.J.A.C. 10:86-3.4(e) applies to parents or caretakers with a child under two years of age when the individual personally provides care for the child.

Subsequent to the proposal of rule text at N.J.A.C. 10:86-4.6(b), the decision was made by the Department to contract, at the State level for the provision of "Job Developers" in each county. Therefore, language has been amended in the final rule to clarify that counties shall have in place, in accordance with P.L. 1991, c.523, the "Job Developer" function, rather than having the task of contracting for that function.

N.J.A.C. 10:86-5.1(a) has been amended by deleting the term "participant" and by replacing the term with its equivalent, "eligible unit member," to conform with the revised definitions at N.J.A.C. 10:86-2.1.

The text clarifies that FDP eligible unit members are to participate in the Education and Employment-Directed Activities (EEDA) component.

Text at N.J.A.C. 10:86-8.1(a)2, (b)1, (c), 8.6(a)2 and 3, 8.8(a)1 and 8.11(a) has been amended to align text with the definitions of FDP participant and family members as delineated above and to clarify that noncompliance with program requirements affects AFDC and GA eligible unit members only.

N.J.A.C. 10:86-8.6(a)1 has been amended to align the penalty with the intent of the Family Development Act. The proposal language stipulated that a 20 percent reduction of the appropriate payment standard used in the configuration of the AFDC benefit would be imposed for non-compliance with the completion of the Family Plan and FDP Agreement. The Division has reviewed the proposal text and has concluded that the lesser penalty (that is, 20 percent of the lower payment standard (Schedule III)) satisfies the intent of the legislation. The lesser penalty will send the message to the family that compliance with FDP requirements is important to helping those families achieve independence from assistance programs and that the means to taking that step to self-sufficiency are available; the use of a 20 percent reduction of Schedule III standardizes the reduction for AFDC families to the least amount possible.

Additional changes were made to N.J.A.C. 10:86 to correct printing errors, as follows.

At N.J.A.C. 10:86-1.10(f)1i, the first word was changed to "specific" from "specify."

At N.J.A.C. 10:86-6.2(b)4, the last word was corrected to read "hearing," as revised from "hearings."

At N.J.A.C. 10:86-9.2(e)2iii, the next subparagraph is corrected to be "iv," as revised from "i."

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*): (Office of Administrative Law Note: The following adopted text includes, without being shown as additions replacing deletions, changes in terminology pursuant to Reorganization Plan No. 001-1992, effective July 6, 1992, which changed the Division of Economic Assistance to the Division of Family Development.)

CHAPTER 86
FAMILY DEVELOPMENT PROGRAM (FDP) MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS OF THE FAMILY DEVELOPMENT PROGRAM (FDP)

10:86-1.1 Purpose and scope

(a) The purpose of this manual is to set forth the policies and procedures of the Family Development Program (FDP) for the efficient and equitable provision of intensive, coordinated and comprehensive services Statewide to economically disadvantaged families receiving Aid to Families with Dependent Children (AFDC) and to individuals on the State's General Assistance (GA) program. The FDP shall replace REACH/JOBS and the General Assistance Employability Program (GAEP) as the work/training program for AFDC and GA respectively when a county implements the FDP. ***Based on the availability of resources, the GA program will experience staggered implementation of the FDP due to State fiscal constraints, and may not comply with the implementation schedule in (d) below.*** The Family Development Program is New Jersey's initiative to help public assistance individuals and their family members overcome barriers to employment to become members of the productive work force employed in full-time unsubsidized jobs with wages and benefits at adequate levels to support themselves and their families. The FDP is a result of the Family Development Act approved January 21, 1992, P.L. 1991, c.523, which supplements Title 44 of the Revised Statutes and amends P.L. 1947, c.156; P.L. 1987, c.282 and 283.

***1. Due to Federal waiver requirements to operate FDP for purposes of evaluation, a control group of AFDC applicant and recipient families must be randomly selected from the AFDC population. The following FDP provisions are not applicable in total or in part to control group families because of the FDP evaluation criteria.**

i. The newborn child provisions as delineated at N.J.A.C. 10:82-1.11 and 10:81-3.8(c) and related State disregard provisions set forth at N.J.A.C. 10:82-2.8(c) and 4.4(e);

ii. The procedures for non-needy stepparents marrying a natural or adoptive AFDC-C recipient parent as set forth at N.J.A.C. 10:81-3.9(a)and 10:82-2.10;

iii. The Family Plan at N.J.A.C. 10:86-3.1 and 4.2(d) and (e) shall be completed only for AFDC eligible unit members and FDP services/activities shall only be provided to those AFDC individuals. The sanction penalty at N.J.A.C. 10:86-4.2(e)1 does not apply to control group families (see (a)1iv below);

iv. Sanction procedures at N.J.A.C. 10:86-8 do not apply to control group families; rather, procedures at N.J.A.C. 10:81-14.8 shall be followed;

v. The AFDC control group parent shall participate in FDP activities based on the age of the youngest child (age three or older) in compliance with provisions at N.J.A.C. 10:81-14.3A(a)7, rather than provisions at N.J.A.C. 10:86-3.2(b)1viii and 3.4(e)4; and

vi. The AFDC control group shall receive 12 months of post-AFDC Medicaid in accordance with N.J.A.C. 10:81-14.20 rather than 24 months in accordance with N.J.A.C. 10:86-7.2.*

(b) This manual is an integral part of the AFDC program and the State's GA program and shall be used and interpreted in conjunction with N.J.A.C. 10:81, 10:82 and 10:85, as appropriate. Satisfying the FDP requirements will ensure compliance for GA employable persons with education/work/training requirements for receipt of GA benefits.

(c) The Family Development Program incorporates the requirements of the Family Support Act of 1988, Pub.L. 100-485, which established the Job Opportunities and Basic Skills (JOBS) program under Title II of that Act, the Federal education/work/training program for AFDC recipients. The Act also guarantees, through Title III provisions, necessary supportive services (that is, child care and participant allowances) for participation in program components. Satisfying the FDP requirements will ensure compliance for AFDC participants with the Federal JOBS work/training mandates for receipt of AFDC benefits.

(d) The FDP will be phased into the respective counties of the State on a schedule developed by the Division of Family Development (DFD), Department of Human Services. The FDP participation requirements shall apply to AFDC and GA applicants and recipients in accordance with that schedule. The FDP shall be established for both AFDC and GA in Camden, Essex and Hudson counties in the first year of the program beginning on or about *[July]* ***October*** 1, 1992. During the first year of operation, a FDP demonstration project in the city of Trenton, Mercer County shall also be established for GA employables. If any rules herein contradict or conflict with existing rules or policies established at N.J.A.C. 10:81, 10:82, or 10:85, such material is superseded by this manual.

(e) Nothing in these rules shall be construed as conferring on AFDC and GA applicants and recipients an entitlement to the FDP services. If the fiscal or other resources necessary to provide the FDP services to an FDP participant or other family members are unavailable, that person shall not be deemed to have a right to such services. He or she shall be released from all obligations dependent upon the FDP service(s) under these rules until such services are available to him or her.

(f) This manual shall:

1. Identify individuals eligible for the FDP services;
2. Establish policy for the administration of the FDP; and
3. Identify services and activities offered through the FDP.

(g) The FDP requirements specific for each of the AFDC and GA programs are described in appropriate locations throughout this manual. DFD shall operate the FDP through coordination efforts with existing Departmental services and program resources available through the Department's Divisions of Youth and Family Services (DYFS), Medical Assistance and Health Services (DMAHS) and Mental Health and Hospitals (DMHH); through other State Departments, including the Departments of Labor, Education, Health, Community Affairs and Higher Education; and at the local level with

the county welfare agencies (CWAs), municipal welfare departments (MWDs) and through contracted services.

(h) The policy provisions and terms in this subchapter are general provisions which are applicable throughout all subchapters of this manual concerning the FDP.

1. The policies and procedures set forth in this manual are binding on those agencies and organizations contracting with the Department of Human Services to provide services through the FDP and are enforceable through the DFD. Questions of interpretation shall be resolved by the DFD.

2. The FDP shall be administered within the framework of Federal and State law and regulations. Requirements, other than those established pursuant to Federal and State law and these rules, shall not be imposed as a condition of participating in the FDP.

(i) The FDP expands the education/work/training provisions currently available through REACH/JOBS to employable GA recipients. Additionally, the program emphasizes the availability of comprehensive, coordinated services and activities for AFDC and GA family members. The following principles guide the delivery of services through the FDP.

1. The FDP encourages family stability and self-sufficiency to help families escape a life of dependency and poverty. As such, the FDP addresses the need for families to overcome educational or skills deficiencies to break the cycle of poverty.

2. The FDP provides a choice of expanded activities and services to meet the various needs of AFDC and GA family members to help such individuals in their pursuit of economic opportunities in the attempt to secure permanent full-time jobs at wages which are adequate to support a family.

3. Central to the FDP is its focus on able-bodied public assistance recipients having the same opportunities and responsibilities as any other family not on assistance. Therefore, the FDP has broadened mandatory participation to all able-bodied AFDC parents or caretaker relatives regardless of the age of the youngest child.

4. The FDP references the fact that receipt of cash assistance is a temporary measure pending the AFDC parent's or an employable GA individual's achievement of self-sufficiency.

5. The FDP sets forth mutual obligations on the part of the FDP case manager and the FDP participant for the provision of the FDP services. The FDP is responsible for providing the services which are needed for an individual to achieve self-sufficiency in exchange for the individual's obligation to seek self-sufficiency. The obligations are made explicit in a mutually agreed upon contract, the FDP Agreement.

10:86-1.2 Participant rights and responsibilities

(a) The FDP participants shall be informed by the income maintenance (IM) worker or the MWD of their rights and obligations concerning the FDP participation. Information, program material and agency personnel shall be available to assist non-English speaking individuals. Minority program materials in languages other than Spanish may be prepared based on knowledge of the population served by the FDP.

(b) The FDP participants are in all instances the primary source of information about themselves and their families.

1. It is the responsibility of the FDP case manager to determine compliance with the FDP requirements based on the information provided by the FDP participant and, as necessary, to secure verification from secondary sources. Such verification shall be limited to those facts which are essential to participation and shall be obtained only with the known consent of the FDP participant.

2. The FDP case manager shall explain to the participant that verification of pertinent information may be necessary and that lack of consent on behalf of the ***FDP*** participant to authorize the acquisition of such information may result in the imposition of a sanction for noncooperation with AFDC or GA program requirements.

10:86-1.3 Atmosphere of mutural respect

(a) Assistance and services through the FDP shall be rendered to all ***FDP*** participants and their family members in an atmosphere of mutual respect by employees of the FDP provider entities.

(b) The FDP provider entities shall ensure that assistance and services are:

1. Extended in a manner and environment which increases a person's sense of importance, dignity and self-esteem;

2. Administered in a manner which respect the human and civil rights of persons receiving the FDP services; and

3. Provided in the least restrictive, most appropriate setting to ensure privacy and confidentiality ***and which is physically accessible by individuals with disabilities in accordance with the Americans With Disabilities Act (P.L. 101-336)***.

10:86-1.4 Nondiscrimination

In the administration of the FDP, there shall be no discrimination on grounds of race; color; religious affiliation; sex; national origin; ethnic background; marital, parental or birth status; or ***disability or*** handicap by the Department, the Division or the other FDP designated agencies and organizations involved in provision of the FDP services ***in accordance with Title VI of the Federal Civil Rights Act of 1964 (P.L. 88-352) and, Section 504 of the Federal Rehabilitation Act of 1973 (P.L. 95-602), and the Americans With Disabilities Act (P.L. 101-336)***.

10:86-1.5 Confidential nature of information

(a) Information about participants in the FDP shall be used and disclosed only for purposes directly connected with the administration of the FDP.

(b) The information requested by the Department and the FDP designated agencies shall be information that is required:

1. To determine eligibility for the FDP services without which the FDP services could not be provided;

2. For Federal/State reporting purposes; and

3. To determine the FDP participation in accordance with this manual.

10:86-1.6 County planning process

(a) A county planning process, which integrates the local human services system and the local employment and training system, will be used for the FDP. The purpose of the county planning process is to:

1. Coordinate and ensure the delivery of employment, training, education, case management and supportive services for the FDP participants;

2. Maximize the use of existing resources from various Federal, State, county and private funding sources for the FDP services; and

3. Establish efficient and effective administration and decision making operations for the FDP management.

(b) The Commissioner of the Department of Human Services shall designate a person to serve as the Family Development Program Director in each county. In addition to serving on the FDP Planning Council as a voting member, the FDP Director shall be responsible for:

1. Implementing the FDP as established by the Planning Council;

2. Establishing the roles and responsibilities of CWA staff (including IM, Social Services, IV-D and case management where appropriate), MWD staff, and the FDP case management *[is]* ***in*** the delivery of the FDP services;

3. Coordinating the efficient and effective transfer of information concerning the FDP participants among the agencies and organizations involved with the FDP;

4. Coordinating and managing *[all]* the FDP components available to AFDC individuals by *[directing/supervising various staff]* ***exercising administrative control of the FDP services*** and functions ***in a unitary structured organization***;

5. Participating in the selection of service providers;

6. Ensuring that the FDP contract/interagency agreement process is administered with selected providers;

7. Ensuring that the IV-A Agency (DFD) reviews, prior to final approval, all service contracts initiated for the FDP components for AFDC/FDP participants;

8. Monitoring all activities to ensure compliance with Federal and State regulations and county and municipal procedural practices;

9. Analyzing the availability of services and the capacity of those operations to serve the needs of the FDP participants;

10. Establishing administrative functions necessary to the operation of the program;

11. Enhancing established connections to various referral networks;

12. Expanding AFDC case management operations/functions, as necessary, in order to service AFDC family members, in conjunction with the developed "Family Plan";

13. Developing Resource Centers in conjunction with program mandates/requirements;

14. Ensuring the informational exchanges occur ***among CWAs and MWDs***, when applicable, to establish legally responsible relative linkages between GA individual(s) and AFDC family member(s); and

15. Establishing a MWD network to coordinate the FDP for the GA population.

(c) Each county is required to *[establish]* ***have*** a FDP Planning Council, *[appointed in accordance with established county procedures]* ***established by the Commissioner of the Department of Human Services***. The purpose of the county FDP Planning Council is to determine the most effective way to plan and organize services for AFDC and GA FDP participants in that county.

1. The FDP Planning Council shall consist of no less than 13 and no more than 15 persons and shall, at a minimum, include the following as voting members: the director of the FDP in each county, who shall be so designated by the Commissioner of the Department of Human Services; the Director of the CWA; a MWD director in the county; a member of the board of Chosen Freeholders or County Executive or a designee; a representative of the County Human Services Advisory Council; a representative of the local Private Industry Council; a representative of the Lead Child Care Agency in the county; a representative of the local community college; a representative of the county vocational school; a representative of private business or industry in the county; two recipients of the AFDC residing in the county (costs incurred by those AFDC recipients as a result of participation on the planning council will be reimbursed by the FDP ***as an administrative expense of FDP***); a representative of the Commissioner of DHS; and a representative each of *[the]* ***DFD*** DYFS and DMAHS. Additionally, the FDP Planning Council may include, as non-voting ex officio members, representatives of the following agencies: the County Superintendent's Office; the Division of Employment Services in the Department of Labor; the Bureau of Adult Education in the Department of Education; the Division of Housing and Development in the Department of Community Affairs; local health and social service agencies and any other individuals/organizations that the county believes would provide a valuable contribution to the FDP planning and implementation process.

2. The Commissioner of the DHS shall appoint a person to serve as the FDP Planning Council Chairperson. The Chairperson may be any member of the Planning Council including the FDP Director. The person designated as Chairperson shall chair all Planning Council activities and meetings, as required, and ensure that the Planning Council carries out the following mandates in accordance with DHS established timetables:

i. Develop a FDP Implementation Plan in conjunction with other council members;

ii. Designate a single county agency as the coordinator of services for the FDP;

iii. Report on the progress of program implementation highlighting effectiveness and success;

iv. Examine how local resources can be utilized to obtain maximum effectiveness;

v. Address client needs, barriers and conditions through the established plan; and

vi. Recommend program training/education and support services necessary for the full implementation of the county program.

10:86-1.7 County FDP implementation process

(a) The FDF Planning Council shall prepare and submit a County FDP Implementation Plan. At a minimum, the Plan shall:

1. Contain a needs assessment of the employment-related characteristics and problems (including a target population profile) in the county;

2. Describe the proposed County FDP structure (including a resource analysis and service delivery system description that addresses employment-directed activities and support services) made available to AFDC and employable GA participants;

3. Describe the flow of the FDP participant (both the AFDC and GA participant flow, if different) through the county FDP;

4. Specify the arrangements and methods by which employment, training, education and support services will be selected, integrated and provided to eligible AFDC and GA applicants and recipients in the FDP in that county; ***and***

5. Ensure that the program components reflect local needs and existing resources and that supportive services provided to the FDP participants use existing local arrangements wherever possible*[; and]***.***

[6. Designate a county FDP Director who will manage and coordinate the planning and implementation process. Demonstration that a FDP Director has been designated will be required for final approval of the County FDP Implementation Plan.]

(b) Upon completion of the County FDP Implementation Plan, the Plan shall be reviewed with the Planning Council and submitted to the DPD for approval.

10:86-1.8 FDP client flow

Upon application or redetermination of AFDC or GA eligibility, AFDC and GA clients will proceed through the FDP client flow. The FDP client flow begins with an orientation to the FDP by the IM worker at the CWA or the MWD. The IM worker or the MWD shall determine whether the AFDC parent or caretaker relative and/or other AFDC *[family]* ***eligible*** unit members or the GA individual ***or spouse*** are exempt from participation, in accordance with N.J.A.C. 10:86-3. All AFDC parents or caretaker relatives and employable GA recipients shall be referred to the respective AFDC or GA FDP case management component for evaluation and completion of the Family Plan. This referral will initiate assignment of the individual to the FDP case management.

10:86-1.9 Inter/intra agency coordination

It is essential that an open and accurate exchange of information is maintained among the FDP entities and within the respective agencies/organizations involved in the FDP service delivery. Coordinated interaction is essential since all units (inter and intra agency) have an equal level of responsibility to ensure that the FDP participants and family members are afforded appropriate activities/services and that timely and appropriate action is taken on case actions to fulfill the FDP requirements.

10:86-1.10 Issuance and availability of manual

(a) The DHS' DFD shall issue the manual and amendments to the manual, as necessary. DFD shall follow current practice to publish such amendments in the New Jersey Register, in accordance with the provisions of N.J.A.C. 1:30, Rules for Agency Rulemaking. It is the responsibility of each holder of the manual to maintain its accuracy by inserting new material as it is issued and by removing obsolete pages promptly.

(b) Copies of the manual shall be provided to Department and Divisional administrative and other appropriate staff associated with the FDP. Those individuals are expected to be thoroughly familiar with its contents in order that policy and procedures may be consistently applied.

(c) DFD shall ensure that each FDP entity associated with the provision of an FDP service or activity is provided with the number of copies of the manual as requested for initial use by its staff. Additional copies shall be available from DFD through written request, at the cost of printing and mailing.

(d) Copies of this manual shall be made available to all staff members working with the FDP participants. Each staff member working with the FDP shall be familiar with the manual's contents, and shall apply the required policy and procedures consistently.

(e) One administrative copy of obsolete material related to this manual shall be kept by each FDP entity. Such material reflects time

frames of changes in policies and serves as a historical reference for the agency.

(f) This manual is a public document. As codified in the New Jersey Administrative Code, it is available from the Office of Administrative Law. It is important that all copies in use be up-to-date. It is available as follows:

1. Copies are available for examination or review during regular office hours on regular work days in the DHS, DFD and in each CWA and MWD of the State.

i. *[Specify]* ***Specific*** policy material necessary for a FDP participant or his or her representative to determine the basis for a fair hearing request, or to prepare for a hearing, shall be provided to such persons without charge.

2. Public and university libraries which have agreed with the Division's request to keep the manual up-to-date will have a copy available in accordance with the library reference procedures.

3. Each county legal services office shall be furnished with a copy of this manual.

4. County boards of social services and MWD's shall be provided copies of this manual.

5. Other welfare, social service and nonprofit organizations shall be furnished with a copy of this manual (at no cost) through written request to DFD.

6. Employment, education and training organizations (that is, vocational/technical schools, community colleges, JTPA offices) shall be furnished with a copy of this manual.

7. A current up-to-date copy of the manual, or any portion of the manual, is available from DFD through a written request by the interested person, at the cost of printing and mailing.

i. All supplementary updates will routinely be sent to those who have been supplied with the manual. A mailing list shall be maintained and updated by DFD.

SUBCHAPTER 2. DEFINITIONS

10:86-2.1 Definitions

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

"AFDC participant" means an individual as defined in N.J.A.C. 10:81, regardless of case segment affiliation (-C, -F, and -N), who is required to participate in FDP, except as otherwise provided at N.J.A.C. 10:86-3.2(b). Illegal aliens on AFDC-N are not eligible for participation in the FDP/EE*[P]***D*A Component activities with the exception of Community Work Experience Program (CWEP). Such individuals may be eligible to participate in other FDP components.

"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.

"Case manager" means the individual in the AFDC/FDP case management component or GA/FDP ***case*** management ***component*** responsible for service coordination and participation by an individual in FDP, in accordance with this chapter.

["FDP selected entity" means the agency selected to administer a particular FDP function to either the AFDC/FDP or GA/FDP program. Such agencies or organizations include, but are not limited to, a county welfare agency, a municipal welfare department, JTPA agency, or other public or private (for either profit or non profit) agency or organization.]

"Compliance" means *[AFDC and employable GA recipients shall cooperate in the development of an FDP "Family Plan" and such recipients and their respective family members shall participate in the FDP evaluation/assessment component and in appropriate FDP service and work/training component activities, if available, as set forth and scheduled in the FDP Agreement]* ***cooperation on the part of the adult(s) AFDC recipient and the employable GA recipient in the development of an FDP "Family Plan" and in the FDP evaluation/assessment component. Further, participation by eligible unit members who are not otherwise exempt, in appropriate education/work/training component activities is compliance as identified in the Family Plan, if the activity is available, as set forth and scheduled in the FDP Agreement****.

"County IV-A agency" means the county board of social services or the county welfare agency in the respective county.

"DFD" means Division of Family Development in the New Jersey Department of Human Services.

"EDA participant allowances" means an employment-directed activity/allowance for activities including non-educational employment-directed activities (that is, but not limited to: work supplementation programs, community work experience programs, interim worksite assignment, and on the job training) and educational employment-directed activities (that is, but not limited to: English as a Second Language, Adult Basic Education, secondary education or its equivalent, technical/vocational and post secondary educational/vocational programs).

"Eligibility participation period for participant allowance***s***" means a period of time in which participant allowances are available up to the respective cumulative total amount of the particular type of participant allowance as delineated at N.J.A.C. 10:86-9.7.

"Education and Employment-Directed Activity (EEDA)" means the education/work/training component of the FDP.

"Employable GA recipient" means an individual in receipt of General Assistance maintenance payments who is an able-bodied person and who could be placed in employment/education or training.

"Excused participant" means a mandatory FDP participant who is temporarily excused from FDP participation for reasons set forth at N.J.A.C. 10:86-3.

"Exempt participant" means an AFDC or employable GA individual who is not required to participate in the FDP/EEDA Component for specific reasons set forth at N.J.A.C. 10:86-3.2(b). Exempt participants also include unemployable GA individuals who are unable to participate in work/training activities.

["Family member" means any other member of the AFDC adult recipient's eligible unit, or those members who reside with the AFDC eligible unit members who are ineligible for AFDC due to receipt of SSI or Title IV-E foster care or excluded due to reasons set forth at N.J.A.C. 10:82-1.11. GA family members include the spouse or dependent children of an employable General Assistance individual living in the GA recipient's household.]

"Family member" (AFDC family for purposes of FDP) means a person other than AFDC eligible unit members, as defined herein, residing in the home of the AFDC eligible unit due to family circumstances. Family members may include: family members who are ineligible for AFDC due to receipt of SSI or Title IV-E foster care; family members excluded from the AFDC eligible unit due to reasons set forth at N.J.A.C. 10:82-1.11 (newborn excluded for cash assistance) or N.J.A.C. 10:82-2.10 (natural parent to AFDC child(ren), his or her non-nedy spouse, and the spouse's child(ren) not receiving AFDC); non-needy caretaker relative(s) of the AFDC eligible child(ren); other relatives in the home who, due to limitations as a result of physical or psychological need, are not on AFDC and for whom an AFDC adult is the primary caretaker; protective services child(ren) as identified by DYFS, placed in the home of the AFDC family; and any adult children on General Assistance. Family Development Program (FDP) referrals of those members identified in the Family Plan to FDP components shall be based on whether or not problems experienced by that family member create a barrier to the AFDC eligible unit in becoming self-sufficient.

***"Family member" (GA family for purposes of FDP) means a person other than the employable GA recipient(s) and his or her spouse, as defined herein, who reside in the home of the employable GA recipient due to family circumstances. Family members who reside with the employable GA recipient may include: children of the GA recipient who have reached the age of majority; an emancipated child of the GA recipient in accordance with N.J.A.C. 10:85-3.1(e); an elderly parent or SSI child who, due to limitations as a result of physical or psychological need, resides with and for whom the GA employable recipient is the primary caretaker; and**

protective services child(ren) as identified by DYFS. Family Development Program (FDP) referrals of those members identified in the Family Plan to FDP components, shall be based on whether or not problems experienced by that family member create a barrier to the employable GA recipient(s) in becoming self-sufficient.*

"Family Plan" means the plan developed by the *[AFDC/GA FDP participant or caretaker relative to address the goal of the employable AFDC and GA recipient]* ***adult(s) AFDC recipient or caretaker relative or the GA employable individual which is a detailed action agenda which sets forth the GA and AFDC/FDP participant/other eligible unit/members and other family members' assessment results; the educational and employment-related goals of the adult(s)/caretaker(s)/AFDC individual(s) or GA employable individual; and the steps the FDP participant and other family members will need to take to achieve those goals; supportive services provided to permit FDP participation by eligible unit members; and the timetable for the provision of those services***.

"FDP" means "Family Development Program" which is a program designed to offer intensified and coordinated services/activities to address the educational, vocational, and other needs of public assistance recipients and their family members in order to enable AFDC and employable GA recipients to prepare and achieve economic self-sufficiency through permanent full-time unsubsidized employment.

"FDP Agreement" means the agreement between the AFDC parent recipient or caretaker relative or the GA employable individual and the respective case management entity that sets forth the FDP participation obligations of the FDP participant(s) and the FDP case management agency for specific activities or services for FDP.

"FDP Components" means the various offerings/services of the FDP including the assessment/evaluation component; the job development component; the social services/special referrals component; the work/training component; and the supportive services component (including child care and participant allowances).

"FDP ***education and*** employment-directed activities" means FDP activities that are designed to lead to economic self-sufficiency through employment of AFDC and employable GA recipients, and include: FDP Job Search; FDP Work Supplementation Program; FDP Community Work Experience Program (CWEP); (FDP vocational/technical training programs; FDP educational services; post-secondary educational opportunities; *[vocational assessment and counselling;]* and job readiness activities.

"FDP participant" means any member of the AFDC adult recipient's eligible unit, including the adult or caretaker relative ***who is not exempt from FDP participation***; or, in General Assistance, *[the]* ***any*** employable GA individual ***in the eligible unit*** *[and his or her spouse or other family members]*.

FDP selected entity" means the agency selected to administer a particular FDP function to either the AFDC/FDP or GA/FDP program. Such agencies or organizations include, but are not limited to, a county welfare agency, a municipal welfare department, JTPA agency, or other public or private (for either profit or non profit agency or organization.

"General Assistance" means financial and/or medical assistance provided by municipal welfare departments to needy persons currently ineligible for participation in any other public assistance program in New Jersey, or for Supplemental Security Income (SSI).

"Lead child care entity" means the lead child care agency or other agency or administrative entity established in each county to assist the case manager and FDP participant in obtaining child care.

"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 who is receiving AFDC or GA cash assistance benefits who is required to participate in FDP and whose participation is not exempt. Participation may be required in one or more of the FDP components.

"MWD" means municipal welfare department.

"PAL" means participant allowance which may include a transportation (TRE) allowance, an employment-directed activity allowance (EDA); a job allowance (JOB); an allowance for an automobile repair or insurance (CAR); or an allowance to participate in the CWEP.

"Public Assistance" means assistance benefits provided to individuals/families through the Aid to Families with Dependent Children program or the General Assistance program.

"Satisfactory progress in an educational activity" 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 or municipal welfare department or GA case management entity (see N.J.A.C. 10:86-4.5(d)).

"Satisfactory progress in a training activity (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 or municipal welfare department or GA case management entity (see N.J.A.C. 10:86-4.5(e)).

"Unemployable GA individual" means an individual who, because of a physical or medical impairment, incapacity, or age, cannot maintain employment due to circumstances which prohibit that individual from doing so. The period of time an individual is classified as unemployable may be for a short or temporary timeframe or may extend indefinitely.

"Voluntary participant" means an individual applying for or receiving AFDC who is not required to participate in the FDP, but who chooses to participate on a voluntary basis in the FDP work/training component.

"Work/training" means educational, vocational and employment-directed activities as well as employment.

SUBCHAPTER 3. FAMILY DEVELOPMENT PROGRAM PARTICIPATION

10:86-3.1 General participation

(a) All AFDC and required GA eligible individuals shall, except as otherwise provided in this manual, participate in FDP as a condition of eligibility for AFDC or GA. FDP services/activities are not limited to the adult public assistance recipient, but are extended to include the eligible recipient's family members. Participation in FDP is twofold:

1. Development of a Family Plan by the AFDC parent or caretaker relative and GA recipient to identify (through assessment) services/activities needed by family members;

i. The Family Plan is at the core of the FDP and is designed as an evolutionary tool to be modified periodically, as necessary, to address the changing needs/circumstances of the family; and

2. Individual family member participation (including the adult recipient) in activities/services targeted to meet his or her needs.

(b) The objective of the Family Plan is to direct member participation in one or more of the other available program core components: evaluation/assessment; social services/special referrals; and education and employment-directed activities (see N.J.A.C. 10:86-4 for full component descriptions).

(c) An AFDC parent or caretaker relative or an employable GA recipient shall participate in FDP components as follows:

1. Attend initial assessment of employability (evaluation/assessment of individual and family member needs), counseling and diagnostic sessions necessary for his or her placement in employment, education, or in employment-directed activities (including, but not limited to, on-the-job training/job search/vocational training/job readiness activities);

2. Participate in good faith at all sessions necessary to develop an FDP Family Plan (that is, family agreement for services/activities needed by individual family members); and

3. Comply in good faith with all provisions of the FDP Family Plan, including, but not limited to, ensuring that family members

participate in activities or receive services provided through the FDP family agreement; attending activities specified in the Family Plan necessary to improve his or her skill levels or to address educational needs; participating in other services provided through referrals (such as medical services and/or rehabilitation for purposes of restoring or improving employability); or by maintaining employment, when appropriate.

i. An AFDC recipient whose youngest child is less than two years of age shall at a minimum (unless the provisions at N.J.A.C. 10:86-3.4(e)3 apply) participate in counseling, vocational assessment and in the development of a Family Plan. He or she may volunteer to participate in appropriate (as determined by the assessment process) FDP education or employment-directed activities. Special services include:

(1) Basic instruction and counseling in parenting skills and caring for a child's physical and emotional well-being;

(2) The provision of information on the availability of community resources for protection and development of children; and

(3) The identification of future educational, training and employment goals of the parent.

(d) Other AFDC and GA family members shall participate in FDP components based on an assessment of the family's needs as set forth in the Family Plan.

(e) The MWD will submit a written notice to the appropriate county welfare agency (CWA) when a General Assistance/Food Stamp Program employable recipient fails or refuses to comply with FDP requirements. Information provided shall include the recipient's name, address, Social Security number and the specific FDP requirement violated.

10:86-3.2 Exemption from participation in the FDP Education and Employment-Directed Activity (EEDA) Component

(a) AFDC and employable GA recipients are required to participate in employment or in the FDP Education and Employment-Directed Activity Component (EEDA) which includes educational programs, vocational training and work-directed activities, unless exempt from such participation as determined by the IV-A agency income maintenance (IM) worker or the municipal welfare department (MWD) in accordance with (b) below. An individual may claim at any time that he or she is entitled to an exemption.

1. The date of the determination of the exemption and the reason for the exemption shall be recorded in the individual's case record at the CWA or MWD.

2. Any authorized 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 or GA eligibility. During the periodic review, if there is a change in the exemption status, the appropriate action shall be taken by the CWA or the MWD on the change in status and the recipient shall be notified of the change by the respective agency.

3. The term "unemployable" used to describe individuals in receipt of GA benefits is used interchangeably with the term "exemption" for compliance with the FDP/EEDA Component.

i. For purposes of GA, unavailability of employment cannot be the basis of a determination of unemployability.

4. Any individual who is not exempt from participation, for any of the reasons in (b) below, is considered mandatory for participation in the activities of the FDP/EEDA Component as determined by an assessment of that person's specific needs.

5. When appropriate, referral of the recipient to the Division of Vocational Rehabilitation Services (Form PA-14, Referral for Services, shall be used for this purpose) and/or to the Social Security Administration for Retirement, Survivors and Disability Insurance (RSDI) or Supplemental Security Income (SSI) benefits shall be made. Acceptance of referral for such service is optional with the individual and shall not affect a recipient's entitlement to AFDC or GA benefits.

(b) The following categories of individuals in Charts I and II are exempt from participation in the FDP/EEDA Component:

1. Chart I: FDP exemptions from education/work/training activities for AFDC are as follows:

i. Persons who are under age 16 and who are dependent children;

ii. Students 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 who are 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;

iii. Persons who are 60 years of age or older;

iv. Persons who are ill or injured;

v. Persons who are incapacitated (includes alcohol and drug addiction impairments and periods of recuperation after childbirth due to complications during or after the birth);

vi. Persons who are pregnant following the first trimester;

vii. Persons who are required in the home to care for another member of the household on a substantially continuous basis when no other appropriate member of the household is available;

viii. A parent or other caretaker relative of a child under two years of age who personally provides care for the child ***(see additional criteria at N.J.A.C. 10:86-3.4(e))***;

ix. Persons who live in areas defined as "remote" (see N.J.A.C. 10:86-3.4(f);

x. A parent or other caretaker of a child on AFDC-C, if another adult relative in the home is a mandatory FDP participant in the work/training component and has not refused to participate in the FDP or to accept employment without good cause;

xi. The other parent who is not the principal earner in an AFDC-F family if the parent who is the principal earner is not exempt under these rules;

xii. The parent who is not the principal earner in the AFDC-N segment;

xiii. Any individual who 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; and

xiv. A person who is working 30 or more hours per week.

2. Chart II: FDP exemptions from education/work/training activities for GA are as follows (†denotes GA unemployables):

i. Persons who are under age 16 or who are under age 18 and are a full-time student;

ii. Persons who are participating in a lawful strike or who are locked-out of a labor dispute;

iii. Persons who are applying for or are receiving medical benefits only, without cash assistance;

iv. Persons who are receiving inpatient hospital care and treatment;

v. †Persons who are 65 years of age or older;

vi. †Persons receiving inpatient hospital care and treatment who were or would have been classified as unemployable under these rules, prior to entering the hospital;

vii. †Persons who are patients in long term care facilities;

viii. †Persons in the first 12 months of residential treatment in centers licensed by the New Jersey Department of Health for the treatment of drug and alcohol abuse when medical evidence exists that residential treatment is necessary (the 12-month period starts anew for each commencement of treatment);

ix. †Persons normally eligible to receive RSDI, SSI, or Railroad Retirement benefits on the basis of disability, but due to recovery of overpayments or administrative delays, such payments are being withheld;

x. †Persons in the third trimester of pregnancy when an examining physician certifies to both the pregnancy and its term;

xi. †Pregnant persons when an examining physician certifies that employment poses a threat to the mother of the fetus; or

xii. †Persons who are required at home to care for one or more children under age six, or for disabled family members and no other appropriate member of the household is available.

(c) Any parent receiving AFDC-N cash assistance or any GA recipient who is not otherwise exempt from participation in the FDP/EEDA Component who is an illegal alien shall participate in FDP Community Work Experience program (CWEP) worksites only (see N.J.A.C. 10:86-5.5 for a description of the CWEP activity).

10:86-3.3 GA incapacity exemption from the FDP/EEDA Component (MWD function)

(a) GA recipients determined to be incapacitated by the MWD, and therefore exempt from participation in the FDP/EEDA Component due to a physical or mental impairment which prevents the individual from engaging in employment, shall be re-evaluated periodically by the MWD. A determination of incapacity is supported by any of the following circumstances.

1. The individual is unable to engage in any useful occupation for which he or she has formerly demonstrated competence. Written certification by an examining physician attesting to the individual's inability by reason of an identified physical or mental defect, disease or impairment shall be obtained by the recipient.

i. Alcohol or drug addiction shall be considered physical impairments if the specific addiction prevents the individual from engaging in employment or training. If 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, the individual shall no longer be exempt from FDP/EEDA participation and shall be required to participate in other FDP activities as set forth at N.J.A.C. 10:86-5.

2. The expressed period of the incapacity or the termination date of the incapacity contained in the written certification shall be observed as follows:

i. A time period of "indefinite" shall be construed to mean three months unless renewed by the examining physician or extended by the GA Program Unit (GAPU) in the Division of Family Development (DFD) (see (b) below).

ii. When no date or time period is indicated, the certification shall be renewed monthly or at an interval set by GAPU.

3. The individual has an obvious disability or impairment which makes employment unrealistic at the time of application/redetermination.

i. Such determinations may be valid for up to three months or longer, as decided by GAPU.

4. The individual's history of unemployment and lack of vocational training and/or education, combined with medical evidence of the existence of a mental or physical disability or impairment, negates all possible employment.

i. Facts leading to such a determination shall be recorded in the MWD case record.

ii. A determination on this basis shall be valid for three months or longer, as determined by GAPU.

(b) The DFD/GAPU may prepare a "Written Record of Action." The MWD makes application for the Record through the submission of such documentary material to GAPU as the MWD deems appropriate. This material may include, but is not limited to, medical or hospital reports and the MWD's own statement of specific observations and recommendations. Public Assistance Form PA-5 (DRS-1), Examining Physician's Report, may be used in this process.

1. Social information submitted by the MWD should include, at a minimum, the recipient's age, educational level attained, experience (including vocational training and work history) and a general description of the individual, especially as that description may relate to employment.

2. The GAPU shall consider the social information submitted by the MWD as well as the physical or mental defects, diseases or impairments of the individual in determining whether the recipient shall be able to engage in any useful occupation for which he or she has competence, or of the individual's ability to engage in retraining.

10:86-3.4 Discussion of AFDC exemption criteria (IM function)

(a) An AFDC individual is considered incapacitated and therefore exempt from FDP/EEDA Component participation when it is verified that a physical or mental impairment, either by itself or in conjunction with age, prevents the individual from engaging in employment and/or training. Such an incapacity is expected to exist for a continuing period of at least three months (see N.J.A.C. 10:81-3.16(g)).

1. Physical or mental impairment shall be determined by a physician, or licensed or certified psychologist, or by the Disability Review Section, Division of Medical Assistance and Health Services.

2. Alcohol or drug addiction shall be considered physical impairments if they prevent an individual from engaging in employment or training.

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, he or she shall no longer be exempt from FDP/EEDA participation.

3. Incapacity may include a period of recuperation after childbirth if prescribed by the woman's physician. 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 (DRS-1), Examining Physician's Report, for an appropriate period of recuperation prescribed by her physician/psychologist.

4. 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 FDP shall be encouraged rather than exemption of the individual for reason of incapacity.

5. When an individual claims exemption under incapacity or illness, but further verification is necessary (for example, a medical or psychological examination), 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 in the FDP/EEDA Component unless there is a legitimate delay in obtaining a medical appointment. In such instance, the 30-day limit may be extended to 45 days.

6. Individuals who have been determined to be exempt from FDP on the basis of incapacity shall be referred 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 or family's entitlement to benefits.

(b) An AFDC individual is considered ill or injured when it is determined on the basis of medical evidence (such as a doctor's verification) or on some other sound basis that the illness or injury is serious enough to temporarily prevent participation in employment or in the FDP/EEDA Component. Reasons for exemption for illness or injury (which are of a temporary nature) include: observation of a cast on a broken limb; information of scheduled surgery; recuperation from surgery; or other instances where the condition will be of limited duration.

1. Exemption for illness or injury normally will not exceed 90 days.

2. As part of the AFDC income maintenance function (IV-A agency function), the case shall be reviewed every 30 days to determine changes in circumstances that may render the individual able to participate in FDP/EEDA Component activities or employment.

(c) An individual is considered to be "required in the home" and therefore exempt from FDP/EEDA Component participation 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.

(d) An individual is considered exempt from FDP/EEDA Component participation due to pregnancy after the first trimester, that is, months four through childbirth, with medical verification of the expected date of delivery.

(e) An AFDC parent or other caretaker relative who is exempt because he or she personally provides care for a child under two years of age is subject to the following additional criteria:

1. Only one parent or other relative in the family may be exempt from FDP participation for the reason of personally providing care to a child under two years of age.

2. Limited participation of 20 hours in any FDP/EEDA Component activity is required for a parent in an AFDC-C segment case and only one caretaker relative in a two parent AFDC-F family whose child is two years of age or greater, but less than age six

if child care is available in accordance with N.J.A.C. 10:86-10 to enable the 20 hour participation unless the factors in (e)3 below apply to the AFDC parent or caretaker relative. The AFDC parent may volunteer to participate for greater than 20 hours.

3. Custodial parents under age 20 must participate in the FDP/EEDA Component 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 in accordance with N.J.A.C. 10:86-10.

4. AFDC parents with a child under two years of age shall participate in FDP assessment, counselling and preparation of the Family Plan.

(f) An AFDC participant may satisfy an exemption for remoteness if despite the provision of support services, the commuting time between home and the site of the FDP 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.

(g) The principal earner in an AFDC-F or -N segment family, if exempt from participation in FDP due to remoteness, shall register with the State Employment Service.

(h) AFDC 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 FDP/EEDA Component 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 AFDC participant continue employment. However, to receive supportive services, the individual shall be referred by the IV-A agency income maintenance worker to AFDC/FDP case management and shall cooperate with applicable FDP requirements to be determined eligible for receipt of any supportive services of the FDP program (see N.J.A.C. 10:86-9 and 10).

2. The participant may voluntarily participate in other FDP training or education agreed upon by the AFDC/FDP case management entity if it appears that the current employment held by the AFDC individual will not result in the family becoming self-sufficient. FDP activities, as needed, shall be delineated to help the participant achieve this end.

10:86-3.5 Volunteer participation in FDP/EEDA Component activities (AFDC program only)

(a) Volunteers in the FDP/EEDA Component are defined as those AFDC individuals who meet the FDP exemption criteria at N.J.A.C. 10:86-3.2(b) and decide to participate in the FDP education/work/training component (EEDA) regardless of the exemption. The IV-A agency income maintenance worker shall inform all exempt AFDC-C, -F, and -N applicants and recipients of their right to voluntarily participate in FDP education/work/training component activities and of their right to stop participation at any time without loss of assistance payments.

1. During county phase-in to the FDP program, that AFDC individual who voluntarily agrees to participate in a FDP/EEDA Component activity and who is not a member of a required county phase-in group shall be treated as an FDP mandatory individual (one who is required to participate at that phase of the county's implementation of the FDP) unless the individual satisfies FDP exemption criteria at N.J.A.C. 10:86-3.2(b). If that AFDC individual is found to be exempt from FDP/EEDA Component activity and decides to participate, then the individual is a "volunteer in FDP."

(b) If an exempt AFDC individual "volunteers" to participate in FDP/EEDA, he or she is not subject to sanctioning due to non-participation (see N.J.A.C. 10:86-8).

(c) In determining the priority of participation within the FDP/AFDC target populations (see N.J.A.C. 10:86-3.6) in the FDP/EEDA Component, the agency shall give first consideration to applicants for or recipients of AFDC who are exempt but "volunteer" to participate in the FDP/EEDA.

(d) When a "volunteer for FDP" stops participation in a FDP/EEDA Component activity without good cause, that AFDC individual shall not be given priority to participate again so long as other AFDC individuals are actively seeking to participate, unless the individual loses exemption status and becomes FDP mandatory for participation in the FDP/EEDA Component.

10:86-3.6 Specific AFDC participation requirements in the FDP/EEDA Component

(a) As required by the Federal Family Support Act (JOBS), the FDP program targets services to certain AFDC populations for participation in the program.

(b) Those AFDC/FDP target groups are:

1. "Long term recipients"—Long term recipients receiving AFDC for any 36 of the preceding 60 months;

2. "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;

3. "AFDC custodial parents under age 24 needing high school"—AFDC 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 (General Education Development—GED);

4. "Custodial parent under age 24 with no work history"—AFDC individuals who are custodial parents under age 24 and who have little or no work experience in the preceding year; and

5. "Potentially ineligible AFDC 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).

(c) A State only target group is comprised of AFDC individuals/families being considered for or living in transitional housing (including temporary rental assistance under *[IX-A]* **IV-A** emergency assistance provisions) requiring participation, if not otherwise exempt, in an educational/work/training component as a condition of eligibility for that transitional housing; or living in a shelter when the shelter provides access to training/educational programs designed to encourage self-sufficiency which may be determined by the county as qualifying as FDP or REACH/JOBS participation; or who are on waiting list(s) for a rental subsidy or living in housing which is subsidized and which requires work/training participation*[,]* (for example, Section 8 Programs, both State and/or Federal);

1. Transitional housing programs for purposes of the State only target group may encompass the following:

i. Self-Sufficiency Transitional Housing—Provided through the New Jersey Department of Community Affairs. This Program requires participation in the FDP/EEDA, REACH/JOBS or Project Self-Sufficiency;

ii. IV-A Funded Transitional Housing—Provided in accordance with the New Jersey Department of Human Services Comprehensive Homeless Assistance Strategy Guidelines (for example, Harmony House). FDP/EEDA or REACH/JOBS participation is required;

iii. IV-A Temporary Rental Assistance—As described under the emergency assistance provisions at N.J.A.C. 10:82-5.10(f)5;

iv. Demonstration Transitional Housing Sites—The four Demonstration housing sites in the counties of Monmouth, Middlesex, Passaic and Mercer require FDP/EEDA or REACH/JOBS participation; and

v. Other—County initiated transitional housing programs requiring work/training participation.

2. The State-only target group shall be used only if the AFDC family/individual does not first satisfy one of the five Federal target group definitions in (b) above, and the family meets the aforementioned State-only target group criteria. The State-only target group has been added for participation purposes of AFDC/FDP so that those families most in need of housing assistance can be targeted for services through the FDP.

3. Income maintenance staff at the CWA should address questions to AFDC individuals at intake and in AFDC redetermination interviews to determine family circumstances regarding housing issues to ascertain whether such individuals may be targeted for FDP services if other Federal target group definitions are not met.

4. CWA social services staff should immediately contact the family's IM worker alerting the worker to a family's situation so that IM can assure the proper target group designation for the family so that appropriate referral can be made to AFDC/FDP case management for FDP/EEDA participation.

(d) 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 five Federal target groups, that individual shall remain in that target group for the duration of AFDC/FDP participation, including the 12-month post-AFDC period. If the individual is identified as belonging to the State only target group, the target group status shall be changed when such individual satisfies Federal target group criteria as set forth in (b) above.

1. It is advantageous to the State and county to match the family/individual first to Federally mandated target groups if that criteria is met by the individual/family due to Federal JOBS funding policies.

(e) CWAs have an ongoing responsibility to assign target group status to new AFDC/FDP cases and to correct an inappropriately assigned AFDC target group status. The IV-A agency shall ensure coordination between IM and AFDC/FDP case management so that a participant's target group status is accurate.

(f) Title II of the Family Support Act, the Job Opportunities and Basic Skills Training (JOBS) program, requires that AFDC individuals with certain educational needs or certain family circumstances participate in prescribed employment-directed activities (EDAs) or participate subject to Federal limitations. These requirements 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; and

5. Limited participation for a caretaker of a child age two and older but under age six.

(g) Dependent children between 16 and 18 years of age, who are not parents and who are not attending high school, shall be mandatory AFDC/FDP participants in the FDP/EEDA Component. Such individuals should be encouraged and helped to remain in school or to participate in other educational or training activities as delineated in accordance with N.J.A.C. 10:86-5.

(h) The principal earner in an AFDC-F segment case shall participate for a total of at least 16 hours per week in a FDP work supplementation program (WSP), in a community work experience program (CWEP), or in an on-the-job training (OJT) program.

1. If the AFDC-F 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 in lieu of participation in WSP, CWEP or OJT.

i. The AFDC-F individual shall be considered to be meeting the above participation requirement if he or she is making satisfactory progress.

2. The AFDC-F 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 participation as permitted under that program's guidelines (see N.J.A.C. 10:86-5.5(e)4).

(i) For purposes of determining a State's participation rate for Federal Financial Participation, an AFDC participant is an AFDC recipient who is assigned to a FDP program component (including educational activities, including training, job skills training, job readiness activities, job search, OJT, WSP, CWEP and post-secondary education) for at least the minimum activity level. 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 AFDC/FDP participant individual active only in assessment, employability development planning, or in services is not considered a participant for these purposes.

10:86-3.7 Federal educational requirements for AFDC custodial parents

(a) AFDC 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 FDP/EEDA, must participate in FDP/EEDA preparatory educational activities, subject to the provisions below:

1. An AFDC 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. The AFDC/FDP case manager 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 AFDC 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 is beyond New Jersey's compulsory attendance requirement of age 16 and participates in another FDP/EEDA preparatory activity or in skills training combined with education (for example, Job Corps) and:

(1) 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

(2) The participant's local school district legally refuses to admit or readmit the participant and no alternative, appropriate educational components are available; or

(3) The participant has been determined developmentally disabled or in need of special educational programs for the learning disabled.

2. An AFDC custodial parent age 18 and 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 AFDC 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. 10:86-3.4(e)2, 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 AFDC 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 Family 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 FDP Family Plan; the participant has the basic literacy level; or the employment goal in the FDP Family Plan does not require a high school diploma or its equivalent.

(b) A mandatory FDP 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 FDP Family Plan. Any other FDP 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 FDP Family Plan, does not require a high school diploma (or its equivalent).

(c) A custodial parent regularly attending high school or a secondary vocational school is not required to participate in the AFDC/EEDA Component. Such individuals are not included as FDP/EEDA participants for Federal reporting purposes. Such individuals may be eligible for child care through FDP to help them remain in school if necessary and appropriate.

10:86-3.8 FDP Family Plan and FDP Agreement

(a) On the basis of the initial assessment of employability of the adult AFDC recipient(s) or caretaker relative, or the employable GA participant, the AFDC or GA FDP case manager shall develop a FDP Family Plan in consultation with the participant. The Family Plan shall take into account available program resources; the participant's supportive service needs; the skills level and aptitudes of the FDP adult participant; local employment opportunities; and, to the maximum extent possible, the preferences of the participant. The Family Plan shall also list the services/resources needed for each family member.

(b) A FDP Family Plan shall be completed for each FDP participant family. The FDP Family Plan shall be signed by the AFDC or GA FDP case manager and the AFDC parent or caretaker relative or GA participant and a copy retained in the FDP participant's case record. The participant shall also receive a copy of the plan.

(c) The FDP Family Plan is an outline of the activities and services needed by the AFDC parent or caretaker relative or GA participant to achieve an employment goal. The FDP Family Plan shall not be considered a contract but rather shows the path the AFDC adult or GA employable individual must follow to help him or her achieve an employment goal. The Plan also establishes services and activities needed by other family members.

(d) The FDP Family Plan shall be used in conjunction with the FDP Agreement which provides detailed information concerning specific FDP/EEDA Component activities and FDP supportive services needed to achieve the employment goal.

(e) The FDP Family Plan shall contain the following:

1. General case information;

2. An employment goal for the AFDC parent or caretaker relative or GA FDP participant developed in consultation with the AFDC or GA individual which should reflect the availability of jobs in the local and/or relevant market;

3. A list of the FDP/EEDA Component activities that will be undertaken by the participant to achieve the employment goal (the specific details of the FDP/EEDA activity, such as dates and hours of participation, shall be identified in the FDP Agreement);

4. The supportive services to be provided to enable FDP/EEDA 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 an FDP Agreement);

5. Any other needs of the AFDC or GA FDP family members, identified during assessment, that might be met through FDP;

6. The AFDC or GA FDP participant's literacy level, including date assessed, and the name of the specific test used to assess the literacy level; and

7. The participant's education level, that is, highest grade completed.

(f) Final approval of the FDP Family Plan rests with the AFDC or GA FDP case manager.

(g) The AFDC or GP FDP case manager shall make changes to the FDP Family Plan as follows:

1. Update the literacy level when the FDP participant(s) completes a preparatory educational activity, such as GED, Adult Basic Education (ABE) or English as a second language (ESL), as appropriate;

2. Record satisfactory progress in a noneducational employment-directed activity at the time of completion of the activity or every three months, whichever occurs first;

3. 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;

4. Complete a new AFDC or GA FDP Family Plan when there is a change in the participant's employment goal or to reflect new activities or services needed by family members.

(h) The FDP Agreement will set forth provisions for both the AFDC or GA FDP participant and the agency to comply with under the principle of mutual obligation. Each participant will sign an initial FDP Agreement with the AFDC or GA FDP case manager affirming participation, provision of supportive services (such as child care and transportation) and commitment to self-sufficiency. The final FDP Agreement places the AFDC or GA participant in employment or an employment-directed activity, and will be adapted to each participant's skills and necessary employment activities. A Spanish language version of the FDP Agreement is available for any participant whose primary language is Spanish.

1. All AFDC or GA FDP participants will be required to complete and sign a FDP Agreement as a condition of continued eligibility for the AFDC or GA programs.

2. All AFDC/FDP participants no longer receiving AFDC will be required to complete and sign a FDP Agreement as a condition of receiving post-AFDC extended medicaid and child care benefits. If the participant would be penalized by the employer for taking time off from work, the Agreement may be mailed to the participant with the approval of the AFDC or GA FDP case management supervisor.

(i) Failure or refusal of the AFDC or GA FDP participant to sign the Family Plan or FDP Agreement without justification will result in sanctions set forth in N.J.A.C. 10:86-8. Justification shall include good faith disagreements about the particular employment or educational or employment-directed activity proposed by the AFDC or GA FDP case manager or about the specific supportive services that will be required. If the FDP case manager can demonstrate with available and pertinent information that there is no reasonable basis for the participant's position, then the disagreement will be deemed to be without justification.

1. Inadvertent failure of the AFDC or GA FDP case manager, as the agency representative, to sign the Family Plan will not relieve the FDP participant or the agency of compliance with the terms of the Family Plan or FDP Agreement and sanctions for noncompliance.

2. Prior to being asked to sign the FDP Agreement, each AFDC or GA FDP participant shall be advised that legal responsibilities are involved and that the FDP participant has three business days to have the Agreement reviewed by an attorney or other adviser.

(j) If, after evaluation and assessment, the AFDC or GA FDP participant is not satisfied with the terms of the Agreement, including the results of the assessment, the scheduled FDP/EEDA activities or supportive services set forth in the Agreement, and if, after three days, the FDP case manager cannot resolve the disagreement, then the following conciliation procedures shall be applied:

1. The AFDC or GA FDP participant shall be offered the opportunity to immediately voice his or her dissatisfaction to the supervisor of the case manager. The supervisor will review the assessment and proposed Agreement, listen to the concerns of the participant and, within one working day, make a decision.

2. If the participant still has disagreement about the Agreement terms the FDP participant shall be advised orally and in writing that he or she has a 10-day period to request a fair hearing (N.J.A.C. 10:81-6 and 10:85-7) as to whether the participant's position is without reasonable basis.

(k) The FDP Family Plan and/or Agreement are continuous and have no automatic or periodic expiration date. Once signed, those documents remain in force until any of the following occurs:

1. The individual becomes ineligible for AFDC or GA for a reason other than employment or receipt of unemployment insurance benefits or temporary disability insurance; a sanction is imposed; the individual moves to another county or municipality; or the participant completes the last scheduled activity with no subsequent activity scheduled.

2. In absence of a change in AFDC or GA eligibility, an FDP Agreement will expire on the ending date of the last activity unless the FDP case manager and participant amend the Agreement with a new activity. To ensure continuous participation in FDP, the AFDC or GA FDP case manager shall review the individual's progress, Family Plan and/or schedule an appointment with the participant, and jointly update the Family Plan and/or Agreement with the participant within two weeks of the ending date of the last FDP activity set forth in the Agreement.

3. The FDP Family Plan and 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 concerning family members.

4. A review of the Family Plan and Agreement shall be completed at time of the redetermination of AFDC or GA eligibility. At a minimum, the case manager and the participant shall review compliance with the existing Plan/Agreement.

10:86-3.9 Employment

(a) AFDC or GA individuals who are working not less than 30 hours per week in unsubsidized employment which is expected to last a minimum of 30 days are exempt from participation in other FDP/EEDA Component activities, even if there is a temporary break which is expected to last no longer than 10 working days.

1. The individual may voluntarily participate in FDP/EEDA Component activities.

2. Supportive services shall be provided, as available under these rules, if needed to continue employment. To receive supportive services, the individual shall cooperate with FDP requirements for receipt of those supportive services.

(b) FDP is designed to allow each AFDC or GA FDP participant to maximize his or her individual abilities. Every effort will be made to place FDP participants in jobs which offer the greatest range of responsibility, opportunity for advancement, and rate of pay, given the FDP participant's abilities and experience. If a job which maximizes the participant's abilities and experience is not available, the AFDC or GA FDP participant may be encouraged to take another job. Where such a participant's assessment(s) indicate the ability to hold a job requiring more advanced skills, but the FDP participant is impeded from securing such a position because of lack of experience, education or training, reasonable efforts will be made through the FDP/EEDA Component to place the participant in education or employment-directed activities which would provide the necessary experience, education or training, whether or not the FDP participant is contemporaneously working at another less skilled position.

10:86-3.10 Social Services

(a) Social services as related to FDP AFDC or GA participation are intended to address problems such as substance abuse (including alcohol and narcotic abuse) or behavioral problems that may prevent or seriously impair an individual's ability to participate in the FDP program. Examples include mental health services, vocational rehabilitation, drug and alcohol treatment programs, and health care.

(b) Acceptance of social services is optional. For the period the individual is receiving these services or participating in treatment programs, he or she will be deemed to be complying with FDP requirements.

1. If an individual does not accept these services or stops participating in a treatment program, the individual will not be subject to sanctions at N.J.A.C. 10:86-8. In such instances, the individual will be required to participate in another designated activity of need as set forth in the Family Plan.

10:86-3.11 Net loss of income (AFDC only)

(a) Regarding calculation of net loss of cash income through employment as good cause for nonacceptance of the job, AFDC individuals shall have good cause for refusing a specific employment opportunity, as set forth at N.J.A.C. 10:86-8, 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 AFDC family while receiving assistance. The calculation is a manual process which is done on a case-by-case basis by income maintenance at the time of the offer of employment if the participant requests a determination of "good cause" for nonacceptance of a job. If the agency makes direct payments for the actual costs of child care up to the maximum limits established by DHS, 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.

(b) Net loss of cash income means that actual work-related expenses which would otherwise not be incurred shall be subtracted from the AFDC 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 AFDC payment standard less any unearned income.

1. 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.

2. The determination of net loss of cash income is a comparison of actual expenses incurred from the job versus the applicable AFDC earned income disregards.

3. 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.

4. The value of the family's Food Stamp allotment is not included in the calculation.

5. Actual work-related expenses due to that specific job shall be used in the computation. Work-related expenses to be considered are mandatory payroll deductions, union membership fees, transportation costs, required uniforms/clothing, and/or necessary equipment or tool costs.

(c) 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.

1. 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 appropriate payment standards 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.

2. 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).

3. Determine the difference between the resulting income figure from Step II and the cash assistance payment (that is, the payment standard less any unearned income) for the family.

4. The resulting difference is the net loss of cash income.

10:86-3.12 Excused participation (AFDC and GA)

(a) FDP participants shall be temporarily excused from participation if the FDP component (including social services) for which they are scheduled as set forth in the FDP Agreement is not currently available or if a supportive service set forth in the FDSP Agreement is not available. Excused participation is reviewed once every week up to once every month, depending on the circumstances surrounding the excuse.

1. During the excused period, the FDP participant and the AFDC or GA FDP case management entity will be expected to comply with the other FDP Agreement terms.

2. Another FDP activity which is suitable for the participant and for which necessary supportive services are available may be substituted as an alternative form of participation.

(b) Absence from a particular day or session of employment or any FDP/EEDA Component activity shall be excused, and therefore approved by the AFDC or GA FDP case manager, because of:

1. Illness of the FDP participant, a child of the participant, or any other member of the participant's household or immediate family who is or becomes by reason of the illness dependent upon the participant.

2. Death of a spouse, parent, child, sibling, or grandparent within the preceding three working days; or

3. Other circumstances requiring the participant's immediate and personal attention, including, but not limited to, jury duty, a court appearance, school conferences concerning a child of the participant, medical diagnosis or testing, and other similarly important matters.

SUBCHAPTER 4. FAMILY DEVELOPMENT PROGRAM (FDP) COMPONENTS

10:86-4.1 FDP Components—general description

The FDP is designed as a comprehensive approach in addressing the educational, vocational and other needs of public assistance recipients and their families by providing for the delivery of multiple and interrelated services to meet those needs. This subchapter describes the core components which constitute the structure of the FDP. It is compulsory upon the county planning council to ensure that FDP components are organized and administered effectively within the respective county for both AFDC and GA individuals, in order that the goals and objectives of the FDP are met. The FDP is a network of available social, health-related, educational and vocational resources and services that may be accessed through the FDP case management referral process to assist both AFDC and GA family members.

10:86-4.2 Case Management Component

(a) The Case Management Component is the nucleus of and catalyst for the other FDP core components in that it sets forth the direction for a cohesive family effort toward achieving economic self-sufficiency. The Case Management Component shall be the integral link among the different subsystems of the FDP including assessment; social, health and remedial services; educational and employment-directed activities; and supportive services (that is transportation, participation allowances, and child care). In each county, the case management function may be handled by one or more entities to serve the AFDC/FDP and GA/FDP populations. The county planning council shall select the AFDC/FDP case management entity. The DFD may determine the case management provider(s) for GA employable individuals in the various municipalities of a county in accordance with established State bidding procedures.

(b) The AFDC/FDP Case Management Component shall provide the necessary linkages to assist AFDC families in obtaining necessary services/activities for family members through referrals to provider entities for appropriate services. The AFDC/FDP case management provider will communicate with the various units of the CWA including, but not limited to, income maintenance, child support and paternity and social services to ensure the transfer of accurate and up-to-date information concerning AFDC families. The FDP is dependent upon the cohesive interaction of these CWA units and AFDC/FDP case management; an open exchange amongst these units is central to an effective AFDC/FDP program. Family member participation in FDP depends on the eligibility of the family for AFDC cash assistance as FDP also satisfies the education/work/training requirement of the AFDC program. When phased in each respective county, FDP becomes New Jersey's Federal JOBS program.

(c) Likewise, the GA/FDP Case Management Component shall assist GA employables referred by the MWD and their family members to obtain needed services through referrals to provider entities of GA/FDP components. The GA/FDP case manager shall make referrals of employable GA individuals and their family members to appropriate health, social or rehabilitative services; to educational or employment-directed activities of the FDP/EEDA Component; and provide the related supportive services necessary for participation in FDP activities. The GA/FDP case manager shall communicate with the MWD as GA/FDP participation is dependent upon the MWD's assessment of GA employability including the periodic review of incapacity cases for possible referral to FDP, its role in determining GA eligibility in computing worksite participation hours and in imposing sanctions for noncompliance with GA/FDP requirements.

(d) The Case Management Component, through a designated representative (usually a case manager), shall be responsible for preparing a FDP Family Plan, the key element of the FDP. The Family Plan is to be developed mutually with each GA and AFDC/FDP participant to set goals and find solutions for overcoming obstacles to economic achievement. An assessment shall be conducted to determine the health-related, social, educational and vocational needs of the participant and/or other family members in order to identify employment barriers and to establish appropriate employment goals for those individuals. The Family Plan identifies the necessary activities/services needed for each family member.

1. The Family Plan is a detailed action agenda which sets forth the GA and AFDC/FDP participant/family's assessment results, their educational and employment-related goals and the steps the participant and other family members will need to take to achieve those goals; supportive services which provided shall be to permit FDP participation by the individual; and the timetable for the provision of those services.

2. The FDP mandates that each AFDC parent caretaker or relative and GA employable participant from each eligible family be responsible for participating in the development of a Family Plan for that eligible family.

i. The Family Plan consists of an FDP Employability Plan, which sets employability goals and the pathway to self-sufficiency, and the FDP Agreement, which sets forth the FDP activities and supportive services needed to achieve the employability goals. Both the FDP Employability Plan and the FDP Agreement shall be mutually developed and signed by the FDP participant and an appropriate case management representative.

ii. Since the Family Plan is designed as a tool to address the needs of AFDC and GA FDP participants and their family members to achieve educational and employment related goals, the FDP Family Plan and FDP Agreement may be amended or updated periodically, as appropriate.

(e) The AFDC parent or caretaker relative or employable GA participant is responsible for mutually developing the Family Plan with AFDC or GA FDP case management.

1. If the responsible AFDC individual fails or refuses to cooperate, without good cause, with the Family Plan process, he or she shall be subject to a sanction penalty of 20 percent of the AFDC payment standard for the family size subtracted from the AFDC grant.

2. If the responsible GA employable participant fails or refuses to cooperate with the Family Plan process without good cause, he or she is subject to a sanction of three months of ineligibility for receipt of GA cash assistance.

3. Any subsequent instances of non-compliance with the FDP family plan requirements shall result in subsequent sanctions of three months' ineligibility for benefits, for both AFDC and GA FDP responsible participants.

10:86-4.3 Vocational Assessment and Counselling Component

(a) The Vocational Assessment and Counselling Component is intended to assist individuals in exploring their employment options. This Component is available to all FDP age appropriate AFDC and GA participants. This core Component is provided to assess the AFDC or GA FDP participant's recent work history, marketable job skills, and reasonable prospects of successfully completing the academic requirements of a high school or equivalency program of study or possible participation in other educational or employment-directed activities as needed.

(b) If an adult AFDC or GA FDP participant fails or refuses to comply with the Vocational Assessment and Counselling Component, as agreed in the FDP Agreement and Family Plan, the individual shall be subject to FDP mandated sanctions, as set forth at N.J.A.C. 10:86-8.

(c) The Vocational Assessment and Counselling Component helps to determine the services and activities needed by the AFDC parent or caretaker relative or GA employable individual, as well as other possible referrals or activities for all family members needed to support the FDP participant so that he or she can achieve success in escaping welfare dependency for himself and his or her family.

10:86-4.4 Social Services/Special Referrals Component

(a) The Social Services/Special Referrals Component is designed to provide special individualized services for those FDP participants and their families who face multiple barriers that may prevent or seriously impair an individual's ability to participate in the FDP. This Component shall provide for the coordination and utilization of existing resources that are available in each community and includes, but is not limited to, the following:

1. Mental health services;
2. Vocational rehabilitation;
3. Substance and alcohol abuse treatment and/or counselling;
4. Family/individual counselling;
5. Parental skills training and development;
6. Remedial, educational or tutorial services;
7. Individual job training services;
8. Health care; and
9. Blind and visually impaired services.

(b) If it is determined that social services/special referrals are needed, such services/referrals may serve as an FDP activity; however, noncompliance on the part of a participant and/or a family member with such an activity shall not be subject to sanction penalties. The network of available social, health-related, and remedial activities such as tutoring do not satisfy FDP/EEDA component requirements but rather assist AFDC or GA family members in confronting barriers to their success in the FDP/EEDA component activities.

10:86-4.5 Education and Employment-Directed Activity (EEDA) Component

(a) The objective of the Education and Employment-Directed Activity (EEDA) Component is to promote self-sufficiency by creating productive, competitive workers who can secure permanent full-time jobs at wages that are adequate to support the participants and their families.

1. This Component contains the educational, and work-related activities necessary to promote an individual's employability. The activities comport with Federal regulatory requirements of the Job Opportunities and Basic Skills (JOBS) program, the mandatory work/training program for AFDC participants.

2. The FDP/EEDA Component stresses a strong foundation in basic educational areas and provides such activities to strengthen the FDP individual's success in later employment-directed programs. Higher education opportunities are encouraged through the FDP/EEDA Component and State financial assistance through programs can be accessed for FDP participants in post-secondary colleges (both community colleges and four-year institutions) and vocational training programs.

3. The FDP/EEDA Component provides job readiness activities to help prepare FDP AFDC/GA participants for work by ensuring that participants are familiar with general workplace expectations and can exhibit work behavior and attitudes necessary to compete successfully in the labor market.

(b) FDP preparatory services, educational and employment-directed activities, job readiness skills, the ability to practice work skills on the job, and employment searches are activities contained with the FDP/EEDA Component. Detailed descriptions of specific activities are delineated at N.J.A.C. 10:86-5.

(c) Mandatory AFDC/FDP participants and non-exempt GA employable FDP participants must comply with the participation requirements of the EEDA Component and are subject to sanction penalties, unless good cause exists.

(d) The case manager shall determine satisfactory progress in an educational activity on a periodically measured basis of less than one year, such as a term or quarter, using 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 or municipal welfare department or GA case management entity.

1. 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.

2. Upon review and approval by the State or local education agency and the county IV-A agency or municipal welfare department or GA case management entity, 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 FDP participant or other special circumstance.

(e) The case manager shall determine satisfactory progress in a training activity (that is, on-the-job (OJT), Community Work Experience (CWEP), and skills training) on a periodically measured basis of less than one year, such as quarterly, using 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 or municipal welfare department or GA case management entity.

1. 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.

2. Upon review and approval by the county IV-A agency or municipal welfare department or GA case management entity, 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 circumstances. Such circumstances include the death of a relative, injury or illness of the FDP participant or other special circumstance.

10:86-4.6 Job Development Component

(a) The Job Development Component encompasses job placement activity. The FDP in each county of the State that has implemented the program shall provide the JOB Development Component to outreach public and private employers to discover job openings or to establish positions for placement of AFDC or GA FDP participants. Additionally, this Component may also develop new

employment-directed activity positions in the public and private sectors for the subsidized WSP and OJT activities and the unsubsidized CWEP activity.

(b) Each county, as mandated by P.L. 1991, c.523, shall *[contract for]* ***have*** one or more person(s) in the position(s) entitled "Job Developer" for this expressed purpose.

(c) The Component shall be responsible for marketing the FDP participant populations in both AFDC and GA for such jobs, including securing job interviews for FDP participants.

10:86-4.7 Supportive Services Component

(a) The FDP Supportive Services Component allows for payment to cover expenses incurred by FDP participants for services that are necessary for participation in AFDC or GA FDP activities. Supportive services include primarily participant allowances (PALs) and child care, as well as extended post-AFDC Medicaid benefits.

(b) The following PALs may be provided:

1. For AFDC and GA FDP participants:

i. Transportation-related expenses (TREs), up to $6.00 a day during enrollment in an FDP activity;

ii. Employment-directed activities (EDAs) allowances, up to $100.00 cumulative allowance for clothing, tools or other supplies necessary to participate in FDP educational or employment-directed training activities; and

iii. A $100.00 cumulative JOB allowance for expenses necessary to accept or maintain employment.

2. For AFDC only FDP participants:

i. Automobile-related expenses (CAR) allowance, up to $500.00; and

ii. CWEP $10.00 allowance.

(c) Child care supportive service benefits shall be made available through the FDP to the extent that such child care is necessary to permit an AFDC eligible family member to accept employment, to remain employed, to participate in FDP educational or employment-directed activities or to complete the initial assessment or employability. Child care benefits shall also be provided during the one-year post-AFDC period, subject to co-payment requirements, to ease the transition from public assistance.

1. The maximum child care rates established by the Department of Human Services and published in this manual shall be adhered to and are determined according to the type of child care arrangements, age of the child(ren) and hours of care necessary for FDP participation.

i. For an AFDC FDP participant who is waiting to enter an FDP educational or employment-directed activity or to start employment, FDP child care benefits are available on a limited time basis to bridge the period between such FDP activities.

(d) For individuals who are no longer eligible for AFDC, extended post-AFDC Medicaid benefits shall be provided during the 24-month post-AFDC eligibility period in accordance with N.J.A.C. 10:86-7.

SUBCHAPTER 5. FDP EDUCATION AND EMPLOYMENT-DIRECTED ACTIVITIES (EEDA) COMPONENT

10:86-5.1 General description

The FDP Education and Employment-Directed Activities (EEDA) Component is designed to provide the means to prepare FDP *[participants]* ***eligible unit members*** for economic self-sufficiency through a variety of available activities that will lead to securing permanent full-time unsubsidized employment. Such activities shall consist of, but are not limited to, educational activities, job skills training, job readiness activities and the Community Work Experience Program (CWEP). Other work/training activities may be selected by the County Planning Council to encompass such activities as job search (individual or group), On-the-Job (OJT) Training and Work Supplementation (WSP). Participants for this Component shall include, unless otherwise exempt in accordance with provisions at N.J.A.C. 10:86-3.2(b), AFDC adults or caretaker relatives and employable GA recipients and, as need determined, their respective family members. This subchapter describes in detail the requirements for the activities under this Component, including Federal JOBS provisions which have been incorporated herein.

10:86-5.2 Educational activities for AFDC and GA FDP participants

(a) FDP offers certain educational activities directly. Other educational programs, although not offered directly through FDP, may nevertheless be accessed as acceptable educational activities that will satisfy FDP participation requirements and may be included as such in the FDP Agreement. The need for educational services will be determined during FDP assessment.

(b) The following educational activities may be available in the respective county through the FDP for both the AFDC and GA populations:

1. Post-secondary education which includes educational opportunities at colleges (four-year and community colleges) and in post-secondary vocational training programs that lead to recognized careers for which there is or will be a demand in the job market. Such programs may often lead to a recognized college credential such as a certificate or an associate's or bachelor's degree.

i. Any scholarships, grants or similar financial aid obtained by the FDP participant in conjunction with FDP post-secondary educational activities shall be treated in accordance with specific public assistance policies in determining eligibility and grant amounts.

ii. Within the limits of available funds, financial assistance through the New Jersey Educational Opportunity Fund established pursuant to P.L. 1968, c. 142 (N.J.S.A. 18A:71-28 et seq.) and other State student assistance programs, such as the Tuition Assistance Grant (TAG) program, may be provided to FDP participants. Such funds shall be made available in an amount sufficient to cover all tuition and educational expenses to each AFDC parent/caretaker relative participant or GA employable individual or other family member(s) who has been accepted into an institution of higher education, including public four-year colleges and community colleges, or a post-secondary vocational training program.

2. Preparatory educational activities (also known as remedial educational activities) are activities designed to remedy educational deficiencies and which provide the FDP participant with the basic skills necessary for entry into the labor market. A high school diploma, the ability to speak and understand the English language, basic literacy, and minimum competency in basic mathematics and writing skills are desirable for increasing employability potential. Such educational activities include the following:

i. Programs for completion of a high school education or the equivalent, such as a General Educational Development (GED) certificate, are available to individuals who lack a high school education.

ii. Limited English proficiency educational programs are mandatory educational components for participants who are non-English speaking or who have limited competency in the English language and such competency in English as a second language (ESL) is needed for the participant to obtain employment or 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.

iii. Basic and remedial educational activities are compulsory FDP activities to help certain individuals achieve a basic literacy level. Many individuals do not have a high school diploma, or its equivalent, and the participant's long term employment goal may not require a high school education. Others may have a high school diploma but cannot read or write or perform arithmetic functions to secure employment. Adult Basic Education (ABE) programs are provided for such individuals who lack basic competency in reading, writing and mathematics necessary for achieving the basic literacy level, to enable the individual to enroll in job training, obtain an equivalency diploma or to obtain employment.

(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.

10:86-5.3 FDP job search activities for AFDC and GA FDP participants

(a) Job search is an employment-directed activity (EDA) in which mandatory GA and AFDC participants and AFDC voluntary participants engage in activities with the immediate goal of obtaining full-time employment. Job search is directed 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. Before a participant is placed and required to participate in job search activities, the job search provider entity shall take steps to ensure that the participant can read and complete a job application and is otherwise able to present himself or herself properly for employment. Steps may include the necessary referrals to job readiness activities.

1. Job search activities include referrals to potential employers, the provision of employment counseling, job seeking skills training, information dissemination and guidance in the participant's efforts in actively contacting employers to secure employment. 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.

2. 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 as determined during assessment.

3. All FDP participants in the FDP Education and Employment-Directed Activities Component may participate in FDP job search. Participation in FDP job search may be postponed while an individual is participating in another FDP employment-directed activity, in an educational program, or when referred to a social service activity for rehabilitation purposes.

4. Assignment to job search activities and the duration of such activities will be based on individual employability potential and geographic location.

(b) FDP Job search activities for AFDC and employable GA individuals include:

1. Job contacts which are defined as contacts made by the FDP participant with a prospective employer. The job search provider may assist the participant by providing a list of employers. The following apply to job contacts:

i. A referral to an employer shall be considered a job contact provided the participant presents himself or herself to the employer as available for employment.

ii. To be considered a job contact initiated by the participant, the participant must present himself or herself to the employer as available for work and the employer must ordinarily employ persons in the areas of work that the participant is reasonably qualified for by means of experience, training or ability.

iii. Depending upon the position sought, the job contact requirements may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the county job search provider to be a generally accepted practice, including telephone contacts when the job offer or advertisement lists a telephone number.

iv. The participant cannot count the contact of the same employer more than once in a four-week period unless the employer indicates that vacancies in additional positions may soon exist, or a subsequent advertisement is made by the employer.

v. The participant will be required to report the result of all job contacts to the job search provider at a prescheduled time. The time may vary with the job search participation requirements set forth in the FDP Agreement.

(1) Job contacts shall be reported in writing in a manner prescribed by the job search provider at the time the FDP Agreement is signed. This writing requirement shall be reasonable, given the participant's language abilities. While such reporting will not require the employer's written confirmation of the job contact, the participant shall be required to sign written documentation to attest to its validity. The written report shall be submitted to the job search provider at the participant's follow-up interview. The participant shall be responsible for providing the job search provider with any additional information concerning job contacts.

vi. The job search provider shall review the participant's job contacts and determine if the participant has completed the assigned number of job contacts as set forth in the FDP Agreement.

2. FDP group job search activities may include the classroom group job search training and supervised job clubs.

3. The job search provider shall review the individual's participation in job search and determine if participation should continue or if assignment to another FDP education or employment-directed activity is appropriate. If reassignment is appropriate, the job search provider must notify the respective FDP case manager so that the FDP Agreement may be updated.

(c) Supportive services (including child care and transportation), as determined appropriate, are available to FDP participants in job search activities.

(d) Participation in the job search component, for AFDC/FDP participants only, is subject to the following administrative requirements and limitations:

1. Job search requires that an AFDC/FDP individual participate for an equivalent of at least 20 hours per week for Federal participation purposes.

2. The AFDC/FDP individual may participate in job search for Federal participation purposes for a period of eight weeks, or its equivalent, in any period of 12 consecutive months of continuing receipt of AFDC cash assistance. Should an AFDC/FDP individual leave AFDC, upon filing a new application (reopened case), he or she becomes eligible for a new eight week job search participation period.

3. Participation in job search for an AFDC/FDP participant (who is in continuous receipt of AFDC cash assistance) beyond the eight week (or its equivalent) participation period in a 12 consecutive month timeframe is permissible. However, participation in job search beyond this compulsory eight-week timeframe is an unmatchable FDP activity for Federal financial participation (FFP) purposes. In order for the IV-A/FDP case management agency to claim FFP, the AFDC/FDP individual must participate in another FDP activity (such as education or training) and job search becomes part of that other FDP activity. FFP is available for administrative and supportive service costs of the job search-related portion of the other approved FDP activity. Participation in the job search component beyond the Federal eight-week limit (in a 12 consecutive month period) as a AFDC/FDP activity is State funded only.

(e) Since the majority of GA recipients receive Food Stamps, the Food Stamp Employment and Training Program (FSETP) shall be explored as a resource for GA employable participants by the GA/FDP provider entity for job search activity.

1. FSETP/job search may be a viable activity for employable GA participants who have marketable job skills and experience in lieu of FDP participation.

10:86-5.4 FDP Work Supplementation Program (AFDC participants only)

(a) Under the FDP Work Supplementation Program (WSP), AFDC funds are used to develop and subsidize employment for AFDC/FDP participants as an alternative to aid provided to such AFDC recipients. While in WSP status, the AFDC/FDP participant is in a subsidized job. WSP can be used extensively with minimal investment of FDP or other employment and training financial resources.

(b) Any appropriate job may be provided or subsidized under the WSP, but acceptance of any such position by an AFDC/FDP participant shall be voluntary. The job positions which may be provided for AFDC recipients must be of the following general types:

1. A job position provided to an eligible individual by the Department of Human Services, Division of Family Development, CWAs, the Department of Labor or Job Training Partnership Act (JTPA); or

2. A job position provided to an eligible individual by any other public or private employer for which all or part of the wages are paid by the FDP entity selected to administer the WSP wage pool.

(c) The county FDP provider entity may use whatever means are appropriate to provide or subsidize jobs for participants in WSP. The FDP provider entity may make whatever arrangements it deems appropriate with regard to the type of work provided, the length of time the position is to be provided or subsidized, the amount of wages to be paid to the AFDC/FDP recipient receiving the work supplemented job, the amount of subsidy to be provided and the conditions of participation.

(d) The following provisions apply to conditions of employment under AFDC/FDP WSP:

1. The county *[FPD]* **FDP** provider entity is not required to provide employee status to any eligible individual to whom it directly provides a job position under the AFDC/FDP WSP.

2. The county FDP provider entity is not required to ensure that eligible individuals filling job positions provided by other employers under AFDC/FDP WSP be granted employee status by such employer during the first 13 weeks during which they fill such positions. Employee status confers on the individual the benefits available to regular employees of that employer (for example, insurance coverage and vacation leave).

3. Wages paid to participants in the AFDC/FDP WSP shall be counted as earned income and are subject to the prospective budgeting requirements set forth at N.J.A.C. 10:82.

4. No AFDC/FDP WSP participant can be assigned to fill any established, unfilled position vacancies at the site of employment.

(e) The AFDC/FDP WSP wage pool is an administrative tool used to provide wage subsidies to employers who hire AFDC/FDP WSP participants. AFDC monies saved through participation of AFDC individuals in the AFDC/FDP WSP activity are diverted to the AFDC/FDP WSP wage pool in the county for use in setting up WSP activity contracts with employers for other AFDC recipient family members. During AFDC/FDP WSP participation, the calculated grant received by the family, if any, is termed a residual grant. The residual grant is determined at the time of placement in the supplemented job by the county IV-A agency income maintenance (IM) worker. Case management shall contact income maintenance to determine the WSP calculation. The residual grant is recalculated periodically at time of the next redetermination or when a change in circumstances is reported to income maintenance based on information supplied by the individual. IM shall advise the AFDC/FDP case management provider of any changes resulting from the subsequent periodic recalculations as such changes may affect FDP participation status.

1. After application of AFDC earned income disregards, the resulting calculated earned income (CEI) monies are diverted to the AFDC/FDP WSP wage pool. The AFDC/FDP WSP participant will receive a residual grant equal to the difference between the CEI and the AFDC payment standard for the family unit.

2. If the resulting CEI monies are greater than or equal to the AFDC payment standard for the family unit, then the entire assistance payment is diverted to the AFDC/FDP WSP wage pool and the participant will not receive a residual grant; however, extended Medicaid benefits may be continued as set forth at N.J.A.C. 10:86-7.

(f) Mandatory and voluntary AFDC/FDP participants are eligible to participate in the AFDC/FDP WSP if they are eligible for AFDC and to the extent that such jobs through WSP are available in the county FDP. Placement in AFDC/FDP WSP is defined as the date on which the county FDP provider agency and the employer agree on the terms of the placement and on the specific person to participate.

1. There is no specific limit on the number of times an individual may participate in AFDC/FDP WSP, but participation shall not exceed a lifetime cumulative total of nine months for each AFDC individual.

(g) 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 AFDC/FDP WSP job until the AFDC/FDP WSP contract expires. All monies from the AFDC grant for those individuals are diverted AFDC grant funds to the AFDC/FDP WSP wage pool. Because of contractual arrangements with the employer, changes which render an individual ineligible for AFDC, such as a change in family composition, do not render him or her ineligible to continue in AFDC/FDP WSP.

(h) A FDP participant shall not simultaneously participate in WSP and in OJT. No one is allowed to be in both activities at the same time.

(i) If more than one individual in the AFDC family unit is participating in WSP, the amount of the Federal reimbursement to the State will not exceed the AFDC standard payment allowance for that family (see N.J.A.C. 10:82-1).

(j) An AFDC/FDP WSP participant is eligible for supportive services as a participant in FDP. 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. 10:86-9. Transportation costs are covered through the AFDC $90.00 work expense disregard. Child care payments for necessary child care services will be made directly (when possible) to the child care provider as set forth at N.J.A.C. 10:86-10.

(k) Medicaid coverage is provided for the duration of an AFDC/FDP 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. 10:86-7.

(l) If the family loses AFDC eligibility during the AFDC/FDP WSP contract, the individual would continue participating in WSP; 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 at N.J.A.C. 10:86-10. After fulfilling the AFDC/FDP 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.

(m) The Income Maintenance (IM) worker shall apply the AFDC earned income disregards set forth at N.J.A.C. 10:82-4.4 to WSP participants. A WSP case with earned income is computed the same as any other AFDC case with earnings.

1. The Federal $90.00 work expense disregard shall apply to earned income of WSP participants.

2. The Federal $30.00 and one-third disregard shall be extended for the entire period of an individual's participation in WSP, up to a maximum of nine months. The participant is eligible for the Federal $30.00 and one-third disregard under WSP regardless of the prior application of that disregard to non-WSP earned income while receiving AFDC.

i. Example: A FDP participant has received AFDC benefits for three years. During the first year of public assistance the FDP participant was employed for a period of six months; the participant received four months of the $30.00 and one-third disregard and two months of the $30.00 disregard during that time. The participant has remained continuously on assistance. Under WSP participation, this individual is entitled to the $30.00 and one-third disregard for each month of participation in WSP up to a maximum of nine months.

ii. Example: A WSP participant completed four months of WSP participation in January and subsequently continued to receive AFDC benefits. Participation in WSP resumed on June 1 and continued through October 31, completing a total of nine months in WSP. The participant is eligible for the $30.00 and one-third disregard for the entire nine months of WSP participation even though entitlement to that disregard had been exhausted under previous non-WSP employment.

3. The WSP participant who has never had the benefit of the $30.00 and one-third disregard is entitled to the $30.00 and one-third disregard for each month of WSP participation and may, at the end of this WSP participation period, be eligible for any of the remaining months of the $30.00 and one-third disregard or the $30.00 disregard regularly applied to earned income as set forth at N.J.A.C. 10:82-4.4.

i. Example: An individual who has had no previous employment participates in WSP from January 1 through September 30 (the nine

month maximum time permitted for WSP participation) and receives the $30.00 and one-third disregard during the entire nine-month period. The individual then enters unsubsidized employment on October 1 and is eligible for the $30.00 disregard for three months (through December 31).

ii. Example: An individual who has had no previous employment participates in WSP from January 1 through March 31 and receives the $30.00 and one-third disregard for those three months. The individual then enters unsubsidized employment on April 1 and is eligible for the $30.00 and one-third disregard for one additional month (through April 30) and for the $30.00 disregard for another eight months (through December 31).

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. 10:86-10.

5. The State disregard is applied last in the AFDC WSP calculation process (see N.J.A.C. 10:82-4.4).

10:86-5.5 FDP Community Work Experience Program for AFDC and GA/FDP participants

(a) The purpose of the FDP Community Work Experience Program (CWEP) is to provide work experience and training for AFDC and employable GA 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. The CWEP activity serves as a training environment to improve the employability potential of the participant. Participants in CWEP activities may not otherwise be able to obtain employment. CWEP replaces the "workfare" assignments for employable recipients of GA. 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 unable to do so because of the absence of available jobs. The FDP CWEP will operate community work experience programs which serve a useful public purpose.

1. The AFDC or GA case management entity may provide necessary reimbursement for transportation, child care and other costs that are incurred by FDP CWEP participants and which are directly related to participation in the FDP CWEP as set forth in the FDP agreement. A CWEP allowance (see (a)1iii below) meets the cost of "other needs" for AFDC individuals while participating in an FDP CWEP assignment. Likewise, GA participants' "other needs" are paid for through the individual's employment-directed activity allowance (EDA) as described at N.J.A.C. 10:86-9.

i. AFDC or GA participants shall be reimbursed for transportation costs directly related to their participation by mutual agreement between the CWEP participant and the FDP GA or AFDC case manager or MWD (GA cases only) based on the availability of transportation in that locality.

ii. AFDC participants shall be reimbursed for child care costs in such amounts as are determined by the AFDC case manager to be reasonable, necessary, and cost-effective, or by direct payment to the child care provider. Child care payments shall be made in accordance with N.J.A.C. 10:86-10.

iii. An additional $10.00 per month per participant CWEP allowance shall provide reimbursement for costs that FDP/AFDC case management determines are necessary and directly related to participation in CWEP as incurred by an AFDC participant. Such costs include clothing and personal care items, materials and supplies and similar expenses related to applying for or accepting employment. The EDA allowance (see N.J.A.C. 10:86-9) is not available for AFDC CWEP participation in accordance with Federal regulations.

iv. Participants may not be required to use their AFDC or GA grant or their own income or resources to pay CWEP participation costs which are within the limits specified as allowable in (a)1i through iii above.

(b) The FDP will designate CWEP sponsors to operate each CWEP project or, at the sponsor's option, more than one project (worksite). Only public agencies which include, but are not limited to, Federal offices or agencies, county and municipal offices, and nonprofit organizations may be CWEP sponsors. For purposes of this provision, Federal offices or agencies include agencies of the Executive branches of the Federal government, Congressional offices, and Federal courts.

(c) CWEP worksites established by MWDs shall remain as an FDP CWEP assignment option, subject to the approval of the GA/FDP provider entity. Such worksites may be established with CWEP sponsors in municipal government or with non-profit agencies or institutions under contract to the municipality. The GA/FDP shall make maximum use of existing MWD worksites previously established under the General Assistance Employability Program (GAEP). Arrangements for use of the MWD GAEP worksites and any subsequently developed MWD worksites shall be part of an agreement established between the GA/FDP provider entity and the respective MWD.

1. Municipal CWEP worksites established by MWDs shall also be used as assignment sites for illegal aliens receiving GA who cannot participate in FDP, as well as by other employable GA/FDP participants.

2. Established MWD worksites may not be available to FDP participants in a municipality where an employable GA recipient receives his or her assistance grant. The GA/FDP provider entity shall assume the responsibility in such instances, for the development of CWEP sites for employable GA participants in the FDP within their respective municipalities, where possible.

3. To assure that worker's compensation coverage is provided for all MWD worksite participants at worksites developed by the MWD, a Municipal Worksite Agreement (MWSA) shall be signed by both the MWD and the MWD worksite agent. The worksite agent is a designated paid employee with the authority for conducting on site supervision of GA employable participants, including the maintenance of time and attendance reports, at the agency office or institution where the CWEP worksite activity is being performed.

i. The MWD will supply the GA/FDP provider entity with an MWSA for each worksite established by the MWD. Only one MWSA is necessary for the same MWD established worksite, regardless of the number of GA participants assigned to the worksite.

ii. No GA recipient shall report to a MWD developed worksite until the GA/FDP provider entity has received the signed MWSA. The GA/FDP provider entity shall notify the MWD in writing of receipt of the MWSA via a form established for this purpose. Likewise, the form shall be supplied by the MWD to the GA/FDP provider for each GA individual subsequently assigned by the MWD to a previously established and approved MWD worksite.

iii. The GA/FDP provider entity shall evaluate the MWD established worksite within 14 days after receipt of the MWSA from the MWD. During this 14 day period, the MWD shall monitor the attendance of the GA participant at the worksite.

(1) The criteria used by the GA/FDP provider entity to evaluate the MWD established CWEP worksite is set forth in (d) and (e)1 and 2 below.

(2) If any of those criteria are not met, the GA/FDP provider shall reassign the GA/FDP participant to another activity or CWEP worksite, as appropriate.

iv. The participant shall be provided by the MWD with a copy of an Individual Worksite Agreement. This notice shall contain the participant's worksite schedule, the wage rate used to determine the GA participant's CWEP schedule, the person to whom the participant is to report at the worksite, and the worksite address. The notice also advises the participant of the penalty for failure or refusal to perform satisfactorily in the CWEP project.

(d) AFDC/GA FDP CWEP worksites must satisfy all of the following requirements:

1. The worksite shall 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. Employment of the *[AFDC/EA]* ***AFDC/GA*** FDP CWEP participant shall not result in the displacement of persons currently employed or the filling of established, unfilled position vacancies at the worksite. This means that AFDC or GA CWEP participants shall not perform tasks which would have been undertaken by employees

or which have the effect of reducing the work of employees. However, CWEP participants may perform the same type of tasks as performed by employees;

3. The worksite shall not be in any way related to political, electoral or partisan activities;

4. The worksite shall not be in violation of applicable Federal, State or local health and safety standards, and provide reasonable work conditions; and

5. The worksite shall not have been developed in response to, or in any way associated with, the existence of a strike, lockout or other bonafide labor dispute, or violate any existing agreement between employees and employers.

(e) The following participation requirements shall apply to CWEP:

1. Assignments to FDP CWEP projects will take into consideration, to the extent possible, the prior training, proficiency, experience and skills of a participant.

2. AFDC or GA FDP 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.

3. Part-time participation of AFDC and GA individuals in a CWEP activity combined with other FDP education or employment-directed activities may be required and negotiated in the FDP Agreement.

4. No AFDC or GA individual shall be required to participate in CWEP for more than the number of hours which would result from dividing the family's or individual's monthly grant amount by the State minimum wage. For AFDC purposes, 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 AFDC payment allowance (see N.J.A.C. 10:82-1) before computation of the maximum number of hours that the AFDC individual is required to participate in CWEP.

5. The FDP case management provider (GA or AFDC) shall coordinate among CWEP, the job search program and other FDP employment-directed activities provided in the FDP for the AFDC or GA population to ensure that job placement will have top priority over participation in CWEP. FDP case management (GA or AFDC) also has the responsibility to ensure that individuals eligible to participate in more than one activity under FDP are not denied AFDC or GA on the grounds of failure to participate in one such activity if they are actively and satisfactorily participating in another.

6. Nothing in this section shall be construed as authorizing the payment of AFDC or GA 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.

7. CWEP participants who perform work in the public interest for a Federal office or agency shall not be considered for any purpose as Federal employees.

8. CWEP participants who claim "good cause" for refusing or failing to participate in CWEP must meet the criteria set forth at N.J.A.C. 10:86-8.3.

9. Participation in CWEP shall be reevaluated at least once every three months and at the conclusion of each CWEP assignment by the appropriate program FDP case manager for AFDC or GA, to determine if CWEP and the specific worksite are still appropriate for that AFDC or GA individual. The FDP case manager shall provide a reassessment and revision, as appropriate, of the family's plan which includes the AFDC or GA individual's employment goal.

i. After an AFDC 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 (minus the $50.00 pass-through for child support) divided by the State 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.

(f) Workers' compensation accident insurance protection shall be provided for both AFDC and GA FDP CWEP participants under a Statewide umbrella policy of the Department of Human Services for persons participating in FDP. Workers' compensation shall be provided to those participants in FDP CWEP assignments for Federal offices or agencies to the same extent as it is provided to other FDP CWEP participants at other CWEP sites. Claims shall be sent directly to the insurance company. DFD shall provide the name of the insurance company and the policy number to the CWAs and MWDs participating in FDP.

(g) The following categories of AFDC or GA employable recipients may not be required to participate in FDP CWEP:

1. An AFDC or GA individual who is exempt from participation in FDP in accordance with N.J.A.C. 10:86-3.2(b); the exception to this rule is an employable illegal alien on GA or an AFDC-N illegal alien who is not otherwise exempt from FDP participation. Such individuals may be required to participate at local worksites established by the MWD (GA program only), subject to the approval by the FDP/GA provider entity contracted for such services, or at AFDC/FDP CWEP sites;

2. An AFDC individual who is both currently employed for at least 80 hours per month and earning not less than the legally established or defined State minimum wage for such employment (for jobs which do not have an established minimum wage, recipients currently employed 80 hours must be exempt from FDP CWEP regardless of wage level);

3. An individual who was denied AFDC or GA solely because the amount of his or her grant would have been less than $10.00 (for AFDC) or $5.00 (for GA) per month;

4. An AFDC individual who would have been a mandatory participant due to care of a child at least two years old, but appropriate child care cannot be secured to enable participation in the work experience project; or

5. An applicant for AFDC.

10:86-5.6 FDP employment and training activities for AFDC and GA FDP participants

(a) FDP employment and training services are designed to provide job training and other preparatory services for FDP participants (both GA and AFDC recipients). Such services include, but are not limited to, instructional skills training, on-the-job training, work experience and retraining. Such training should be utilized whereever there is potential for upgrading a participant's skills and employment prospects.

1. Training and employment programs allowable under Pub.L. 97-300, Job Training Partnership Act, sections 204, 205, 251 and 303 are permissible programs for FDP participation.

2. All occupational training programs funded through FDP will be in accordance with guidelines established by the private industry councils established under the JTPA.

3. Employment and training programs funded through FDP are intended to supplement, not supplant, existing programs and resources available to the FDP participant.

4. FDP employment and training services will be provided as set forth in the FDP agreement.

5. Employment and training activities may include, but are not limited to, training programs in the private or public sector, vocational exploration and pre-apprenticeship programs.

(b) FDP on-the-job (OJT) training is an employment opportunity which includes training. Under this component, an AFDC or GA FDP participant is hired by a private or public employer and receives training that provides knowledge or skills essential to the full and adequate performance of the job. The employment is subsidized under contract between the employer and the AFDC or GA FDP provider agency. At the end of the OJT, as established in contracts between the FDP provider entity 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. Assignment for FDP OJT is dependent on the participant's previous knowledge and/or experience in the area of the specific job position under consideration.

1. Employers will provide increased supervision and training through contract with the FDP provider agency, pursuant to which

the FDP provider agency will reimburse the employer for the extraordinary costs of such training and additional supervision. The AFDC or GA FDP provider agency shall monitor the satisfactory progress of the AFDC or GA individual in the OJT assignment for an increase in a participant's skills and competencies.

i. Payments to an employer through FDP for on-the-job training shall not exceed 50 percent of the wages paid by the employer to the participant during the period of OJT training.

2. For purposes of AFDC or GA benefits, FDP OJT participants are considered to be employed and wages paid to participants are earned income for purposes of these provisions. However, FDP OJT participants shall be required to complete the OJT agreement period and are considered mandatory FDP participants during the agreement period.

3. A FDP 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 applicable State minimum wage.

4. If a participant in OJT becomes ineligible for AFDC or GA pursuant to the rules applicable to earned income (see N.J.A.C. 10:82 and 10:85-3), or pursuant to the 100-hour rule in the case of a principal earner in an AFDC-F case (see N.J.A.C. 10:81-3.18(b)1), he or she shall remain an FDP participant for the duration of the OJT contract.

i. If the family loses AFDC or GA eligibility, they may be eligible for appropriate supportive services available to individuals with earned income (including the JOB and AFDC CAR allowances). Transportation costs shall be paid from the AFDC $90.00 or GA $60.00 work expense disregards.

ii. Child care benefits for AFDC participants 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. 10:86-10. 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.

(c) Vocational training is an activity involving institutional or other classroom training conducted by an instructor in either a worksite or non-worksite setting. AFDC and GA FDP participants receive instruction in specific occupational areas. FDP participants shall be directed to those vocational training resources available in the respective county that reflect the current job market for that area (for example, homemaker, culinary arts or nurse's aide).

1. Vocational training programs in the FDP shall be provided through the existing service delivery system established by the JTPA. The AFDC or GA FDP provider entity shall coordinate and contract with the local JTPA entity.

10:86-5.7 Client-selected activity participation of AFDC or GA individuals

(a) Individuals classified as mandatory AFDC or GA FDP participants who are scheduled to begin FDP participation but who are self-enrolled in a client-selected education or training program or activity shall be treated as follows:

1. The individual will complete an initial assessment of employability and develop an employability plan as part of the process to develop a Family Plan to determine the appropriateness of the self-enrolled activity to the AFDC or GA individual's employment goal. The AFDC or GA FDP 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 AFDC or GA 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 AFDC or GA 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; and

iii. A new AFDC or GA 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 AFDC or GA cash assistance.

2. If the AFDC or GA FDP case manager determines that the client-selected activity meets the criteria in (a)1 above and the AFDC or GA 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 FDP. The activity shall be included in the final AFDC or GA FDP Agreement.

i. The AFDC or GA FDP case manager in making the decision to approve the client-selected activity for FDP participation shall also consider the length of time for completion of the program, within a reasonable time, as defined by the AFDC or GA FDP provider entity based on average completion time-frames for AFDC or GA FDP participants in the county in similar activities.

ii. The AFDC or GA FDP 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 AFDC or GA FDP case manager deems necessary; and that, if necessary, a change could be made in the approval status. The AFDC or GA FDP 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 AFDC or GA individual may be required to accept unsubsidized employment (other than OJT or WSP) with the potential of leading to self-sufficiency.

iii. The AFDC or GA FDP case manager shall not permit other FDP activities to interfere with participation in the approved client-selected activity.

iv. The client-selected activity may be approved as AFDC or GA FDP participation; however, if FDP funds through State student assistance programs (see N.J.A.C. 10:86-5.2(b)) are not available to pay the tuition for the client-selected activity, the individual shall assume responsibility for all tuition costs. If FDP funds are available, the agency may pay for costs incurred from the date of approval. Under no circumstances shall AFDC or GA FDP pay for costs incurred by the AFDC or GA individual for participation in the self-enrolled activity prior to the date of approval.

v. AFDC or GA participants in approved client-selected activites may be eligible for child care and other supportive services as set forth in this Chapter. AFDC or GA FDP participants in unapproved self-enrolled activities are ineligible for FDP supportive services.

3. If the AFDC or GA FDP case manager determines that the client-selected or self-enrolled activity is not in accordance with (a)1 and 2 above, participation in the activity shall not be considered participation in FDP and the activity shall not be included in the final AFDC or GA FDP Agreement. The individual shall be required to participate in other FDP activities unless he or she satisfies the exemption criteria in N.J.A.C. 10:86-3.2(b).

4. An AFDC or GA 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. 10:86-6 and 10:81-6 or N.J.A.C. 10:85-7.

10:86-5.8 Other employment-directed activity initiatives for AFDC and GA FDP participants

(a) AFDC/FDP participants may be able to participate in a special initiative that designates 600 slots Statewide, among certain counties for AFDC recipients to satisfy FDP participation as child care providers.

1. Slots are allocated among counties based on a county's proportionate share of the AFDC population.

2. The AFDC/FDP participant must become a registered family day care provider in accordance with the Family Day Care Provider Registration Act (see N.J.A.C. 10:126). The FDP provider entity shall assist the AFDC/FDP participant in becoming a registered child care provider.

i. The AFDC/FDP individual may provide care for any children, but must give priority to the children of AFDC recipients also participating in the FDP and participants in the FDP post-AFDC period.

3. Income earned by AFDC parents from providing child care for children of FDP participants and other AFDC recipients shall be considered income from self-employment, and shall be treated in accordance with (a)3i through iii below (the exception is noted in (a)3i below).

i. In determining gross earned income for purposes of the maximum income level at N.J.A.C. 10:82-1.2, 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 at N.J.A.C. 10:82-1.2 based on the eligible family size. However, in the instance of the birth of a child in accordance with N.J.A.C. 10:82-1.11, the AFDC/FDP participant serving as a child care provider shall have the option of having income budgeted in accordance with the provisions of this section, or may choose to have the earned income disregards applied as set forth at N.J.A.C. 10:82-2.8 and 4.4 to include application of the State disregard in lieu of the provisions of this section.

ii. In determining prospective need, 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 Schedule II payment standard at N.J.A.C. 10:82-1.2 for the eligible family size to determine if the family is prospectively eligible.

iii. In determining the calculated earned income for the AFDC-C, -F and -N 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 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, or for the Federal and State disregards set forth at N.J.A.C. 10:82-2.8 and 4.4.

(b) The New Jersey Youth Corps (NJYC), administered primarily through the Department of Community Affairs, is designed to recruit, train and employ young persons (between the ages of 16 and 25) who are high school dropouts in urban renewal projects that include housing rehabilitation, repair of public facilities and delivery of certain educational, health and social services.

1. The program provides in-depth assessment, job/life skills instruction, and basic education and work experiences. The NJYC program is six months in duration, but may be modified to extend to nine months, if necessary, for an FDP participant (AFDC or GA) to attain a GED certificate through the program. Participation in NJYC serves as a FDP activity placement. NJYC currently is operational in 13 city sites throughout the State.

2. Participants receive stipends in exchange for services provided as well as the vocational training and education services necessary to perform program assignments and to enhance future employability.

i. Stipends extended to NJYC participants are to be treated as an "exempt resource" in accordance with applicable AFDC and GA program exempt resource provisions.

(c) Specific Job Readiness Skills for Adolescents (JRSA) programs are available to adolescent custodial parents *[under]* age 19 ***and under*** who are participants in the FDP/EEDA Component and engaged in another activity of the EEDA.

1. The adjunct EEDA JRSA focus on adolescent concerns to help prepare that FDP participant group to enter employment.

2. Job readiness workshops may include topics such as, but not limited to: parenting skills, family planning, motivation and self-esteem, HIV and drug abuse, techniques of job hunting, interviewing for a job, dressing for success, resume preparation, maintaining employment, relating skills to job functions and nutritional counseling.

3. JRSA programs shall be provided concurrently with participation in FDP educational or employment-directed activities.

10:86-5.9 Employment

(a) The goal of the FDP and of those activities offered through the program is the realization of regular jobs for FDP participants in unsubsidized employment. Subject to the provisions of this chapter, all mandatory FDP participants will be required to accept a reasonable offer of employment unless good cause exists.

1. Case management shall assist the GA or AFDC participant in job placement activities, as necessary, in accordance with the Family Plan.

SUBCHAPTER 6. FAMILY DEVELOPMENT PROGRAM (FDP) HEARINGS AND NOTICES

10:86-6.1 Hearings

(a) The provisions governing fair hearings at N.J.A.C. 10:81-6 or N.J.A.C. 10:85-7 shall apply to the FDP. The hearing process is maintained by the Office of Administrative Law and is applicable to all AFDC or GA FDP participants concerning FDP requirements which are unrelated to wage and hour statutes. These decisions must be reviewed for final decision by the Director, DFD. It is the right of every AFDC or GA FDP participant adversely affected by the agency to request a fair hearing if the individual is dissatisfied with components of AFDC or GA FDP participation including, but not limited to:

1. The determination of the AFDC or GA FDP individual's participation requirements, (for example, computation of hours of CWEP and WSP participation);

2. The determination of the AFDC or GA FDP individual's exempt or excused participation status;

3. The supportive services being offered the AFDC or GA FDP individual;

4. The sanction or adverse actions being imposed upon the AFDC or GA FDP individual; and

5. The determination of all issues concerning the reasonableness of the elements of the FDP Agreement and the participant's cooperation and noncooperation with the Agreement in accordance with N.J.A.C. 10:86-3.

10:86-6.2 Notices

(a) Adverse actions taken by the agency are subject to timely and adequate notice provisions. Notices of action taken by the CWA concerning AFDC/FDP participants are subject to the provisions of N.J.A.C. 10:81-7.1. Likewise, notices of action taken by the MWD concerning GA/FDP participants are subject to the provisions of N.J.A.C. 10:85-7. Notices shall be provided in a Spanish language version for any AFDC or GA FDP participant whose primary language is Spanish.

1. Changes in the manner of payment of FDP supportive services (including PALS and child care) do not require timely notice unless they result in a discontinuation, suspension, reduction or termination of FDP supportive service benefits or they force a change in child care arrangements.

(b) Provisions concerning continuation of FDP child care and other supportive service benefits (see N.J.A.C. 10:86-9 and 10), pending a hearing, are as follows:

1. If the AFDC/FDP individual had been receiving FDP child care or an AFDC or GA FDP participant was receiving transportation benefits and is awaiting a hearing because such benefits were reduced, he or she is not entitled to receive FDP child care or transportation benefits at the prior unreduced level. Benefits shall continue at the determined reduced level pending the hearing.

2. If the AFDC/FDP individual had not been receiving any child care benefit or the AFDC or GA FDP participant had not been receiving a specific FDP supportive service benefit (PALS), as delineated at N.J.A.C. 10:86-9, 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 the that child care benefit or the specific FDP supportive service benefit pending the hearing.

3. If the AFDC/FDP individual had been receiving FDP child care benefits or the AFDC or GA FDP participant had been receiving

transportation benefits and is awaiting a hearing because such benefits were discontinued or terminated, he or she is not entitled to receive those FDP benefits pending the hearing.

4. If the AFDC/FDP individual is contesting the amount of the FDP child care benefits received and is awaiting a hearing, he or she shall continue to receive FDP child care benefits in the amount previously established by the agency, pending the hearing. Likewise, if the AFDC or GA FDP individual is contesting the amount of a specific FDP supportive service benefit received, the amount of the benefit shall remain in the amount previously established by the AFDC or GA FDP case management provider, pending the hearing*[s]*.

(c) Violations of New Jersey wage and hour statutes are appealed through the New Jersey Department of Labor's Divisions 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.

1. The term "employees" as used in this subsection refers to OJT/WSP participants as well as other workers hired by the employer (not under FDP contract).

SUBCHAPTER 7. FAMILY DEVELOPMENT PROGRAM (FDP) MEDICAL ASSISTANCE

10:86-7.1 General provision

This subchapter contains provisions concerning extended post-AFDC Medicaid benefits as set forth in the Family Development Act, for AFDC/FDP families losing assistance and entering the post-AFDC period on or after July 1, 1992, in those counties which have implemented the FDP. As other counties are phased into FDP, the FDP extended Medicaid provisions will be applicable to those families losing AFDC benefits on or after the date of implementation of FDP in each county.

10:86-7.2 Post-AFDC assistance Medicaid coverage

(a) When an AFDC-C, -F or -N family 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 24 months.

(b) To be eligible for the 24-month Medicaid extension, the family must lose AFDC eligibility for any one of the following reasons:

1. Earnings or increased earnings from employment, including earnings from new employment;

2. Loss of the $30.00 or one-third disregards of earning income (see N.J.A.C. 10:82-4) because of the time-limited application of those disregards;

3. Increased hours of employment; or

4. Receipt of New Jersey State unemployment or temporary disability insurance benefits.

(c) The following additional requirements apply to the 24-month Medicaid extension:

1. The family must have received AFDC in the month preceding the month in which the family became ineligible for AFDC.

2. Eligibility for the 24-month Medicaid extension is not available for any month to any individual who, except for income, resources or hours of employment, is not otherwise eligible to receive AFDC.

3. New members added to the eligible family during the 24-month extension period are not included under the extended coverage with the exception of a child born to the family during the 24-month extension period. When a child is born to the family during this period, the child and the mother may be eligible for additional coverage if the 60-day post-partum period of guaranteed Medicaid eligibility for the mother continues beyond the termination of the 24-month post-AFDC extension period applicable to the remainder of the household, or if the child's 12-month guaranteed period (from date of birth) of Medicaid eligibility continues beyond that termination date of the post-AFDC extended Medicaid period (see N.J.A.C. 10:81-8.22(e)). In either case, Medicaid eligibility terminates at the end of the guaranteed eligibility period, if that termination date is later than the termination date of the 24-month Medicaid extension.

4. The Department of Human Services may require that the individual or family periodically report certain information, such as health insurance coverage from an employer or absent parent, earnings and continued employment, to ensure that the individual or family continues to be eligible for Medicaid. Eligibility for the 24-month Medicaid extension will be discontinued if the individual or family does not comply with such reporting requirements.

(d) The 24-month post-AFDC Medicaid extension period begins with the month AFDC is terminated, but no later than the month following termination of assistance due to a change in circumstances, subject to timely and adequate notice provisions. If the family fails to report the change in circumstances causing ineligibility, the 24-month extension shall begin with the first month in which the family became ineligible for AFDC.

1. Example: A client receives increased earnings in January and reports the increase timely to the agency. The increased earnings render the family ineligible for AFDC; assistance is terminated effective for the February payment month. Extension of Medicaid benefits shall begin with February, the month for which assistance was terminated.

2. Example: In January a family receives increased earnings that cause ineligibility for AFDC but fails to report the earnings to the CWA. In May the agency discovers the unreported earnings and terminates assistance for June. The 24-month Medicaid extension shall begin in January, the month in which the earnings causing ineligibility were first received.

SUBCHAPTER 8. FDP NONCOMPLIANCE; GOOD CAUSE; SANCTIONS

10:86-8.1 Noncompliance

(a) The FDP 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 AFDC or GA FDP individual. However, it is recognized that situations may occur in which the individual may not comply with the FDP participation requirements.

1. Noncompliance of the AFDC parent(s) or caretaker relative or the GA employable individual in the completion of the FDP Family Plan for the respective family members and with vocational assessment shall result in the imposition of a penalty since these FDP program requirements are compulsory for such individuals regardless of exemption of these same persons from participation in the FDP/EEDA Component.

2. Likewise, noncompliance of any AFDC or employable GA *[family]* ***eligible unit*** member*,* as age appropriate*,* who is not otherwise exempt from FDP participation, with vocational assessment or with the requirements of the FDP EEDA Component shall result in a penalty of ineligibility of the individual for AFDC or GA cash assistance for a period of not less than 90 days. Sanctions are described in detail in N.J.A.C. 10:86-8.6 and 8.7.

3. If an AFDC individual classified as a voluntary participant (that is, exempt from FDP participation, see N.J.A.C. 10:86-3) for the EEDA Component discontinues participation in an activity of that FDP Component, 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 FDP program, the AFDC/FDP case manager may wish to discuss with the individual the circumstances surrounding the decision not to participate in the education or employment-directed activity and the benefit of his or her continuing voluntary participation in the EEDA Component. However, all AFDC adult or caretaker relatives who are recipients of AFDC cash assistance, regardless of exemption from FDP/EEDA Component activity participation, shall be subject to compliance with the Family Plan development and vocational assessment.

(b) The following situations are not identified as noncompliance with the FDP Education and Employment-Directed Activity (EEDA) Component requirements:

1. Supportive services set forth in the FDP Agreement are guaranteed to those AFDC or GA *[individuals]* ***eligible unit members*** in need of such services; however, if resources necessary to provide supportive services (see N.J.A.C. 10:86-9 and 10) to an

AFDC or GA FDP participant are unavailable to meet that individual's needs, then the individual is temporarily excused from participation in the FDP activity.

2. AFDC volunteers as defined at N.J.A.C. 10:86-3 are not subject to sanctioning due to nonparticipation or noncompliance with the EEDA Component (see (a)3 above for FDP compliance requirements for AFDC volunteers).

3. If the AFDC or GA individual is scheduled to participate in more than one FDP activity and a "conflict in scheduling" of those activities results in the AFDC or GA FDP participant not being able to participate in the activity, then noncompliance does not exist in that circumstance. The AFDC or GA individual shall be temporarily excused from participation in the other activity or an alternative activity shall be considered in its place for the individual.

(c) A GA or AFDC *[family]* ***eligible unit*** member is deemed to be in noncompliance with assessment or EEDA Component requirements of FDP when he or she refuses a specific referral for vocational assessment and counselling; a definite offer of training, education or employment; or ceases participation in an assigned FDP activity without good cause. Indications of noncompliance may be reported to the AFDC or GA/FDP case manager or may become apparent to the AFDC or GA/FDP case manager during client participation. Indications of noncompliance with the FDP program requirements include, but are not limited to, situations in which the AFDC or GA FDP participant:

1. Did not cooperate in the development of the Family Plan or the FDP Agreement;
2. Did not sign the FDP Agreement;
3. Did not participate in vocational assessment;
4. Did not make a bona fide application for employment;
5. Did not accept the type of employment agreed upon and specified in the FDP Agreement without good cause;
6. Terminated employment or reduced earnings without good cause;
7. Was discharged from employment for cause; for example, gross misconduct connected with such employment, or failing to meet reasonable job requirements;
8. Did not participate or ceased participation without good cause, in any FDP education or employment-directed activities;
9. Refused necessary and appropriate supportive services without good cause as determined by the AFDC or GA FDP case manager, which permit participation in FDP activities or employment without providing alternative arrangements or showing that such refusal will not prevent or interfere with FDP participation; or
10. Disrupted a FDP activity or behaved in a manner that constituted a threat or hazard to other staff or fellow participants.

10:86-8.2 Notification of noncompliance

(a) When *[an]* AFDC or GA FDP participant noncompliance ***occurs*** for evaluation and Family Plan development, vocational assessment or other FDP requirements *[is indicated]*, the AFDC or GA FDP case manager shall notify the CWA income maintenance (IM) worker or the MWD accordingly of the indicated noncompliance. In turn, the IM worker or MWD shall provide timely and adequate notice to the AFDC/FDP or GA/FDP individual.

1. The IM worker or the MWD shall move to impose the sanction no later than the date of receipt of such notification from case management.

2. The IM worker or the MWD shall notify the respective FDP case management entity on the date he or she takes action on the notification of noncompliance by telephone and in writing via a FDP referral indicating the effective date of imposition of the sanction and the reason for the sanction.

10:86-8.3 Good cause

(a) If in any single instance an AFDC or GA FDP 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 the FDP or of the FDP Agreement. The AFDC or GA FDP participant is responsible for providing the necessary information so that a good cause determination can be made. The AFDC or GA FDP case manager shall indicate in writing in the case record the good cause reason for nonparticipation in the FDP by the individual. Good cause for failure to *[participation]* ***participate*** in the FDP, or refusal to accept employment, shall be found if:

1. An AFDC/FDP 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 an AFDC/FDP participant experiencing a net loss of cash income. Net loss of cash income results if the AFDC 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. 10:86-3. If payment for the family's child care costs is met by direct payments through FDP to the provider of care, or if child care costs are met through the AFDC child care disregard procedure and AFDC/FDP case management supplements the cost of care over the disregard limits, then good cause does not exist;

3. The mandatory AFDC or GA FDP participant is physically or mentally unable to engage in such education, training or employment;

4. The mandatory AFDC or GA FDP 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 AFDC or GA FDP individual's health and safety;

6. Conditions violate the rights of the AFDC or GA FDP participant or applicable law;

7. The totality of circumstances surrounding the AFDC or GA FDP participant's ability and willingness to comply with the participation requirements prevent or seriously impair participation. Such circumstances beyond the AFDC or GA FDP 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;

8. No bona fide offer of employment was received by the AFDC or GA FDP individual; or

9. An offered job was available solely because of a strike or walkout of other regular employees of the employer or organization offering employment.

10:86-8.4 Decision to impose sanction

(a) No participant shall be subjected to a sanction if 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 an inference of willful refusal without good cause to comply with the FDP requirements or the FDP Agreement.

1. 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. 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 the FDP or the FDP Agreement.

(b) Sanctions will be imposed if a mandatory FDP participant has willfully refused to comply with the requirements of the FDP or the FDP Agreement. The AFDC or GA FDP case manager shall advise the participant at the time of referral for imposition of a sanction, orally if possible, and in writing, that the participant can voluntarily remove the sanction by coming into compliance with requirements of the FDP and the FDP Agreement before the sanction period begins. If a mandatory participant complies with the FDP or the FDP Agreement requirements before the sanction period begins, any sanction proceedings which had been initiated shall cease.

1. The sanction periods in N.J.A.C. 10:86-8.7 and 8.8 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 the FDP or the FDP Agreement requirements before the sanction period begins, the AFDC or GA FDP case manager shall notify the CWA income maintenance unit supervisor or the MWD via a FDP referral form that the individual shall not be sanctioned. IM or the MWD shall take appropriate action and ensure restoration of correct grant amount, if necessary.

10:86-8.5 Appeals

(a) Any appeals resulting from sanctioning for noncompliance with the FDP requirements will be handled according to established procedures for fair hearings (see N.J.A.C. 10:81-6 or N.J.A.C. 10:85-7). Eligibility for continued AFDC or GA benefits at an unreduced level shall be determined in accordance with N.J.A.C. 10:81-6.9 for AFDC or N.J.A.C. 10:85-7 for GA. Agency records of action taken by the CWA or MWD on the indicated noncompliance shall be made available to the Administrative Law Judge should a fair hearing be requested by the participant.

1. An AFDC or GA FDP participant who has been sanctioned has the right to review, personally or through a representative, his or her file contents pertaining to the noncompliance at any time during regular business hours of the CWA or MWD.

10:86-8.6 Sanctions for AFDC/FDP participants

(a) The following sanctions shall apply for failure or refusal to comply with the AFDC/FDP requirements:

1. AFDC families shall be sanctioned if the AFDC adult(s) caretaker relative**s***, who is a mandatory participant by virtue of the fact that such individual*[s]***(s)*** must develop the Family Plan and sign the FDP Agreement for the family members, fails to complete the Plan and to sign the FDP Agreement. A penalty of a 20 percent reduction of the appropriate payment standard in *[Schedule II or]* Schedule III for the family's size as set forth at N.J.A.C. 10:82-1.2, shall be deducted from the AFDC cash benefit for the family for one payment month or until the failure to comply ceases, whichever is longer.

2. Any ***mandatory*** AFDC *[family]* ***eligible unit*** member shall be sanctioned for ***his or her*** failure *[of the AFDC/FDP mandatory participant]* to comply as age appropriate, if not otherwise exempt from FDP participation, in vocational assessment or with the appropriate EEDA Component activities identified in the Family Plan for his or her FDP participation. The individual shall be penalized for a period of ineligibility for AFDC cash assistance for a period of at least three payment months, or until the failure to comply ceases, whichever is longer.

3. Subsequent penalties for willfull refusal to comply with FDP requirements by an AFDC adult or caretaker relative or by other *[family]* ***eligible unit*** members for noncompliance with EEDA Component activities, shall result in a period of ineligibility for AFDC cash assistance for the individual for a period of at least three payment months, or until the failure to comply ceases, whichever is longer.

(b) If the AFDC mandatory participant is a caretaker relative and his or her needs are deleted for a period of at least three payment months for noncompliance as described in (a)2 and 3 above, then 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.

(c) If the AFDC-C parent or other caretaker relative who is required to participate in FDP (both applicants and recipients alike) and who is not otherwise exempt, has work experience, a high school diploma, or equivalent, and is determined in the course of the FDP evaluation assessment to be "job ready" and capable of self-support, but fails without good cause to seek employment, accept a bona fide offer of employment or terminates employment or reduces earnings without good cause, then the needs of the parent or caretaker relative shall be deleted in the determination of eligibility and in the calculation of the AFDC assistance payment for a period of at least three months, or until the failure to comply ceases, whichever is longer.

(d) If the AFDC-F 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 for a period of at least three months, or until the failure to comply ceases, whichever is longer. 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 for the same period, whether or not he or she would otherwise be exempt, unless that second parent is participating (or agrees to participate) in the FDP. 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.

1. The principal earner must satisfy the employment criteria set forth at N.J.A.C. 10:81-3.18(b) to qualify for AFDC-F eligibility and shall also cooperate with the FDP requirements in actively seeking employment and shall be required to accept a bona fide offer of employment or retain employment if determined "job ready" and capable of self-support in the evaluation/assessment process. If the principal earner fails without good cause to accept employment or terminates employment or reduces earnings without good cause, then the needs of the principal earner (and possibly the needs of the second parent as well, if he or she is not participating in the FDP) shall be deleted for a period of at least three months, or until the failure to comply ceases, whichever is longer in the determination of eligibility and in the calculation of the AFDC-F assistance payment. The penalty for failure or refusal without good cause shall continue until such time as the individual demonstrates willingness to cooperate (that is, the failure to comply ceases) as described below, at N.J.A.C. 10:86-8.9.

(e) Noncompliance with the mandatory participation requirements of the FDP by the AFDC-N principal earner will result in both parents being deleted from the eligible family for a period of at least three months, or until the failure to comply ceases, whichever is longer.

(f) 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 for a period of at least three months, or until the failure to comply ceases, whichever is longer; 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.

(g) 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 for a period of at least three months, or until the failure to comply ceases, whichever is longer.

(h) The following additional sanctions shall apply in AFDC-N segment cases for voluntary cessation of employment. 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. 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. If an employed principal wage earner recipient 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 for a period of at least three months, or until the failure to comply ceases, whichever is longer.

i. 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.

(i) Any adult individual, or child 16 to 18 years old sanctioned for noncompliance with the FDP/EEDA Component requirements remains eligible for Medicaid so long as other Medicaid eligibility criteria are met (all segments).

10:86-8.7 Sanctions for GA/FDP participants

(a) Any employable GA individual who fails or refuses without good cause to comply with FDP requirements, or who voluntarily ceases employment without good cause or who has been involuntarily terminated from employment for reasons attributable to his or her own negligence, is considered for purposes of the FDP unwilling to work and shall be sanctioned. A penalty of ineligibility of the GA/FDP individual for GA cash assistance for a period of at least three months, or until the failure to comply ceases, whichever is longer shall be applied.

1. In an eligible unit of more than one, when a person incurs a penalty of ineligibility, the GA grant shall be reduced by the penalized person's pro-rata share.

2. The MWD shall be notified by the GA/FDP case manager of the noncompliance and shall discontinue assistance to the GA individual subject to the provisions of timely and adequate notice when good cause does not exist.

10:86-8.8 Duration of sanction

(a) If a sanctioned individual reapplies for AFDC or GA but the sanction period has not expired, the AFDC or GA FDP individual will remain ineligible for AFDC or GA for the entire sanction period or until the failure to comply ceases, whichever is longer.

1. Example: A mandatory AFDC participant is sanctioned for three payment months, effective January 1 through March 31. Effective February 1, the remaining AFDC *[family]* ***eligible unit*** members become ineligible for assistance due to excess resources. The family spends the excess resources and on March 1 reapplies for AFDC. The sanctioned individual will remain ineligible for AFDC through at least March 31.

(b) 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 AFDC or GA assistance may be reestablished at the end of the sanction period based on the individual's circumstances and willingness to participate with the FDP program requirements.

(c) Continued noncompliance with the FDP requirements or the FDP Agreement after expiration of the sanction period will result in continued sanction of the AFDC or GA FDP individual.

(d) Individuals who are sanctioned may again participate in the FDP after the expiration of the sanction period, upon application and indication to the AFDC or GA FDP case manager of willingness to participate.

10:86-8.9 Determining when failure to comply ceases

(a) The AFDC or GA FDP individual may again participate after completion of the respective sanction period. The AFDC or GA FDP case manager shall determine the date that failure to comply ceases, based on a demonstrated willingness by the individual to participate in the FDP after the applicable sanction period has ended. The date that failure to comply ceases is determined as follows:

1. The AFDC or GA FDP 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 FDP individual. In order to demonstrate willingness to comply, the individual shall participate for a period of up to two weeks as determined by the AFDC or GA FDP case manager, based on the particular requirement to be satisfied and individual case circumstances.

i. If the AFDC or GA FDP individual successfully participates in the activity for the period of time required to satisfy the FDP requirement, the sanction shall cease as of the day the individual agrees to participate.

(1) Example: If a sanctioned FDP/GA individual whose sanction was scheduled to end on January 31, agrees on February 3 to participate by attending a scheduled FDP evaluation session and successfully completes the activity by attending that session, the FDP/GA 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 whose sanction was scheduled to end on March 31, 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 FDP requirements and ceases the noncompliance.

2. At such time that the AFDC or GA FDP case manager determines that the failure to comply ceases, case management shall notify income maintenance or the MWD to lift the sanction and to calculate the assistance payment for the individual for the month of reinstatement back to the date the individual agrees to participate and therefore the date the noncompliance ceased. Income maintenance or the MWD shall likewise inform the AFDC or GA FDP case manager that the individual was reinstated.

3. During the trial period of participation, the AFDC or GA FDP individual shall be eligible for supportive services and, if appropriate, child care which the FDP case manager determines are necessary for participation.

10:86-8.10 Notice to end sanction

(a) The CWA income maintenance worker or the MWD worker will remind, in writing, any AFDC or GA FDP individual whose failure or refusal to participate in the FDP has continued for three months of the individual's option to end the sanction. Form FDP-15, FDP Sanction Reminder Notice, shall be used to inform the AFDC or GA individual when he or she has been in sanction for at least three months. The reason for and time period of the sanction indicated on Form FDP-15 are the same as those recorded on the Notice of Adverse Action, at the time the individual was sanctioned for noncompliance with the FDP requirements. Income maintenance or the MWD shall inform the AFDC or GA FDP case management of the action by sending a referral in writing with a copy of the notice attached (Form FDP-15).

1. Any individual wishing to end the sanction must contact the AFDC or GA FDP case manager (indicated on Form FDP-15). At such time that the AFDC or GA FDP case manager determines that the failure to comply ceases, case management shall notify income maintenance or the MWD to lift the sanction and to calculate the AFDC or GA assistance payment for the month of reinstatement back to the date the individual agrees to participate (date the noncompliance ceased).

2. The three-month notice requirement is applicable to any sanction period which has continued beyond its scheduled expiration date. In situations where individuals in the one-month or three-month sanction periods neglect to contact the agency concerning their eligibility reinstatement for AFDC or GA benefits at the end of the sanction period, and the sanction has continued for at least three months, those AFDC or GA individuals shall be notified via Form FDP-15.

3. The Form FDP-15 advises that the individual may immediately terminate the sanction by participating in the program or accepting employment.

10:86-8.11 Other AFDC sanctions

(a) The CWA IM worker shall advise the IV-D unit in the CWA when an AFDC/FDP sanction is imposed or lifted, to avoid communicating the wrong case status information to the AFDC family and to ensure that no conflict exists with a possible concurrent IV-D sanction concerning AFDC *[family]* ***eligible unit*** members. Likewise, AFDC/FDP case management shall be advised by the IM workers of action taken to impose sanctions (both IV-A and IV-D) on individuals in the AFDC/FDP.

1. If an AFDC *[family]* ***eligible unit*** member is sanctioned for IV-A or IV-D related reasons, then that individual cannot participate in FDP activities for the duration of the sanction period.

SUBCHAPTER 9. FAMILY DEVELOPMENT PROGRAM (FDP) PARTICIPANT ALLOWANCES

10:86-9.1 FDP supportive services: participant allowances (PALs) for transportation and education/employment-directed activity/work expenses (AFDC and GA)

(a) This subchapter describes various types of participant allowances (PALs) available through the Family Development Program, to cover supportive service expenses (other than child care provider services described at N.J.A.C. 10:86-10) incidental to FDP participation of AFDC/GA public assistance recipients. These rules do not confer an entitlement to participant allowances for FDP participants. If fiscal or other resources necessary for provision of PALs are unavailable, the case management provider shall be released from the obligation of providing the participant allowance. The various types of participant allowances (PALs) are: transportation-related expenses (TREs), allowances for employment-directed activities (EDAs), expenses required to accept or maintain employment (JOBs), FDP cumulative payments for automobile-related expenses (CARs) for AFDC adult family member participants only, and the Community Work Experience Program (CWEP) allowance (AFDC participants only).

(b) FDP participant allowances (PALs) shall be paid or reimbursed to the FDP GA or AFDC participant for costs of transportation and other education/work/training-related supportive services if the case manager determines that such services are necessary for an individual to participate in FDP and those services are not provided through existing resources. Transportation/education/work/training 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. FDP remains the payor of last resort, outside of any FDP contractual agreements.

(c) Amounts paid to FDP participants as PALs incident to participation in FDP activities are excluded as income for purposes of the Food Stamp Program.

(d) The case manager will determine the projected need for supportive services based on the participation requirements in assessment, employment or in employment-directed activities set forth in the FDP Agreement. In determining need for services, the participant will be encouraged to use all sources already available to him or her. The services available through the participant's sources will be compared to the projected service needs.

10:86-9.2 TREs for AFDC and GA FDP participants

(a) Transportation costs for regularly employed AFDC individuals or AFDC participants in Work Supplementation (WSP) and FDP On-the-Job-Training (OJT) are not covered under this subchapter (with the exception of the situation of starting employment in (d)3 below) as those costs are accounted for through the $90.00 work expense disregard of earnings in accordance with AFDC rules at N.J.A.C. 10:82. Likewise, no payment shall be authorized under this section for employed GA individuals or for those GA individuals participating in OJT for transportation needs, as those costs are accounted through the $60.00 work expense disregard of GA earned income specified under the General Assistance program at N.J.A.C. 10:85.

(b) 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. No payment shall be made under the authority of this section for travel which is available without charge. The AFDC/GA FDP participant shall be encouraged to make use of his or her available transportation resources.

(c) 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 FDP Agreement, or for the initial two weeks of an activity if the individual is unable to participate without the payment. However, if an arrangement for transportation has been developed for FDP participants by means other than established transportation (through the contracting process), then the AFDC or GA participant may request to use that source of transportation and direct that his or her transportation allowance be paid directly to the provider of the transportation as a vendor payment.

1. Example: A rural county with minimum public transportation has contracted with a vendor to provide transportation in a specific geographic area for AFDC/FDP participants from their homes to training and job search sites. To offset the cost of this transportation and to ensure availability of transportation, an AFDC participant would request that the $6.00 per day transportation allowance (see (e) below) be paid directly to the contracted vendor. Once the AFDC participant completed the activity in the geographic area served by the vendor, he or she would discontinue the arrangement of payment to the vendor.

(d) Payment or reimbursement shall be provided for transportation costs for participation in certain FDP activities (see exceptions in (a) above) approved by the case manager as follows:

1. FDP preparation activities for persons mandated to participate in FDP preparation activities such as evaluation, completion of the Family Plan, assessment, and FDP Agreement conferences, for the duration of participation in such activities, for costs of transportation that are reasonably necessary for attendance.

2. Employment-directed activities (EDAs) which include both educational and non-educational activities for purposes of the EDA allowance.

i. Educational activities include training programs or education services for 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;

ii. Approved FDP non-educational employment-directed activities include, but are not limited to, Job Search and CWEP.

3. 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.

(e) Transportation allowances shall be provided to the FDP participant (AFDC or GA) during the period of need which may begin with participation in the first FDP activity following orientation by the income maintenance worker at the CWA or the MWD, 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.

1. For AFDC and GA participants an allowance of up to $6.00 per day ($30.00 per week) may be paid for transportation needs. However, payment shall be the actual cost of transportation incurred by the participant.

2. For AFDC participants only, 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 AFDC/FDP 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 AFDC 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

*[i.]***iv.*** The county has documented the circumstances, including costs of transportation, surrounding the need for the higher TRE in the FDP case record and approval has been given by the supervisor of the case manager.

3. For AFDC participants only, allowances in excess of $15.00 per day may be provided in extraordinary situations as determined on a case-by-case basis by the AFDC/FDP case manager. Before an AFDC case manager issues allowances in excess of the $15.00 maximum standard (or $60.00 per week maximum), the case manager must have obtained written approval from DFD.

(f) In addition to the standard transportation allowances for AFDC participation in FDP as delineated in (d) above, a non-FDP 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 an AFDC FDP participant's child(ren) to and from a licensed child care center or day camp which includes transportation in its costs as the child care provider has transportation services available (see N.J.A.C. 10:82-5.2(e)1). The payment for the cost of transporting a "special needs" child of a FDP participant to and from the child care site may be authorized through Title IV-A funds for actual costs up to a maximum of $10.00 per week per child 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.

10:86-9.3 $100.00 cumulative allowance for AFDC or GA individual participation in FDP employment-directed activities (EDAs): EDA Allowance

(a) Allowance payments based on need up to a maximum cumulative capped total of $100.00 per eligibility participation period are provided for necessary expenditures to permit participation by AFDC or GA individuals in approved FDP employment-directed activities (EDAs) during the participation period, including training programs, educational services and non-educational employment-directed activities. Such payments shall be made in preparation of and during participation in the specific activity. The case manager shall determine that the costs of participation are not available or paid by any other funding source (for example, JTPA). FDP remains the payor of last resort, outside of any FDP contractual agreements.

1. 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 FDP EDA activities. Payment for regular clothing items is not permitted. Items purchased become the property of the participant.

(b) Approved non-educational FDP employment-directed activities, include, but are not limited to, Job Search and CWEP (for GA participants only). AFDC participants in CWEP cannot use the EDA allowance for CWEP participation. FDP/AFDC CWEP participants may use the CWEP allowance in N.J.A.C. 10:86-9.6 for costs incurred for participation in that activity.

1. OJT and WSP program participation are also non-educational employment-directed activities. However, these activities are not eligible for the $100.00 cumulative EDA allowance payments since such activities are classified as subsidized employment activities. Participants in those activities may be considered for the JOB allowance.

(c) Each eligibility participation period covered by the cumulative $100.00 EDA allowance fund begins with enrollment in the first FDP/EEDA Component activity and ends with the last day of participation in the final education or employment-directed activity in the eligibility participation period (see N.J.A.C. 10:86-9.7 for further clarification of eligibility periods).

1. The $100.00 cumulative total EDA Allowance fund shall cover needed payments made for expenditures of AFDC or GA individuals for combined participation in all FDP activities during the eligibility participation period.

(d) 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 DFD shall be obtained before the payment can be issued. The AFDC or GA/FDP case management entity should exercise extreme prudence in making the decision to seek DFD approval for EDA Allowance issuances above the normal $100.00 limit. The case manager shall document the particular circumstances surrounding the payment in the case record.

1. Additional monies for this purpose shall be capped at $50.00 over the $100.00 EDA Allowance per eligibility participation period (that is, the $100.00 EDA Allowance value plus the ability to approve additional payment(s) of up to $50.00 more, when warranted, or $150.00 maximum for the EDA Allowance). Under no circumstances shall DFD approval be granted for amounts which exceed the $150.00 EDA Allowance maximum.

10:86-9.4 $100.00 cumulative allowance to accept or maintain employment (JOB): JOB Allowance for both AFDC and GA/FDP participants

(a) Allowance payments (JOB) based on need, up to a maximum cumulative total of $100.00 per eligibility participation period (see N.J.A.C. 10:86-9.7 for explanation of an eligibility participation period), are provided for actual expenses necessary to permit an AFDC or GA individual to accept or maintain employment. Such payments shall be issued in preparation for and during the course of employment. The AFDC or GA FDP case manager shall determine that JOB expenditures are necessary and not available from, or paid by, any other funding source. FDP remains the payor of last resort, outside of any FDP contractual agreements.

1. The JOB Allowance is capped at $100.00 per eligibility participation period. Therefore, no payments beyond the $100.00 maximum JOB Allowance shall be authorized.

(b) 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 and ends 90 days after loss of eligibility for GA or for AFDC cash assistance. Therefore, employed individuals receiving post-AFDC child care (see N.J.A.C. 10:86-10) and/or Medicaid, if determined in need of monies available through the JOB Allowance, may be authorized for payment of that allowance or of the remaining portion of that allowance fund only for the first 90 days following the AFDC case closing. The eligibility participation period for the JOB Allowance for AFDC WSP and GA or AFDC OJT participants begins with the effective date of the activity, and ends no later than 90 days after loss of eligibility for cash assistance in either program, or the expiration date of the OJT contract, whichever occurs first.

1. Example: If an AFDC individual enters a six month OJT or WSP activity in January and loses AFDC eligibility effective March 1, he or she would remain eligible for the JOB Allowance as an FDP participant through May 29 in the post-AFDC period which encompasses the 90-day limited timeframe for Federal financial participation (FFP). Although there are four months remaining in the activity contract period through June, the final month of participation in the activity, no authorization for participant allowances can be made for that final month.

(c) AFDC-C, -F, and -N recipients who become ineligible for assistance due to income from employment and who were not participating in FDP may be eligible for JOB Allowance payments, provided the individual complies with FPD requirements for such payments, including signing a FDP Agreement. In those circumstances, the JOB Allowance may be an incentive for the individual to remain employed. The AFDC/FDP case manager 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.

(d) Allowable JOB 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 (d)1 below); books; and other items needed for employment that are not available from an employer or other funding source (for example, JTPA). Payment for regular clothing items is not permitted.

1. 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.

10:86-9.5 FDP $500.00 cumulative motor vehicle related (CAR) expense allowance for AFDC FDP adult or caretaker relative participants only

(a) Allowance payments based on need, up to a maximum capped cumulative total of $500.00 per eligibility participation period, are available for AFDC parents or caretaker relatives who are FDP participants who own motor vehicles to make those vehicles operational to transport the AFDC/FDP parent or caretaker to FDP/EEDA 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 FDP activity and ending no later than 90 days after loss of eligibility for AFDC in the post-AFDC period.

1. Example: A former AFDC FDP or REACH/JOBS participant has been employed and is in receipt of post-AFDC child care services. The AFDC case closed as of August first. On November 15, the recipient requests a CAR allowance of $50.00. In this instance, AFDC/FDP case management cannot authorize payment from the CAR allowance fund since the 90-day authorization period has expired.

(b) 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 AFDC/FDP case manager. Payments in excess of the $500.00 limit may be issued only after obtaining the written approval by DFD. Again, extreme prudence should be used by the AFDC/FDP case management entity in making the decision to seek DFD approval. The AFDC/FDP case manager must document the particular circumstances surrounding the payment(s) in the case record.

1. Additional monies for this purpose shall be limited to $500.00 over the normal capped CAR allowance per eligibility participation period (that is, the $500.00 CAR allowance plus the ability to authorize, with DFD approval, additional payment(s) of up to $500.00 more, when warranted, or $1,000 maximum for the CAR allowance). Under no circumstances shall DFD approval be granted for amounts which exceed the $1,000 CAR allowance maximum.

(c) 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; and 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.

(d) Payments from the $500.00 cumulative CAR allowance may be issued provided that the following circumstances are considered first:

1. No less expensive alternative means of transportation is available to the AFDC/FDP parent or caretaker relative;

2. The motor vehicle under consideration for a CAR expenditure is owned by the AFDC/FDP parent or caretaker relative 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 FDP activities or a job. Car allowance payments are not available for a vehicle that is registered (for any reason) in the name of another relative outside the eligible family as described above;

3. 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) for AFDC participants;

4. The parent or caretaker relative who is the AFDC/FDP participant has documented the need for necessary motor vehicle repairs or service with a written estimate from a bona fide auto mechanic;

5. The general overall condition of the vehicle justifies the cost of repairs (as determined by a bona fide auto mechanic);

6. 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;

7. The FDP activity or service needed by the AFDC/FDP parent or caretaker relative 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

8. The county AFDC/FDP has provided all FDP activities or services needed by the AFDC/FDP parent or caretaker relative (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.

(e) The county AFDC/FDP case management agency may develop a list of "FDP-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.

(f) CAR allowance payments for insurance purposes are limited to the quarterly premium for the minimum insurance required under New Jersey State law for a private vehicle. Payment may include mandatory surcharges by the insurer due to the parent or caretaker's participant's past driving record.

1. The AFDC/FDP parent or caretaker participant shall be financially able to continue to pay insurance costs after the quarterly premium is paid.

2. If the AFDC/FDP parent or caretaker 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. 10:86-11).

10:86-9.6 $10.00 CWEP reimbursement (AFDC participants only)

The AFDC/FDP case management entity shall provide reimbursement for costs which are determined necessary and which are directly related to participation of an AFDC participant 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 for each AFDC participant. The CWEP allowance is used in lieu of the EDA allowance by AFDC participants in CWEP activities.

10:86-9.7 Determining the eligibility participation period for EDA, JOB and CAR allowances

(a) An eligibility participation period is that period of time during which expenditures are made from the EDA, JOB and CAR funds up to their respective maximum cumulative totals ($10.00, $100.00 and $500.00).

1. The FDP participant who has been off GA or AFDC assistance (including post-AFDC extended benefits) for at least one full year (12 consecutive months) shall be entitled to a new eligibility

participation period with full maximum EDA or JOB allowances or the AFDC/FDP parent/caretaker only CAR allowance upon resumption of AFDC/GA FDP participation.

2. The FDP participant who leaves GA or AFDC assistance (including post-AFDC extended benefits) and remains off assistance for less than one year and then returns to AFDC or GA and FDP participation, will be eligible only for the remaining balance of the cumulative total of his or her EDA or JOB allowances or the AFDC/FDP parent/caretaker only CAR allowance.

10:86-9.8 Payment procedures for EDA, JOB and CAR allowances

(a) Allowances for EDA, JOB and CAR 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 as determined in accordance with N.J.A.C. 10:86-9.7.

1. 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.

2. Payments may be issued retrospectively as reimbursements or prospectively if needed, on or after the effective date of the FDP activities.

3. Payments are to be issued as vendor payments when possible.

4. Payments may be issued directly to the AFDC or GA FDP participant as a reimbursement of expenditures already made.

5. Costs currently paid through FDP contracted service providers (for example, contracted through JTPA) or other providers servicing FDP participants shall not be transferred to the FDP TRE, EDA, JOB, or CAR allowances.

10:86-9.9 Administration of TRE, EDA, JOB, CAR, TCC, and CWEP funds

(a) The county FDP case management entity(ies), both AFDC and GA, 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 FDP 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 FDP activity on the same day when possible; and

3. Enrolling participants in equivalent non-FDP contracted activities or services provided in the vicinity of their homes (for example, GED programs are offered at most local high schools).

SUBCHAPTER 10. FAMILY DEVELOPMENT PROGRAM (FDP) CHILD CARE

10:86-10.1 FDP supportive services: child care AFDC families only

(a) The general provisions in this subsection apply to all child care benefits available through the FDP, including post-AFDC child care benefits.

1. To the extent that such child care is necessary to permit an AFDC eligible family member to accept employment, to remain employed, to remain in high school if an adolescent parent, to participate in activities of the FDP/EEDA component (including job search by an AFDC applicant), or to complete the Family Plan or initial assessment, FDP child care is available based on the individual needs of each family.

i. FDP child care benefits and post-AFDC child care benefits are guaranteed for the following children:

(1) A child who is under age 13; or is physically or mentally incapable of caring for himself or herself, based on a determination by a physician or a licensed or certified psychologist, as verified by the county or CWA and who would be a dependent child, if needy;

(2) A child age 13 or older, as determined on a case-by-case basis, due to extenuating circumstances (for example, environmental conditions or maturity level of child), which shall be documented in the case record, through State funds only.

(3) 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; or

(4) A child who meets the requirements of (a)1i (1), (2), or (3) above but who is excluded from the eligible unit for cash assistance purposes in accordance with N.J.A.C. 10:82-1.11 and who would otherwise be a dependent child.

ii. Payments through FDP for child care shall not be made for care provided by the child's own parents, legal guardians, or members of the participant's AFDC family unit (including essential persons) whose needs are met through AFDC benefits on the basis of their responsibility of caring for the child(ren).

2. The case manager shall be responsible for assessing and determining the need for child care and referral to the lead child care agency (LCCA) and authorizing issuance of FDP child care payments.

3. The lead child care agency will assist the case manager and participant in obtaining appropriate child care based on the parent's and child's needs; will assist in identifying child care resources available for a participant during orientation, assessment, participation in education or employment-directed activities and employment; and shall verify and document that the child care arrangements meet the criteria as specified at N.J.A.C. 10:86-10.3 and 10.4.

4. The case manager, the participant, and the lead child care entity shall mutually arrange for child care for the FDP participant's child(ren) as set forth in the FDP Agreement and as described 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 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 agreeable to the participant and located within reasonable commuting distance from the participant's home, place of employment or site of the educational or employment-directed activity. The hours provided or claimed for reimbursement are reasonably related to the hours of participation or employment and shall be sufficient to accommodate the hours required by the employer or FDP activity.

iii. The entity providing child care shall allow parental access.

iv. Child care arrangements shall meet applicable standards of State and local law.

5. Each county AFDC/FDP case manager or lead child care entity shall:

i. Inform families requesting FDP child care benefits of their rights and responsibilities;

ii. Respond to a request for FDP child care benefits within a reasonable period of time; and

iii. Assist the caretaker relative to explore all types of child care arrangements authorized for payment through the FDP (that is, licensed child care centers, registered family day care homes, in-home care, school-age child care programs and summer camps) and provide the caretaker relative the opportunity to choose his or her child care arrangement from those available options, including those other programs for which the caretaker relative or child may be eligible under (a)6 below.

6. FDP child care activities and post-AFDC child care shall be coordinated 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 (Public Law 97-35), school and non-profit 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 REACH Capital Expansion Program, the Mini-Child Care Center program and the New Jersey Cares for Kids Program.

7. AFDC recipients are entitled to hearings and notices under the provisions at N.J.A.C. 10:81-6 and 10:81-7 on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce FDP 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 at N.J.A.C. 10:81-6.9 regarding aid paid pending a hearing do not apply. Therefore, if the individual had been receiving FDP child care benefits and is awaiting a hearing concerning those benefits because such benefits were reduced, he or she is not entitled to receive FDP 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 FDP child care benefits pending the hearing.

8. A mandatory FDP participant may refuse available and appropriate FDP 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 FDP or employment.

i. Refusal of FDP 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. 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 a notification of FDP benefits available; does not provide the information necessary for determining eligibility and fee amount, including verification of earnings; does not sign a FDP Agreement for the period of post-AFDC child care; or does not report participation in post-AFDC FDP activities.

iii. Refusal of FDP 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.

9. The AFDC/FDP case manager shall take reasonable precautions to guard against fraud and abuse in the funding and provision of FDP child care benefits, including following the provisions at N.J.A.C. 10:81-7.40.

(b) Payment for the cost of child care to support FDP participation is available through the FDP program at rates established by the Department of Human Services. Authorization of provider payments for child care is limited to providers satisfying requirements set forth at N.J.A.C. 10:86-10.4, when child care expenses are not otherwise provided through other resources.

1. When child care that is in the best interests of the child has been arranged, the case manager has the responsibility to determine eligibility and authorize payment for the child care that will obtain the maximum Federal financial participation for the particular activity. In determining payment of the cost of child care, the following sequence will be applied:

i. The participant's own sources of child care involving no payment for child care through FDP;

ii. Federally matched child care costs while an individual is participating in FDP job search, work supplementation, and community work experience programs;

iii. Federally matched child care costs while an individual is participating in education, in training for employment, or in a program of vocational rehabilitation;

iv. The participant's funds for the amount of the required post-AFDC child care co-payment in accordance with N.J.A.C. 10:86-10.5; and

v. State FDP funds.

(1) Payment for child care using State FDP funds may be made when the participant's own source or Federally matched child care funds are not available or not sufficient to pay for the cost of child care. The priority of funding sources in (b)1ii through v above will be automatically incorporated into every FDP child care payment through fiscal procedures and reporting from the CWA to DFD, unless otherwise specified.

2. FDP child care payments will be available as each county begins the operation of the FDP and phases out the REACH/JOBS program.

10:86-10.2 Types of care and duration of child care payments

(a) FDP child care payments are available for care of an infant, toddler, preschool child, school-aged child or child with special needs in various types of arrangements, including full and part-time day care and care before and after school.

1. "Special needs" is defined as serious physical, emotional, mental or cognitive conditions for which day care is recommended as part of a treatment plan.

i. Records of children referred because of special needs situations shall contain documentation of the result of a standardized developmental or psychological test given by a certified individual, written verification by a physician identifying and delineating the special needs of the child, or documentation by the case manager, approved by the case management supervisor, attesting to a child's special social or emotional needs.

ii. 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).

2. Payment for care of school-aged children, which is normally limited to part-time or before/after school hours during the school year, shall be made at the full-day rates during summer vacations and recognized vacations and holidays during the school year, for example, Christmas, spring vacation, and so forth.

3. Payment may be made for the cost of transportation of a child to and from a day care center while participating in an FDP activity or employment in accordance with N.J.A.C. 10:86-9.2(f).

(b) FDP child care benefits are routinely available to participants for participation in an activity of the FDP/EEDA for a limited time to bridge the period between participation in FDP activities, or between a FDP/EEDA activity and employment; for an adolescent parent to remain in high school; for the post-employment period after commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, as a direct payment to supplement as necessary, child care paid by the participant as required by the Social Security Act (see N.J.A.C. 10:86-10.3(a)4); and after the commencement of employment that results in ineligibility for AFDC, for one year of post-AFDC child care benefits, subject to post-AFDC child care co-payment requirements specified at N.J.A.C. 10:86-10.5.

1. The post-employment child care period begins with the first week in which a participant is employed and receiving AFDC, and expires when the participant is either ineligible for AFDC for reason other than sanction or penalty or is no longer employed. Such payments may be made as direct payment of child care costs or, as supplemental payments for families using the disregard process if the costs of child care exceed the Federal child care disregard limits set forth at N.J.A.C. 10:82-2. Payment is made only when the care is provided through a FDP authorized child care arrangement (see N.J.A.C. 10:86-10.3).

i. If an employed participant becomes ineligible for AFDC for a reason other than a sanction or similar penalty for noncompliance with AFDC program requirements, the participant shall be eligible for payment of child care through the FDP for the one year post-AFDC period while the participant is employed, subject to (c) below.

2. For a participant who is waiting to enter a FDP/EEDA activity or to start employment, FDP child care benefits are available to bridge the period between FDP activities:

i. For a period not to exceed two weeks; or

ii. For a period not to exceed one month (defined as five weeks to accommodate calendar months of up to 31 days for operational purposes) where child care arrangements would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(c) Post-AFDC child care benefits are available for one year following the loss of eligibility for AFDC assistance, to families whose eligibility for AFDC has ceased due to increased earnings,

increased hours of employment (including new employment) which result in increased earnings, or as a result of the loss of earned income disregards due to the expiration of time limits at N.J.A.C. 10:82-4, for eligible children described at N.J.A.C. 10:86-10.1(a)1i.

(d) The maximum child care payment rates, set forth in Tables I, II and III below, specify weekly and daily rates for the various age categories of children based on the hours of care provided.

1. Table I includes maximum rates for licensed child care centers, school-age programs and day camps.

2. Table II includes maximum rates for registered family day care provider homes.

3. Table III includes maximum rates for approved family day care provider homes.

CHILD CARE MAXIMUM DAILY RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, DAY CAMPS

	Hours of Care Provided			
	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
Child's Service Category	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers Special Needs Child (0 up to 2.5 yrs)				
Weekly	$114.00	$85.50	$57.00	$28.50
Daily	$ 22.80	$17.10	$11.40	$ 5.70
Pre-Schoolers & Special Needs Child (2.5 up to 5 yrs)				
Weekly	$ 94.00	$70.50	$47.00	$23.50
Daily	$ 18.80	$14.10	$ 9.40	$ 4.70
Kindergarteners & School-Agers & Special Needs Child (5-13 yrs) and Special Needs Child (13-19 yrs)				
Weekly	$ 94.00	$70.50	$47.00	$23.50
Daily	$ 18.80	$14.10	$ 9.40	$ 4.70

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

CHILD CARE MAXIMUM DAILY RATES

Table II
These rates shall be utilized for:
REGISTERED FAMILY DAY CARE HOMES

Child's Service Category	Hours of Care Provided: Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50
Pre-Schoolers (2.5 up to 5 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$ 70.00	$52.50	$35.00	$17.50
Daily	$ 14.00	$10.50	$ 7.00	$ 3.50
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$110.00	$82.50	$55.00	$27.50
Daily	$ 22.00	$16.50	$11.00	$ 5.50
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$ 90.00	$67.50	$45.00	$22.50
Daily	$ 18.00	$13.50	$ 9.00	$ 4.50

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

CHILD CARE MAXIMUM DAILY RATES

Table III
These rates shall be utilized for:
APPROVED HOME DAY CARE

	Hours of Care Provided			
	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
Child's Service Category	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75
Pre-Schoolers (2.5 up to 5 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.20	$ 6.15	$ 4.10	$ 2.05
Kindergarteners & School-Agers (5 up to 13 yrs)				
Weekly	$41.00	$30.75	$20.50	$10.25
Daily	$ 8.20	$ 6.15	$ 4.10	$ 2.05
Special Needs Infants/Toddlers (0 up to 2.5 yrs)				
Weekly	$66.00	$49.50	$33.00	$16.50
Daily	$13.20	$ 9.90	$ 6.60	$ 3.30
Special Needs Child(ren) (2.5 yrs & up)				
Weekly	$55.00	$41.25	$27.50	$13.75
Daily	$11.00	$ 8.25	$ 5.50	$ 2.75

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

10:86-10.3 Payment/reimbursement procedures

(a) FDP funds are expended for child care as direct vendor payments to providers or as direct payments to participants.

1. Vendor payments to providers are the primary method for issuing child care payments in FDP. 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 voucher information, the agency issues a FDP child care payment to the provider.

2. In exceptional or emergency situations, payment for child care provided may be made directly to the participant. As with the child care voucher, payment is issued upon verification of the child's attendance and care provided.

3. Child care services may be authorized by the case manager when deemed appropriate for special circumstance situations, such as emergency needs, drop-in care or approved interim care to another provider during illness of a child.

4. The preferred method of payment of FDP child care benefits for employed AFDC-C, -F or -N FDP participants shall be by direct vendor payment to authorized providers of service that meet those requirements set forth at N.J.A.C. 10:86-10.4.

i. When the FDP participant reports the start of employment or is participating in a WSP or OJT assignment, the income maintenance worker shall determine eligibility for AFDC. Additionally, actual expenditures made by the FDP family for care of an incapacitated adult living in the AFDC-C, -F or -N household shall be disregarded in the eligibility determination and benefit calculation in accordance with N.J.A.C. 10:82-2.8. Cost of care of the incapacitated adult remains the responsibility of the FDP family; no supplemental monies for incapacitated adult care are provided through FDP in excess of the disregard limits. Such adult care costs if incurred by the family shall always be disregarded regardless of the method of payment of FDP child care costs. No disregard shall be applied in the prospective eligibility determination for FDP child care purposes (except as delineated in (c) below) as those costs are made by direct vendor payment by the agency.

ii. If the employed FDP family remains prospectively eligible for AFDC, the costs of FDP child care shall not be disregarded in the computation of the family's AFDC assistance benefit except in situations as delineated in (c) below. The income maintenance worker shall explain to the participant that actual FDP child care costs shall be paid directly to the child care provider.

iii. The income maintenance worker shall inform the case manager verbally and in writing via an FDP referral form, or a similar agency developed form, of the participant's eligibility status. The worker shall file a copy of the form (or agency form) in the AFDC case record and forward two copies to FDP case management for filing in the FDP 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 FDP 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 this section.

(b) If an employed participant receiving AFDC pays for child care not approved by the FDP, 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 FDP in excess of the disregards.

(c) The earned income disregard procedure for expenditures made for care of a child (see N.J.A.C. 10:82-2.8 for disregard limits) shall remain available to eligible families participating in FDP in the situations delineated in (c)1 through 4 below:

1. The FDP child care payment is made to a child care provider selected by the AFDC-C, -F or -N family participating in FDP and that provider does not meet the criteria set forth in N.J.A.C. 10:86-10.4 as an authorized child care arrangement for direct payment through FDP funds. In addition, no supplemental monies over the disregard limits are provided through FDP for such unauthorized arrangements.

2. Any AFDC-C or -F FDP family who has an employed family member who has been participating in REACH/JOBS prior to April 1, 1991 and who has been utilizing the disregard method on or before April 1, 1991, for payment of child care costs (see (c)3 and 4 below for applicable procedures).

3. Any employed AFDC-C or -F family who has been continuously eligible for and was receiving AFDC-C or -F benefits on October 13, 1988 and had earnings on that date whereby the child care disregard was the method of payment for child care costs, and who would be financially disadvantaged due to the loss of AFDC eligibility as a result of the direct payment of child care costs rather than the use of the disregard when employed and participating in FDP.

i. The employed FDP AFDC-C or -F participant shall pay actual child care costs up to the Federal disregard limits directly to the provider of care. The child care disregard shall be applied to that first month in which the FDP employed participant begins payment for child care costs. Cost of care in excess of the Federal disregard limits may be supplemented by the FDP program as a FDP post-employment child care payment up to the maximum rates authorized by DFD (see N.J.A.C. 10:86-10.2(d)). Supplemental FDP payments are issued as vendor payments to the child care providers when the child(ren) is in an authorized child care arrangement (see N.J.A.C. 10:86-10.4). Such FDP supplemental payments shall not be counted as income or resources in any month received.

ii. Direct vendor payment by the agency is available as a bridge payment (see N.J.A.C. 10:86-10.2(b)2) for families using the disregard payment procedure, to assist the FDP family in transition to work. That bridge payment through FDP may be paid by the agency as a direct payment to the provider for care in authorized arrangements up to the receipt of the first pay check or for a period not to exceed one month. Child care costs paid through a bridge payment shall not be disregarded in the calculation of the FDP family's assistance payment.

4. Any AFDC-C, -F or -N applicant family which has an employed family member who is defined as a FDP mandatory participant (that is, not exempt from FDP participation) shall utilize the disregard procedure for costs of child care due to employment during the interim time period covering referral of that mandatory individual to FDP case management; and, until such time (subject to timely and adequate notice provisions at N.J.A.C. 10:81-7.1) that income maintenance is subsequently advised by case management of the direct payment of child care costs through FDP.

5. FDP families may voluntarily request direct payment of child care costs rather than the use of the disregard process. Upon request, a prospective AFDC eligibility determination shall be made to determine if continued eligibility exists if the child care disregard is not applied. The participant shall be informed of the result of the determination and of the consequences. If eligibility continues to exist and the client decides to have direct payment rather than the disregard, the case record shall be documented as to the request and appropriate action taken.

10:86-10.4 Provider requirements

(a) FDP payments to providers of child care are available according to the following conditions and in accordance with payment procedures for child care providers set forth at N.J.A.C. 10:86-10.3.

1. To qualify for FDP child care payments, a child care center or program shall meet one of the following requirements as set forth at N.J.A.C. 10:122, Manual of Requirements for Child Care Centers (N.J.S.A. 30:5B-1 through 15).

i. Centers providing care for infant and pre-school children shall be licensed by the Division of Youth and Family Services (DYFS), Bureau of Licensing, or shall have a letter of exemption from DYFS, Bureau of Licensing; or shall be operated under the auspices of the public school system;

ii. Child care programs for school-age children shall meet local occupancy building and fire codes and shall have satisfactorily completed an inspection using the DHS' "Check List of Standards for School Age Child Care Programs"; or shall be operated under the auspices of the public school system; or

2. All family day care providers (registered homes) who serve three or more nonsibling children must be registered pursuant to the Family Day Care Provider Registration Act (See N.J.A.C. 10:126) in order to qualify for payment through the FDP for child care provided to children of FDP participants.

i. Family day care providers of one or two children may choose to register under the Family Day Care Provider Registration Act or to provide family day care as an approved home.

ii. Payment shall be made to the provider who has secured a Certificate of Registration or a temporary registration certificate, as defined by rules promulgated under the Family Day Care Provider Registration Act.

3. Providers of family day care who are not living in the home of the AFDC/FDP participant and who are not registered under the Family Day Care Provider Registration Act (N.J.S.A. 30:5B-16 et seq.—P.L. 1987, c.27; N.J.A.C. 10:126) shall be approved by the Department of Human Services in order to qualify for payment through the FDP. (Reference is made to N.J.A.C. 10:15A-1.3(d) and N.J.A.C. 10:81-14). Unregistered relatives, friends or neighbors are eligible for approved home status.

i. The minimum requirements for approval of the home are an inspection of the home using the "Self-Arranged Care Inspection and Interview Checklist" (see Appendix A, N.J.A.C. 10:81).

ii. As an approved home, providers may receive payment for a maximum of two nonsibling children or of all the sibling children of one family. This type of provider may provide care for no more than eight children in total at any one time. This includes the children of the provider. Children residing in the provider's home who are six years or older are not to be counted in the total number of children being cared for in the home. The maximum number of ratio children, by age, permitted in an approved home is not to exceed the totals set forth by the family day care provider registration requirements (N.J.A.C. 10:126-6.1(c)), as that standard sets minimum safety levels.

iii. 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, if the home has received approval since September 5, 1988. Homes approved prior to September 5, 1988 are paid at prior approved rates.

4. Providers of in-home care, that is, care of a FDP participant's children in the participant's own home, shall be evaluated using the "Self-Arranged Care Inspection and Interview Checklist," in order to qualify for payment through the FDP.

i. The authorized rate for in-home care shall be provided for all services and supervision 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 example, parent, adoptive parent or legal guardian) for any member of the eligible family; or an individual who is a member of the AFDC assistance unit. 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.

5. Regarding day camp providers, "day camp" is construed to mean either the operation of 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. The use of a day camp is permitted as an alternate form of child care during periods when other facilities are unavailable or in situations where, in the judgement of the CWA, such care is considered necessary or desirable.

i. The maximum allowable rate for care in a day camp, regardless of the source or sources of such payment, shall not exceed the maximum rates established by the Department of Human Services (see N.J.A.C. 10:86-10.2(d)).

ii. 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 (see N.J.A.C. 8:25).

6. Providers of child care not in the categories (a)1 through 5 above are not entitled to payment through the FDP for child care provided to children of FDP participants.

10:86-10.5 FDP post-AFDC extended child care benefits

(a) Families ineligible for AFDC may be provided post-AFDC extended child care benefits through FDP if AFDC ineligibility was as a result of increased earnings, increased hours of work or the loss of time-limited earned income disregards on or after April 1, 1990. The FDP seeks to:

1. Enable an AFDC family to accept and maintain employment;

2. Ensure that the parent has freedom of choice in selecting child care arrangements and is provided with flexibility to choose the location and type of provider that best meets their child care needs;

3. Requires that all recipients of FDP post-AFDC child care benefits pay a portion of the cost of care based on ability to pay, as required by the Federal Family Support Act of 1988.

(b) Before the period of post-AFDC child care expires, the case manager shall advise the participant, the provider and the lead child care entity of the expiration date of FDP child care payments and that the participant shall be responsible for payment of the entire cost of child care. The case manager, with the assistance of the lead child care entity, will work with the participant to ease the transition to payment of child care not subsidized by FDP.

(c) A family is eligible for post-AFDC child care provided the following conditions are met:

1. The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from employment, including earnings from new employment, or the loss of earned income disregards, due to the time limitations at N.J.A.C. 10:82-4;

2. The family must have received AFDC in the month preceding the first month of ineligibility (although Federal financial participation for post-AFDC child care payments is available only if the family received AFDC in at least three of the six months preceding the first month of ineligibility);

3. The family requests post-AFDC child care benefits and provides the information necessary, including verification of earnings, for determining eligibility and fees;

4. The participant signs a FDP Agreement covering the period during which the child care is to be provided;

5. The participant cooperates in post-AFDC activities set forth in the Agreement;

6. The family pays the required co-payment, if the family ceased to be eligible for AFDC on or after April 1, 1990; and

7. The family complies with FDP requirements to report participation in post-AFDC activities.

(d) The county agency must notify orally, as appropriate, and in writing, all families whose AFDC eligibility has been or will be terminated due to the reasons in (c)1 above, of their potential eligibility for post-AFDC child care benefits. The FDP notification advises a family who loses or may lose AFDC eligibility due to income from employment, of potential eligibility for post-AFDC child care and extended Medicaid benefits (see N.J.A.C. 10:86-7), and asking the family to request such benefits by contacting the AFDC/FDP case manager whose name and telephone number are included in the notification, which also describes the steps the family must take to establish eligibility for post-AFDC child care benefits and their rights and responsibilities with regard to those benefits.

1. 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 reasons, of their potential eligibility for post-AFDC child care benefits via the FDP Benefit Letter, or a similar locally-developed letter (subject to DFD approval). A copy of the notification 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 FDP benefits.

2. 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 the FDP Benefit Letter or a similar locally developed letter. A copy of the letter shall be sent to case management for possible initiation of post-AFDC FDP benefits.

3. As soon as case management receives the FDP Benefit Letter, the AFDC/FDP case manager shall contact the participant to advise of available post-AFDC FDP benefits and to ascertain whether the participant needs child care. The AFDC/FDP case manager shall advise the participant of the need to sign a FDP agreement and provide verification of earnings for extended child care benefits.

(e) Notwithstanding when the family requests post-AFDC child care, eligibility for post-AFDC child care begins with the first month for which the family is ineligible for AFDC for the reasons at (c) above, and continues for a period of 12 consecutive months computed according to (e)1 below. The 12-month post-AFDC period shall consist of 52 consecutive weeks, if the participant remains employed and does not receive AFDC during that period of time. Families may begin to receive post-AFDC child care in any month during the 12-month eligibility period.

1. The 12-month post-AFDC eligibility period shall begin with the month AFDC is terminated due to income from employment, but no later than the AFDC payment month in which the family becomes ineligible due to earnings from employment. If the family fails to report the earnings causing ineligibility, the 12-month eligibility period shall begin with the first month in which the family became ineligible for AFDC.

i. Example: A participant starts employment and first receives earnings in January and reports the earning timely. The earnings render the family ineligible for AFDC; assistance is terminated effective for the March payment month. The eligibility period for post-AFDC child care benefits will start on March 1, the effective date of AFDC case closing.

ii. Example: In January a participant starts working and receives earnings that cause ineligibility for AFDC. However, the family does not report the earnings until April. Assistance is terminated effective May 1. The eligibility period for post-AFDC child care benefits will start on January 1, the month in which the family first became ineligible for AFDC due to income from employment.

iii. Example: In January a participant starts working and receives earnings that cause ineligibility for AFDC but fails to report the earnings to the CWA. In May the agency discovers the unreported earnings and terminates assistance for June, effective June 1. The eligibility period for post-AFDC child care benefits will start on January 1, the month in which the family first became ineligible for AFDC due to income from employment.

iv. Example: In February an AFDC recipient voluntarily requests that the AFDC case be closed. The agency processes the request and terminates assistance for March, effective March 1. It is later determined that the recipient has been and is currently employed, and the earnings would have rendered the family ineligible for AFDC starting in January. If the individual applies for post-AFDC child care benefits, the eligibility period for post-AFDC child care benefits will start on January 1, the month in which the family first became ineligible for AFDC due to income from employment.

2. Employment shall be presumed unless the participant reports otherwise in the 12-month post-AFDC period.

(f) The family is not eligible for post-AFDC child care for any remaining portion of the 12-month period if the caretaker relative:

1. Terminates employment without good cause, as defined at N.J.A.C. 10:86-8;

2. Fails to cooperate with the CWA in establishing payments and enforcing child support obligations; or

3. Fails to pay required co-payment.

(g) If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month post-AFDC child care eligibility period.

1. If the family reestablishes AFDC eligibility during this period, it may qualify for a new 12-month period of post-AFDC child care. To be eligible for a new 12-month period, the family must have received AFDC in at least three of the six months preceding the first month of ineligibility for AFDC, and must satisfy all other conditions of eligibility at (c) above.

(h) Each family receiving post-AFDC child care is required to contribute a co-payment toward the cost of such care.

1. A co-payment scale established by the Department of Human Services will provide for some level of contribution by all recipients of post-AFDC child care. The co-payment scale shall consider: family income, family size, number of children, and number of children in care. The co-payment scale is set forth at N.J.A.C. 10:86-10.6(b).

2. Pursuant to requirements established by the Department of Human Services, each county AFDC/FDP entity must establish methods and procedures for the collection of co-payment, and may vary the period of collection for different fee levels.

3. Individuals who fail to cooperate in paying the required co-payment will, subject to appropriate notice and hearing requirements, lose eligibility for post-AFDC child care benefits for so long as back co-payments are owed, unless satisfactory arrangements are made to make full payment.

(i) A mandatory FDP participant may refuse available appropriate post-AFDC child care if the participant can arrange other child care or can show that such refusal will not prevent or interfere with employment.

1. 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 FDP notification Benefit Letter by the end of the first month of AFDC ineligibility; does not provide the information necessary for determining eligibility and fee amount, including verification of earnings; does not sign a FDP Agreement for the period of post-AFDC child care; or does not report participation in post-AFDC FDP employment.

(j) Provision of post-AFDC child care benefits is subject to timely and adequate notice and hearing requirements at N.J.A.C. 10:81-6 and 7, and N.J.A.C. 10:86-6.

1. Timely and adequate notice must be given if post-AFDC child care benefits are reduced, discontinued or suspended due to nonpayment of the co-payment; or if a change in the manner of payment results in a discontinuance, suspension, reduction or termination of benefits; or forces a change in child care arrangements.

2. Timely and adequate notice is not required for a change in the manner of payment that does not result in an action in (j)1 above.

10:86-10.6 Co-payment scales

(a) The FDP post-AFDC child care co-payment scales, based on the family size and gross income of the AFDC eligible unit at case closing, are used to determine the co-payment. Once assessed, the co-payment is deducted from the amount to be paid to the provider by the FDP up to the maximum FDP rates. This assessed co-payment for child care services is then paid directly by the parent to the provider of care. Any balance remaining (up to the maximum FDP rates) is paid by the FDP for the total cost of care. The FDP post-AFDC child care co-payment policy and procedures are applicable for all types of care arrangements delineated at N.J.A.C. 10:86-10.4, available through the FDP and approved by the appropriate child care evaluating agency.

(b) The co-payment scales are as follows:

1. The amount of the required co-payment is based on the family's income level, family size, number of children, and number of children in care. There are two co-payment scales:

i. Co-payment scale Table I—Full-Time Care; and

ii. Co-payment scale Table II—Part-Time Care

2. Assessed co-payments are apportioned weekly and are due for the entire 52-week period that subsidized child care assistance is received. Holidays, emergency closings, and absences do not exclude or reduce the required fee co-payment.

TABLE I
CO-PAYMENT SCALE

By Family Size
(Full-Time Care)**

Full Time* Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 2	3	4	5	6
1.00	0%- 5%	0- 1,768	0- 2,184	0- 2,600	0- 3,016	0- 3,432
4.00	6%-10%	1,769- 3,536	2,185- 4,368	2,601- 5,200	3,017- 6,031	3,433- 6,863
6.00	11%-15%	3,537- 5,304	4,369- 6,552	5,201- 7,799	6,032- 9,047	6,864-10,295
9.00	16%-20%	5,305- 7,071	6,553- 8,735	7,800-10,399	9,048-12,063	10,296-13,727
11.00	21%-25%	7,072- 8,839	8,736-10,919	10,400-12,999	12,064-15,079	13,728-17,159
14.00	26%-30%	8,840-10,607	10,920-13,103	13,000-15,599	15,080-18,094	17,160-20,590
18.00	31%-35%	10,608-12,375	13,104-15,287	15,600-18,198	18,095-21,110	20,591-24,022
22.00	36%-40%	12,376-14,143	15,288-17,471	18,199-20,798	21,111-24,126	24,023-27,454
27.00	41%-45%	14,144-15,911	17,472-19,655	20,799-23,398	24,127-27,141	27,455-30,885
32.00	46%-50%	15,912-17,679	19,656-21,839	23,399-25,998	27,142-30,157	30,886-34,317
37.00	51%-55%	17,680-19,446	21,840-24,022	25,999-28,597	30,158-33,173	34,318-37,749
43.00	56%-60%	19,447-21,214	24,023-26,206	28,598-31,197	33,174-36,188	37,750-41,180
50.00	61%-65%	21,215-22,982	26,207-28,390	31,198-33,797	36,189-39,204	41,181-44,612
57.00	66%-70%	22,983-24,750	28,391-30,574	33,798-36,397	39,205-42,220	44,613-48,044
61.00	71%-75%	24,751-26,518	30,575-32,758	36,398-38,996	42,221-45,236	48,045-51,476

**Full-time care is defined as 6 or more hours of care per day or 30 or more hours of care per week.

TABLE I (Continued)
CO-PAYMENT SCALE

By Family Size
(Full-Time Care)**

Full Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 7	8	9	10	11	12
1.00	0%- 5%	0- 3,510	0- 3,588	0- 3,666	0- 3,744	0- 3,822	0- 3,900
4.00	5%-10%	3,511- 7,019	3,589- 7,176	3,667- 7,332	3,745- 7,488	3,823- 7,644	3,901- 7,800
6.00	11%-15%	7,020-10,529	7,177-10,763	7,333-10,997	7,489-11,231	7,645-11,465	7,801-11,699
9.00	16%-20%	10,530-14,039	10,764-14,351	10,998-14,663	11,232-14,975	11,466-15,287	11,700-15,599
11.00	21%-25%	14,040-17,548	14,352-17,939	14,664-18,329	14,976-18,719	15,288-19,109	15,600-19,499
14.00	26%-30%	17,549-21,058	17,940-21,527	18,330-21,995	18,720-22,463	19,110-22,931	19,500-23,399
18.00	31%-35%	21,059-24,568	21,528-25,114	21,996-25,660	22,464-26,206	22,932-26,752	23,400-27,298
22.00	36%-40%	24,569-28,077	25,115-28,702	25,661-29,326	26,207-29,950	26,753-30,574	27,299-31,198
27.00	41%-45%	28,078-31,587	28,703-32,290	29,327-32,992	29,951-33,694	30,575-34,396	31,199-35,098
32.00	46%-50%	31,588-35,097	32,291-35,878	32,993-36,658	33,695-37,438	34,397-38,218	35,099-38,998
37.00	51%-55%	35,098-38,606	35,879-39,465	36,659-40,323	37,439-41,181	38,219-42,039	38,999-42,897
43.00	56%-60%	38,607-42,116	39,466-43,053	40,324-43,989	41,182-44,925	42,040-45,861	42,898-46,797
50.00	61%-65%	42,117-45,625	43,054-46,641	43,990-47,655	44,926-48,669	45,862-49,683	46,798-50,697
57.00	66%-70%	45,626-49,135	46,642-50,229	47,656-51,321	48,670-52,413	49,684-53,505	50,698-54,597
61.00	71%-75%	49,136-52,645	50,230-53,816	51,322-54,986	52,414-56,156	53,506-57,326	54,598-58,496

**Full-time care is defined as 6 or more hours of care per day or 30 or more hours of care per week.

TABLE II
CO-PAYMENT SCALE

By Family Size
(Part-Time Care)

Part Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 2	3	4	5	6
0.00	0%- 5%	0- 1,768	0- 2,184	0- 2,600	0- 3,016	0- 3,432
2.00	6%-10%	1,769- 3,536	2,185- 4,368	2,601- 5,200	3,017- 6,031	3,433- 6,863
3.00	11%-15%	3,537- 5,304	4,369- 6,552	5,201- 7,799	6,032- 9,047	6,864-10,295
4.00	16%-20%	5,305- 7,071	6,553- 8,735	7,800-10,399	9,048-12,063	10,296-13,727
5.00	21%-25%	7,072- 8,839	8,736-10,919	10,400-12,999	12,064-15,079	13,728-17,159
7.00	26%-30%	8,840-10,607	10,920-13,103	13,000-15,599	15,080-18,094	17,160-20,590
9.00	31%-35%	10,608-12,375	13,104-15,287	15,600-18,198	18,095-21,110	20,591-24,022
11.00	36%-40%	12,376-14,143	15,288-17,471	18,199-20,798	21,111-24,126	24,023-27,454
13.00	41%-45%	14,144-15,911	17,472-19,655	20,799-23,398	24,127-27,141	27,455-30,885
16.00	46%-50%	15,912-17,679	19,656-21,839	23,399-25,998	27,142-30,157	30,886-34,317
18.00	51%-55%	17,680-19,446	21,840-24,022	25,999-28,597	30,158-33,173	34,318-37,749
21.00	56%-60%	19,447-21,214	24,023-26,206	28,598-31,197	33,174-36,188	37,750-41,180
25.00	61%-65%	21,215-22,982	26,207-28,390	31,198-33,797	36,189-39,204	41,181-44,612
28.00	66%-70%	22,983-24,750	28,391-30,574	33,798-36,397	39,205-42,220	44,613-48,044
30.00	71%-75%	24,751-26,518	30,575-32,758	36,398-38,996	42,221-45,236	48,045-51,476

TABLE II (Continued)
CO-PAYMENT SCALE

By Family Size
(Part-Time Care)

Part Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income 7	8	9	10	11	12
0.00	0%- 5%	0- 3,510	0- 3,588	0- 3,666	0- 3,744	0- 3,822	0- 3,900
2.00	5%-10%	3,511- 7,019	3,589- 7,176	3,667- 7,332	3,745- 7,488	3,823- 7,644	3,901- 7,800
3.00	11%-15%	7,020-10,529	7,177-10,763	7,333-10,997	7,489-11,231	7,645-11,465	7,801-11,699
4.00	16%-20%	10,530-14,039	10,764-14,351	10,998-14,663	11,232-14,975	11,466-15,287	11,700-15,599
5.00	21%-25%	14,040-17,548	14,352-17,939	14,664-18,329	14,976-18,719	15,288-19,109	15,600-19,499
7.00	26%-30%	17,549-21,058	17,940-21,527	18,330-21,995	18,720-22,463	19,110-22,931	19,500-23,399
9.00	31%-35%	21,059-24,568	21,528-25,114	21,996-25,660	22,464-26,206	22,932-26,752	23,400-27,298
11.00	36%-40%	24,569-28,077	25,115-28,702	25,661-29,326	26,207-29,950	26,753-30,574	27,299-31,198
13.00	41%-45%	28,078-31,587	28,703-32,290	29,327-32,992	29,951-33,694	30,575-34,396	31,199-35,098
16.00	46%-50%	31,588-35,097	32,291-35,878	32,993-36,658	33,695-37,438	34,397-38,218	35,099-38,998
18.00	51%-55%	35,098-38,606	35,879-39,465	36,659-40,323	37,439-41,181	38,219-42,039	38,999-42,897
21.00	56%-60%	38,607-42,116	39,466-43,053	40,324-43,989	41,182-44,925	42,040-45,861	42,898-46,797
25.00	61%-65%	42,117-45,625	43,054-46,641	43,990-47,655	44,926-48,669	45,862-49,683	46,798-50,697
28.00	66%-70%	45,626-49,135	46,642-50,229	47,656-51,321	48,670-52,413	49,684-53,505	50,698-54,597
30.00	71%-75%	49,136-52,645	50,230-53,816	51,322-54,986	52,414-56,156	53,506-57,326	54,598-58,496

(c) The criteria for determination and re-determination of the co-payment are as follows:

1. The criteria for determining the amount of the co-payment are family size and family annual gross income.

i. Family size consists of all members of the AFDC eligible unit at the time the AFDC case is closed.

ii. Family income includes all gross earned and unearned income, as defined at N.J.A.C. 10:82-4, received by all members of the AFDC eligible unit. The gross amount of family income must be verified by wage stubs or similar documentation, as a condition of receiving post-AFDC child care benefits.

2. The co-payment is determined by the number of hours child care services are being provided to the child.

i. Full-time care is defined as care for 30 hours or more per week.

ii. Part-time care is defined as care for less than 30 hours per week.

iii. In no case may the co-payment exceed the cost of care.

3. Once the co-payment is determined, it will remain unchanged for the duration of the eligibility period for the 12-month post-AFDC period, unless there is an increase in family size, or a reduction in gross family income. The participant must notify the CWA of any such changes occurring in the family. AFDC/FDP case management shall determine any changes in the co-payment based on reported circumstances affecting co-payment calculation.

(d) The process for co-payment assessment is as follows:

1. The process for co-payment assessment is based on up to two children in care in a family. If more than two children in a family are in care, no co-payment is required for the third and subsequent children. The co-payment is determined on a per week basis.

2. The weekly co-payment is based on whether the care is full-time or part-time care, on the number of children (up to two per family) in the family needing such care through the program, and on the family's annual gross income level.

3. If only one child is in care, the weekly co-payment is the payment which results from Table I or Table II in (b) above. That co-payment is assessed on that family's size, the family's annual gross income, and whether the care is full-time or part-time care for that child, resulting in the co-payment from Table I or Table II.

4. If two or more children in the family receive child care services through the Program, the weekly co-payment amount is a composite total payment for up to two children in the family receiving such service.

i. The weekly co-payment sum equals the full co-payment assessed for the first child from Table I or Table II plus one-half of the full assessed co-payment for the second child in care from Table I or Table II. The two children are selected for determination of the co-payment from all children in the family in care, based first, on the number of children in the family in full-time care arrangements.

(1) If two or more children in the family are in full-time care arrangements, the full co-payment amount is assessed on two children in full-time care. A full co-payment amount is assessed for the first child in full-time care from Table I; to that co-payment amount is added one-half of the full co-payment amount for the second child in full-time care from Table I. The resulting composite co-payment equals one and one-half of the full-time co-payment amount from Table I based on the family's size and annual income level.

(2) If at least one child in the family is in a full-time care arrangement and the second and subsequent children are in part-time care arrangements, the full weekly co-payment amount is assessed from Table I on the first child in full-time care; to that co-payment amount is added one-half of the part-time co-payment amount from Table II for the second child in part-time care. The resulting composite co-payment equals the full-time co-payment assessed amount from Table I plus one-half of the part-time co-payment amount from Table II.

(3) If all children in the family are in part-time care arrangements, the full weekly co-payment amount is based on up to two children in care and is one and one-half times the part-time co-payment amount from Table II for the family's size and income amount.

(e) The requirements for a provider's receipt of co-payment are as follows:

1. The composite co-payment is paid to only one provider of care based on the care arrangements of the family. That is, the composite co-payment amount is paid in total to the provider of the highest cost of care arrangement (that is, either the full-time care provider or the provider with the highest reimbursement rate per category of care). The following situations may result and the co-payment is distributed as follows:

i. When one child is receiving child care services through the FDP, the full assessed co-payment from Table I or Table II is made by the recipient to that provider of care.

ii. If one child is receiving child care services through the FDP but more than one provider is involved in giving care, the co-payment from Table I or Table II is paid by the recipient to that child care provider who provides the highest cost of care arrangements.

iii. When two children are receiving child care services from the same provider, the composite co-payment amount is determined in accordance with (d) above, and the sum total is paid by the recipient to that provider of care. The composite total is based on the respective type of care (full-time or part-time) provided each child; the

full assessed co-payment fee from Table I or Table II for the first child is added to one-half of the full assessed fee from Table I or Table II for the second child in care with the provider, for the total co-payment amount.

iv. When both children are receiving different child care services from separate providers, the child care provider providing either full-time care or who receives the highest reimbursement rate per category of care will receive from the recipient the full amount of the composite co-payment assessed for both children from Table I and Table II based on the respective type of care provided (full-time or part-time care) for both children.

v. When both children are receiving the same child care services but from different providers (for example both receiving full-time care), the provider assessed at the highest cost of care arrangement receives the full composite assessed co-payment from the recipient.

vi. No co-payment shall be assessed for the third and additional children in a family receiving child care service program benefits.

vii. Fees shall be rounded down to the nearest dollar.

(f) The requirements for refunds of co-payments are as follows:

1. Refunds are made to the participant by the FDP as a lump sum payment when:

i. A fair hearing decision results in a reduced co-payment; or

ii. An error in co-payment computation has resulted in overcharges to the participant.

2. Overcharges are refunded by the FDP within 30 days of the fair hearing decision or discovery of the error.

10:86-10.7 Co-payment determination, collection and monitoring

(a) This section sets forth procedures for determining the amount of a FDP participant's co-payment toward the cost of post-AFDC child care, for the collection of the co-payment, monitoring payment (and nonpayment) of the co-payment, and for notification of nonpayment of co-payments and termination of post-AFDC child care benefits for continued nonpayment of co-payments.

1. The procedures are listed according to the entities involved in the co-payment determination and collection process: the county welfare agency income maintenance staff, the county AFDC/FDP case management staff, the provider of child care, and the county FDP lead child care entity.

2. Counties are responsible for the entire co-payment determination and collection process and functions, according to the standard procedures detailed in this section. Counties may adapt the procedures to local operations and may reassign functions among the entities listed below. However, counties must make sure that the tasks are completed, benefits are processed in a timely manner that affords participants maximum benefits, co-payments are accurately determined, and participants are not denied benefits they are otherwise eligible to receive.

(b) Procedures for determining FDP post-AFDC child care co-payments are as follows:

1. CWA income maintenance (IM) functions are as follows:

i. When the AFDC recipient becomes employed, he or she must report employment to the CWA and provide documentation to verify employment—the start date and amount of earnings—as a condition of eligibility for FDP post-AFDC child care benefits for one year and extended post-AFDC FDP Medicaid coverage for 24 months.

ii. When the IM worker receives the documentation referenced in (b)1i above, the worker will determine if the family will continue to be eligible for AFDC based on income.

iii. If earned income received or expected to be received renders the family ineligible for AFDC, the IM worker shall initiate AFDC case closing and the processing of post-AFDC FDP benefits, including extended Medicaid benefits and post-AFDC child care.

(1) The IM worker shall do the following:

(A) Determine the amount of verified earnings at the time action is taken to close the AFDC case. These earnings will be used to compute the co-payment that the participant must pay toward cost of post-AFDC child care, if the participant elects to apply for such benefits;

(B) Send out Form PA-15, Notification Form, advising of the termination of AFDC benefits and effective date;

(C) Send out the FDP Benefit Letter (or similar locally developed notification) advising the participant of:

(I) The availability of post-AFDC/FDP benefits—extended Medicaid and post-AFDC child care;

(II) The requirement to pay a co-payment toward the cost of post-AFDC child care; and

(III) The need to apply for post-AFDC child care by contacting (by phone, mail or in-person) the FDP case manager listed at the bottom of FDP Benefit Letter; and

(D) Forward one copy of FDP Benefit Letter to AFDC/FDP case management.

(2) If the participant has not provided verification of earnings at time of case closing, the IM worker shall notify the participant of the need to provide such verification of earnings as a condition of eligibility for the extended benefits.

iv. To the extent possible, the IM worker should complete the AFDC case closing, income verification process and mailing of FDP Benefit Letter before the AFDC case is closed. This will ensure that participants receive child care benefits in a timely and uninterrupted manner, and ensure that providers receive payment of co-payments and FDP voucher payments. If this is not possible, the process should be completed as soon as possible after the AFDC case is closed, during the first month of AFDC ineligibility.

v. The eligibility period for post-AFDC child care benefits will be computed in accordance with N.J.A.C. 10:86-10.5(d).

2. FDP case management functions are as follows:

i. Upon receipt of the FDP Benefit Letter copy from IM, AFDC/FDP case management shall monitor the form to see if the FDP participant contacts case management.

ii. The date the FDP participant contacts case management in response to the FDP Benefit Letter will be considered the date of application for FDP post-AFDC child care benefits. In order to begin receiving payments for post-AFDC child care, the participant must make a complete application, which includes providing verification of earnings.

iii. The period of eligibility for post-AFDC child care benefits is computed according to N.J.A.C. 10:86-10.5(d). A FDP participant will begin receiving post-AFDC child care benefits when a complete application is received, computed according to (b)2iii(1) and (2) below:

(1) If the participant submits a complete application within 30 days of the effective date of AFDC case closing, that is, by the end of the month for which the case was closed, the participant will start receiving post-AFDC child care benefits as of the effective date of case closing. The benefit period will be 12 months.

(2) If the participant submits a complete application after the AFDC case has been closed for one calendar month, the participant will start receiving post-AFDC child care benefits commencing with the date the complete application was received by the CWA. The benefit period will be the balance of the 12-month period. In such situations, post-AFDC benefits will not be retroactive to the first day of the month the complete application was received.

iv. Upon receipt of a response from a participant requesting FDP post-AFDC child care benefits, the FDP case manager and the participant will discuss the child care arrangements, including the requirement to pay a co-payment toward the cost of care. The FDP case manager shall determine the amount of the participant's co-payment based on verified earnings, family size and the number of children in post-AFDC child care. The case manager and participant will then complete a FDP Agreement for Supportive Services indicating the child(ren) for whom child care is to be provided, the duration of the child care benefits, the name(s) and address(es) of the child care provider(s), and the amount of the child care benefits.

(1) The case manager shall give the participant a copy of the Agreement and forward a copy of the FDP Agreement to the lead child care entity.

(2) Once the FDP Agreement is signed, case management will process the support agreement and mail out vouchers to the provider(s) listed in the FDP Agreement(s).

v. The case manager, in consultation with the FDP participant, shall complete FDP Form 20, Notification of FDP Post-AFDC Child

Care co-payment. FDP Form 20 is a four-part form which contains information about the FDP post-AFDC child care co-payment arrangement. It sets forth the requirement of the FDP participant to pay a co-payment toward the cost of care and of the FDP to pay the balance of the approved cost of child care. It contains the amount(s) of co-payment(s) computed for the first and, if necessary, second child in care, the total co-payment to be paid. It provides instructions about co-payment arrangements, proof of payment and accounting of co-payments collected. Form 20 specifies actions to be taken for nonpayment of the co-payment, including written notice from AFDC/FDP case management and termination of all post-AFDC child care benefits for continued nonpayment (with right to a fair hearing). FDP Form 20 is signed by the FDP case manager, and may be signed by additional agency representatives.

(1) The purposes of FDP Form 20 are to:

(A) Provide the participant receiving FDP post-AFDC child care benefits with written documentation of his or her co-payment obligation;

(B) Establish the responsibilities of the participant and the provider; and

(C) Establish a basis for monitoring compliance with the FDP post-AFDC co-payment policy.

(2) FDP Form 20 is to be completed and signed for each child for whom a fee is assessed.

(3) Case management must immediately send copies of FDP Form 20 to the participant, child care provider(s), lead child care entity, and must retain one copy.

vi. The biweekly FDP child care voucher process will be used to report post-AFDC child care co-payment collection and nonpayment. Case management (or other entity designated by the county AFDC/FDP to process its AFDC/FDP child care vouchers) shall issue the voucher biweekly listing the name(s) of the post-AFDC FDP participant's child(ren). AFDC/FDP case management or the county entity shall ensure that a method for recording payment or nonpayment of the fee is included in this voucher issuance. Acceptable methods include a separate form attached to the voucher, a computer-printed message on the voucher, or any other method approved in writing by the county's DFD representative.

3. Child care service provider functions are as follows:

i. Upon receipt of the FDP Form 20, from AFDC/FDP case management, the participant and the provider must negotiate the frequency of co-payments and collection (either weekly or biweekly), and date or day of co-payment. Frequency and day of co-payment can be based on individual circumstances, including the participant's source and frequency of income and the co-payment procedures already established by the provider, but the co-payment must be paid by the last day of the voucher service period. Collection periods must coincide with the periods covered by the FDP post-AFDC child care voucher.

(1) The voucher service period is the two-week period listed on the FDP voucher for which FDP child care services are provided.

ii. The provider should implement a system designed to ensure an efficient, error-free method of recording and accounting for all co-payment collections. The lead child care agency is available to provide technical assistance to providers in establishing such a system. The provider may wish to adapt recordkeeping systems used in the Social Services Block Grant (SSBG) system, such as the One-Write Fee Collection System or a comparable method.

(1) Providers must establish procedures for the collection of the co-payment from the participant.

iii. The provider and FDP participant will then follow the terms of the FDP Form 20 notification. The provider shall collect the assessed co-payments from the participant during the voucher service period. The child care provider has the responsibility to make reasonable efforts to collect assessed co-payments from the FDP post-AFDC participant.

iv. At the end of the voucher service period the provider shall complete the voucher indicating the child(ren)'s attendance, the amount of the FDP payment due for child care services provided and whether the FDP participant(s) has paid the required co-payment. The provider must return the voucher to obtain payment for FDP services provided, to document co-payments not paid and thereby to preserve his or her right to possible reimbursement for unpaid co-payments.

v. The income and co-payment information recorded on the FDP Form 20 notification is confidential. The provider, lead child care agency, and AFDC/FDP case manager are responsible for ensuring that access to this information is restricted to those individuals responsible for assessing and collecting co-payments.

4. FDP lead child care agency functions are as follows:

i. The lead child care agency is responsible for advising the provider at time of recruitment into FDP of the post-AFDC co-payment requirements, including the requirement that the participant must pay a portion of the cost of care; training the provider in voucher completion; and providing assistance in co-payment collection and monitoring, as determined by the county;

ii. To maintain a file of the completed FDP Agreements for Support Services for all participants receiving post-AFDC child care as part of the overall provision of child care services;

iii. To maintain a file of the completed FDP Form 20s for the same reason; and

iv. To offer technical assistance to child care providers as needed and when requested.

5. Reassignment of functions shall be accomplished as follows:

i. A county may opt to reassign functions set forth in this subsection to county entities other than those listed, for example, the lead child care agency, if, given the county's FDP operations, those functions would be more appropriately handled by that other entity. A county must obtain approval from the DFD representative prior to any reassignment.

(1) Functions that may not be reassigned to entities other than those listed in this subsection include: determining eligibility or ineligibility for FDP post-AFDC child care benefits, or sending adverse action notices to the FDP participant advising of the termination of FDP post-AFDC child care benefits, or involvement in the fair hearing process.

ii. A county must use the FDP Form 20 in its FDP post-AFDC operations. Each county must provide to the DFD a copy of its notice of co-payment payment and nonpayment that is completed by the provider and its notice of termination of FDP post-AFDC benefits.

(c) Co-payment collection, monitoring, and procedures for late payment or nonpayment of co-payments and termination of FDP post-AFDC child care benefits are as follows:

1. The following are provider functions:

i. It is the responsibility of the child care service provider to collect co-payments and report nonpayment of co-payments in accordance with the terms of the FDP notification.

ii. Whenever the FDP post-AFDC child care co-payment has not been paid to the provider by the end of the voucher service period, the co-payment is considered unpaid.

iii. In the event of nonpayment of assessed co-payments by the participant, the provider will complete the voucher, indicate on the voucher the child(ren) for whom the participant(s) failed to pay the required co-payment, and return the voucher to the designated entity in the county FDP program. This action by the provider in conjunction with the FDP case manager will initiate the process for terminating FDP post-AFDC child care benefits.

iv. The provider must continue to attempt to collect co-payments from the participant and must document such collection efforts.

v. Under no circumstances may the participant be charged a late co-payment penalty.

2. The lead child care agency will provide technical assistance to the provider in cooperation with AFDC/FDP case management as needed.

3. AFDC/FDP case management functions are as follows:

i. It is the responsibility of AFDC/FDP case management to monitor co-payment collection by examining the completed FDP post-AFDC vouchers returned by providers and responding to nonpayment of co-payments reported in the voucher.

ii. Following receipt of a FDP voucher from a provider indicating nonpayment of assessed co-payments by the participant, the FDP case manager shall:

(1) Determine the effective date that FDP post-AFDC child care benefits will be terminated;

(2) Complete a letter notifying the participant of termination of FDP post-AFDC child care services. A county may develop a letter specifically for this purpose or may amend an existing notification letter. The purpose of this notice is to provide written notice to:

(A) Advise the participant of a child receiving FDP post-AFDC child care services of the amount of assessed co-payment which has not been paid;

(B) Advise the participant of the right to request and obtain a fair hearing;

(C) Serve as formal notice to the participant that FDP post-AFDC child care services will be terminated by a specific date unless overdue co-payments are paid;

(D) Serve as written confirmation for the provider and Lead Child Care Entity that child care services will be terminated due to the late or nonpayment status of the FDP post-AFDC participant; and

(E) Advise the participant to pay the required co-payments and to contact the county FDP immediately if she or he has already paid the overdue co-payment(s) so that benefits may be continued; and

(3) Complete and sign four copies of the notification of termination. The FDP Case Manager shall:

(A) Send the original to the participant;

(B) Distribute copies to the provider and the Lead Child Care Entity; and

(C) Retain a copy for the participant's file.

4. When post-AFDC child care services are terminated due to nonpayment of co-payments, the participant of a child receiving FDP post-AFDC child care services retains the right to request a fair hearing. If timely request (within 10 days) is made, the FDP will continue to make payment to the provider for the FDP portion of child care services rendered until a fair hearing is held, and a final determination is made.

i. In all cases where a fair hearing is requested, the procedures outlined in N.J.A.C. 10:81-6 and 7, and 10:86-6 are to be followed.

5. Reimbursement of unpaid co-payments shall be accomplished as follows:

i. If a FDP participant fails to pay assessed co-payments for care provided to her child(ren), the provider(s) may be reimbursed by the FDP program for the amount of unpaid co-payments subject to the following.

(1) Reimbursement by the FDP program will be made if all of the following conditions are met:

(A) The child's attendance at the provider's facility was documented on the FDP child care voucher;

(B) The provider has documented on the FDP voucher nonpayment of the co-payments for each voucher service period for which a claim of nonpayment is made; and

(C) The participant's post-AFDC FDP benefits were actually terminated.

(2) Reimbursement of unpaid co-payments is limited to a maximum period of two months. Exceptions may be granted in extreme circumstances with prior written approval by the DFD.

(3) Reimbursement of unpaid co-payments to the provider must be paid from State FDP funds.

ii. If a participant whose post-AFDC FDP benefits have been terminated due to nonpayment of the co-payment reapplies for post-AFDC child care benefits, the participant must reimburse the amount of the unpaid co-payments before eligibility for post-AFDC child care benefits will be granted for the balance of the post-AFDC period.

(1) If the county FDP has already paid the provider(s) for previous unpaid co-payments arrearages, the participant must reimburse the county for the full amount of co-payment arrearages due. Reimbursement may be in the form of a lump sum or installment payments as determined by the county.

(2) If the county FDP program has not yet paid the provider(s) for previous unpaid co-payment arrearages, the participant must reimburse the provider(s) for the full amount of co-payments due. Reimbursement may be in the form of a lump sum or installment payments as determined by the county and the provider(s).

SUBCHAPTER 11. RECOVERY OF OVERPAYMENTS

10:86-11.1 Overpayments of FDP supportive services (child care and PALs)

(a) This section applies to overpayments of supportive services, including FDP participant allowances (PALs), child care benefits and post-AFDC child care benefits at N.J.A.C. 10:86-9 and 10, respectively.

1. An overpayment is a payment which exceeds the amount of FDP child care benefits, post-AFDC child care benefits or FDP participant allowances for which the AFDC or GA FDP participant or service provider was eligible.

2. The amount of the overpayment subject to recovery is the difference between the amount actually paid to the AFDC or GA FDP participant or service provider and the amount for which the participant or service provider was eligible.

i. If the AFDC or GA FDP 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 delivered by the service provider was not approved by the AFDC or GA FDP provider agency through FDP operating procedures, the entire amount paid is an overpayment.

(b) The AFDC or GA FDP provider entity or MWD (for GA transportation costs) shall take all reasonable steps necessary to promptly correct any overpayment of FDP child care benefits, post-AFDC child care benefits or FDP participant allowances made to and AFDC or GA FDP participant or service provider. Recovery shall be attempted in the following circumstances:

1. In all cases of fraud;

2. In all cases involving current AFDC or GA recipients; and

3. In all cases where the overpayment amount would equal or exceed the costs of recovery.

(c) 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 or GA family, the family shall be permitted to retain, for any month, a reasonable amount of funds.

2. Overpayments to AFDC or GA individuals may be recovered as follows:

i. From the family unit which was overpaid;

ii. From individuals who were members of the AFDC or GA family when it was overpaid; or

iii. From AFDC or GA families which include members of a previously overpaid AFDC or GA family.

3. In cases of former AFDC or GA 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 of child care benefits may be made only from child care benefits, and recovery of transportation and related participant allowance payments may only be made from those FDP benefits.

5. Any recoveries of overpayments of child care or transportation and related participant allowance benefits may be made from the AFDC or GA grant only upon a voluntary request of the recipient family.

(d) Underpayments and overpayments may be offset against each other in correcting incorrect payments.

(e) The Department of Human Services may provide that an AFDC or GA FDP provider entity need not attempt recovery of overpayments from providers if obligated to make the full payment under the contract. However, Federal financial participation for AFDC purposes may not be claimed for such overpayments.

(f) The AFDC or GA FDP provider entity shall collect and maintain information on the collection of overpayments.

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

New Jersey Personal Automobile Insurance Plan

Adopted New Rule: N.J.A.C. 11:3-2

Proposed: February 3, 1992 at 24 N.J.R. 331(a).
Adopted: August 28, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: August 28, 1992 as R.1992 d.370, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:29D-1.

Effective Date: September 21, 1992.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received 17 written comments from insurers, insurer trade associations, a producer trade association, and insurance consumers as follows:

1. The Keystone Insurance Companies;
2. New Jersey Manufacturers Insurance Company;
3. First Trenton Idemnity Company;
4. The National Association of Independent Insurers;
5. Crum and Forster Commercial Insurance;
6. Allstate Insurance Company;
7. Selective Insurance Company of America;
8. Liberty Mutual Insurance Group;
9. State Farm Insurance Companies;
10. Motor Club of America Insurance Company;
11. Chubb Group of Insurance Companies;
12. Prudential Property and Casualty Insurance Company of New Jersey;
13. The American Insurance Association;
14. The Professional Insurance Agents of New Jersey;
15. Insurance Brokers Association of New Jersey;
16. The Independent Insurance Agents of New Jersey; and
17. Mr. and Mrs. Michael Moran.

COMMENT: One commenter noted that N.J.A.C. 11:3-2.6(b) and (c)2 require the governing committee to submit a proposed plan of operation for the Personal Automobile Insurance Plan (PAIP) to the Commissioner by March 1, 1992. The commenter suggested that the March 1, 1992 deadline be extended until May 1, 1992.

RESPONSE: The Commissioner has extended the deadline until May 1, 1992; the rules have been changed upon adoption to reflect this change.

COMMENT: Several commenters objected generally to the degree of control granted the Commissioner over the appointment of the PAIP governing committee and the approval of the plan of operation provided by these rules. Several commenters stated that since the companies are at risk for losses of the PAIP, the companies should be permitted to appoint the members of the governing committee rather than the Commissioner. The commenters similarly objected to the ability of the Commissioner to unilaterally alter the plan of operation for cause pursuant to N.J.A.C. 11:3-2.6(c)3.

The commenters stated that in assigned risk plans in virtually every other state, the insurance industry, through an election process, retains the prerogative to nominate and elect company representatives to the governing committee. The commenters believe that the degree of control and influence the Commissioner possesses over the governing committee as provided in the rules is excessive and deviates from the traditional role of the regulator in other state assigned risk plans.

One commenter specifically stated that a regulatory presence of the type contemplated by the rules may be counterproductive by "chilling industry creativity and chilling the air." The commenter stated that there is a total absence of statutory authority on which to premise "such regulatory overreaching."

Another commenter specifically suggested that N.J.A.C. 11:3-2.5 be revised to provide that the entities listed under N.J.A.C. 11:3-2.5(b) to (d) should **appoint** rather than just nominate their respective representatives on the governing committee. The commenter similarly stated that while the Commissioner should actively participate in the development of a plan of operation or amendments thereto, and should have the authority to approve the final plan, the authority to alter the plan and certify amendments on two days notice as provided under N.J.A.C. 11:3-2.6(c)3 is inappropriate, excessive and should be deleted.

Finally, several commenters noted that the degree of control and degree of participation by the Commissioner in the PAIP process appears to treat it like the New Jersey Automobile Full Insurance Underwriting Association (Association) and the Market Transition Facility of New Jersey (MTF), which the commenters believe is inappropriate.

RESPONSE: Upon review of the comments, the Department has determined that no change is required. One of the criticisms of the Association, a predecessor of the residual market PAIP, was the perception of a lack of regulatory oversight by the Commissioner and lack of regulatory control. The Department believes that it is reasonable and appropriate to provide the Commissioner with the authority to review and approve nominations to the PAIP governing committee. Further, while it is true that insurers are at risk for losses of the PAIP, the PAIP is not a private insurer but rather is a quasi-public entity. Therefore, the members of the PAIP governing committee are actually representing the interest of the public in addition to those of the member companies. The Department thus believes that the rules are appropriate, reasonable and provide the Commissioner with the required regulatory authority to provide proper regulatory oversight over the PAIP. The Department notes that the Commissioner has approved all nominations made thus far by member insurers to the PAIP governing committee.

COMMENT: One commenter stated that the rules governing the PAIP should be reduced in scope to provisions necessary to (1) define insurers subject to PAIP; (2) create and empower a governing committee; (3) mandate that the governing committee propose a plan of operation for the PAIP; and (4) provide a procedure for the appeal governing committee decisions to the Commissioner. The commenter believes that there are advantages in limiting the scope of the rules in the manner set forth above. To handle the type of business the PAIP will be required to write, it must be able to adjust and make changes as needed as quickly as possible. Failure to make a change quickly could potentially cost insurers, producers and consumers millions of dollars. The commenter stated that changing the plan of operation with the Commissioner's approval as necessary may be accomplished in a relatively shorter period of time compared to the time required to amend regulations. The commenter believes that this will not diminish the Commissioner's oversight of the PAIP since the Commissioner is an ex-officio member of the governing committee and must approve the plan of operation and any changes thereto.

Accordingly, the commenter suggested that N.J.A.C. 11:3-2.3(c), 2.7, 2.8, 2.9, 2.10 and 2.11 be deleted in their entirety and that the provisions set forth therein be left to the plan of operation.

RESPONSE: The Department believes that the rules provide the minimum framework necessary for the establishment of the PAIP to service assigned risks in this State. Many facets of the operation of the PAIP have been left to the PAIP governing committee in the plan of operation. These include: procedures for the appointment, compensation, and termination of producers, the PAIP manager and other employees and professionals; performance standards for producers and a producer certification program; commissions to be paid producers; the methodology by which a member company's apportionment share shall be determined; and the development of a rating plan. The Department believes that the rules provide the basic framework and puts the PAIP governing committee on notice as to the minimum requirements deemed necessary by the Department for the approval of a plan of operation. This in turn should actually streamline the process by eliminating the submission and subsequent disapproval of a plan of operation that does not contain or provide necessary minimum requirements.

COMMENT: One commenter noted that the rules provide for the appointment of a PAIP governing committee separate from the Commercial Automobile Insurance Procedure (CAIP) governing committee. The commenter believes that a single AIP governing committee should be established to govern both the PAIP and CAIP. The commenter stated that in many other states with assigned risk plans, the governing committees for AIP's and CAIP's are the same. The commenter believes that a single PAIP/CAIP governing committee would be more efficient, and would be in a better position to address issues of coverage regarding whether a vehicle should be covered in the PAIP, the CAIP, or some other mechanism.

In order to effectuate these changes, the commenter suggested that a new subsection (h) be added to N.J.A.C. 11:3-2.5 as follows:

"Notwithstanding any provision to the contrary in subsections (a) through (e) of this section or N.J.A.C. 11:3-1.4, effective on the expiration on the appointments of the current CAIP governing committee, the PAIP and the CAIP shall be administered by a single AIP governing committee. That single AIP governing committee shall be the current PAIP governing committee. The provisions of subsection (a) through (e) of this section shall govern the future makeup, nomination, appointment and terms of the AIP governing committee."

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The Department recognizes that in many states assigned risk plans are administered by a single governing committee. However, in order to ensure that a governing committee was in place and a plan of operation established so that the PAIP could begin issuing automobile insurance policies by October 1, 1992 (as is required under N.J.S.A. 17:33B-11(b)), the Department determined it appropriate to provide for a separate PAIP governing committee rather than to attempt to merge the two at this time.

Further, the CAIP is currently in operation and is governed by its own governing committee and plan of operation. The changes the commenter suggested could not be made upon adoption as it would amend N.J.A.C. 11:3-1.4 without providing notice and an opportunity for comment, as is required under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Accordingly, the Department does not believe that a change is warranted at this time. However, the Department notes the commenter's suggestion for possible future amendment.

COMMENT: One commenter noted that the proposed definition of "automobile" in N.J.A.C. 11:3-2.2 excludes private passenger automobiles "customarily used in the occupation, profession or business of the insured other than farming or ranching." The commenter states that there are many private passenger automobiles used for business purposes other than public or livery conveyance or rental vehicles. For example, the commenter stated that it has company cars which employees use for visiting claimants to provide personal service and that many small businesses or solo practitioners also have a private passenger automobile used primarily for the business for sales or service calls. The commenter stated that the proposed definition of "automobile" would exclude such vehicles from the PAIP. The commenter stated that a problem exists in that such vehicles are also excluded from coverage under CAIP, in that CAIP does not cover any private passenger automobile except those used for public or livery conveyance, or, which are rented to others. The commenter believes that it would be more advisable for such automobiles to be insured through the PAIP rather than CAIP in that PAIP deals with private passenger automobiles. The commenter, therefore, suggested that the definition of "automobile" in N.J.A.C. 11:3-2.2 be amended to delete the words "not customarily used in the occupation, profession or business of the insured other than farming or ranching."

RESPONSE: The definition of "automobile" is consistent with the definition of automobile utilized for the prior residual market mechanisms (the Association and the MTF). The Department believes that this definition continues to be appropriate and that no change is required. The Department further notes that the commenter has apparently misinterpreted the definition. The definition excludes only motor vehicles with a pickup body, delivery sedans, van or panel trucks, or camper-type vehicles used in the occupation profession or business of the insured. The exclusion doers not apply to private passenger type automobiles. It must also be noted that any vehicle that is not eligible for coverage through the PAIP because of its commercial use would be eligible for coverage through the CAIP.

COMMENT: Several commenters objected to including physical damage coverage as a mandatory coverage to be provided by the PAIP. The commenters generally state that the PAIP should not offer physical damage insurance to ineligible risks, which are objectively "bad drivers," who should not be afforded coverage that is not required by law. The commenters believe that since it is in the public interest to keep basic automobile insurance coverages available in the PAIP as affordable as possible, the additional cost of providing physical damage coverage is unnecessary and, therefore, the requirement should be deleted.

One commenter specifically suggested that if physical damage coverage is provided, the rules should provide for a minimum deductible of $500.00 for both comprehensive and collision coverages and should reduce the maximum loss payable to $25,000 rather than $30,000.

Another commenter, however, specifically stated that if drivers wish to purchase physical damage coverage, the coverage should be included on the exportable list promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43.

Another commenter specifically stated that the MTF currently has a maximum loss payable of $70,000 for physical damage coverage, and, therefore, these rules should similarly provide a $70,000 cut-off. The commenter believes that insureds in the residual market are not "second class citizens" because they must avail themselves of the residual market for coverage and the same $70,000 maximum loss payable on physical damage should be available to them.

RESPONSE: The Department believes that it is both reasonable and appropriate to require that the PAIP offer physical damage coverage. The Department believes that it would pose unreasonable burdens and disruptions to the driving public if physical damage coverage were not provided. For example, many lending institutions require that a car for which a loan was made be covered by physical damage coverage as a condition for granting the loan.

In addition, liability and physical damages coverages are generally provided to insureds under one policy. The Department believes that the administrative costs and confusion that would result in requiring insureds to suddenly split their liability and physical damages coverages far outweigh any costs associated in providing physical damage coverage as provided by these rules. The Department further notes that, historically, rates for properly rated physical damages coverages have proven to be more than adequate. The Department, therefore, does not believe that requiring the PAIP to provide physical damage coverages should result in unduly increased costs.

With respect to the suggestion that the rules provide for a minimum deductible of $500.00 for comprehensive and collision coverages and reduce the maximum loss payable to $25,000 rather than $30,000, it must be noted that the rules provide for a standard deductible of $500.00 for both comprehensive and collision coverages set forth in N.J.A.C. 11:3-2.7(d).

It must also be noted that N.J.S.A. 17:29D-1b provides that collision and comprehensive coverages on vehicles worth $25,000 or more must be experience rated. Accordingly, the Legislature has implied that physical damage coverage be available through the PAIP.

The Department further disagrees with the comments regarding the maximum loss payable for physical damage under the PAIP. The maximum loss payable amount of $30,000 is consistent with the current exportable list which provides that physical damage coverage for private passenger and commercial vehicles with actual cash value over $30,000 is eligible for export. The Department believes that tying the maximum loss payable for physical damage coverage to the maximum amount available below that eligible for export is appropriate in that insureds may place coverage in excess of that amount through the surplus lines market. The Department, however, has determined to revise N.J.A.C. 11:3-2.7 so that physical damage coverages are subject to a maximum loss payable tied directly to the amount at which coverage is eligible for export. While the result is the same, since the exportable list is subject to change at regular intervals, making this change will eliminate the need to repeatedly amend these rules.

COMMENT: Several commenters stated that members of the governing committee should serve for a period of two years to provide more continuity in the operation of the PAIP. One commenter specifically suggested that members of the governing committee serve for a three year term.

RESPONSE: The Department believes that the one year period is sufficient and should provide continuity in the operation of the PAIP. Further, the one year period is consistent with the time period provided in assigned risk plans in other states (for example, New York, Pennsylvania and Connecticut). Most AIP governing committees are appointed for one year terms. However, in order to provide more continuity in the PAIP's initial "start-up" period, the Department has determined to revise the rules upon adoption to provide that the initial appointments shall be for a two-year period, and for a one-year period thereafter.

COMMENT: Several commenters objected to the requirement that the administrative offices of the PAIP be located in New Jersey, as required under N.J.A.C. 11:3-2.3(c), as arbitrary and capricious. The commenters stated that the Automobile Insurance Plan Services Office (AIPSO) is located in Rhode Island and this requirement could foreclose them from bidding to service PAIP. The commenters believe that AIPSO is the most qualified to service the PAIP.

One commenter specifically stated that it may also be more efficient if certain duties of the PAIP, such as policy assignment to carriers, be administered in New Jersey, while other duties, such as insurers' statistical reporting, be handled by computers outside of New Jersey (for

example, AIPSO in Rhode Island). The commenter believed that this is a technical matter for the governing committee to evaluate and decide.

Another commenter specifically said that it may also be a violation of New Jersey laws governing open bidding for public contracts.

One commenter, however, specifically stated that the rules should be clarified to provide that processing facilities as opposed to administrative offices do not have to be located in this State. The commenter stated that the rule should either explicitly name AIPSO or, through response to comments, the Department should clarify that the governing committee, with the input of the Commissioner, has the authority to name AIPSO if it determines that AIPSO is the best available and most appropriate entity to serve as plan manager and provide all necessary administrative and technical support.

RESPONSE: The issues raised by these comments are essentially moot, since AIPSO has been already appointed by the governing committee as the PAIP manager. AIPSO agreed to provide administrative offices in New Jersey and the Commissioner approved the appointment. The Department does not believe that this requirement is burdensome, unreasonable, arbitrary or capricious. The rules only require that the administrative offices of the PAIP be in New Jersey. Support services, such as statistical reporting, may be handled elsewhere. The Department believes that it is appropriate as it provides the Commissioner with regulatory authority and jurisdiction over the PAIP manager. Further, this is consistent with requirements of assigned risk plans in other states. For example, the assigned risk plan in New York requires that all operations of the PAIP manager be located in the City of New York except for specified operations. As AIPSO has already agreed to these conditions and is currently acting as PAIP manager, the Department does not believe that these rules impose an unreasonable burden. Finally, the Department does not believe that this poses a violation of New Jersey laws for open bidding for public contracts as the PAIP is not a public contract entity.

COMMENT: Several commenters objected to N.J.A.C. 11:3-2.4(b)3 and (c), which exempts insurers with less than 1,000 private passenger automobile insurance exposures from participation in PAIP and limits PAIP assignments to certain specialty insurers to that particular type of automobile currently being insured.

With respect to the exemption for insurers with less than 1,000 in-force exposures, the commenters stated that there is no reason to exempt solvent carriers which are not withdrawing from this State pursuant to an approved plan of orderly withdrawal. The commenters stated that because of the statutory limitation on the size of the PAIP, the burden of servicing PAIP business will not be great in proportion to the business carriers are doing in New Jersey. The commenters further stated that the LAD carrier and LAD servicing carrier mechanisms provide an alternative to small carriers which do not want to service or take the risk of PAIP business.

One commenter specifically stated that while it recognizes that insurers with less than 1,000 exposures will be exempt from the requirements of N.J.S.A. 17:33B-15 and through proposed amendments to N.J.A.C. 11:3-40 on the basis that a small carrier could possibly be "deluged" beyond its ability to service, it does not believe that this reasoning applies to PAIP. The PAIP is statutorily limited in size and risks will be apportioned according to market share.

Another commenter specifically stated that no such exemption is available in other assigned risk plans and that no such exemption should be given to new companies in New Jersey. New companies should not be given a long-term competitive advantage over companies that have historically supported the New Jersey automobile insurance market.

The commenters similarly objected to the stated limitation on assignments for "specialty" carriers to assignments only within their specialty. One commenter stated that this limitation assumes that the PAIP can identify and allocate by specialty and discern that insurer's proportionate share. The commenter stated that this may not be the case. The commenter finally stated that the plan of operation could provide for assignments in the manner proposed by the rules and therefore there is no need for this provision in the rules.

Finally, another commenter specifically stated that only insurers which write "physical damage only" should be exempted.

It should be noted that one commenter specifically commended the Department for its effort to exempt small volume insurers and insurers of specialty vehicles from the operation of the PAIP.

RESPONSE: The Department proposed the exemption provisions set forth at N.J.A.C. 11:3-2.4 to ensure consistency with the proposed amendments to N.J.A.C. 11:3-40 which provided exemptions from the requirements of N.J.S.A. 17:33B-15 (the "take all comers" provisions). Upon further review of the concerns expressed by the commenters, and in consideration of the ability of insurers to utilize LAD carriers or LAD servicing carriers to service assigned risks, the Department has determined it appropriate not to adopt proposed N.J.A.C. 11:3-2.4. The Department will repropose this rule in the near future to provide appropriate exemptions taking into consideration the nature of assigned risk plans, and the ability of member insurers to utilize LAD carriers to "buy-out" of their obligations.

The Department does not believe that deferring action on proposed N.J.A.C. 11:3-2.4 through a reproposal will cause any adverse economic impact upon insurers. With the exception of *de minimis* companies and specialty writers, the exemption provisions essentially codify and collect exemptions consistent with the purpose and scope of these rules (that is, provide for an assigned risk plan for personal private passenger automobile insurance), and which are provided by other laws. For example, insurers may request a suspension of PAIP obligations if fulfillment of such obligations would result in the insurer being or becoming in an unsafe or unsound financial condition, N.J.S.A. 17:33B-23 and 24, and N.J.A.C. 11:2-35; or as part of a plan of orderly withdrawal submitted and approved pursuant to N.J.A.C. 17:17b and 17:33B-30, and N.J.A.C. 11:2-29. The exemption provisions therefore do not affect exemptions otherwise available.

Moreover, the Department does not believe that elimination of the exemption for *de minimis* companies and specialty writers will result in any adverse economic impact upon such insurers. The Department initially notes that the number of *de minimis* companies in the aggregate represent less than one percent of the private passenger automobile insurance market in this State. Further, the amount of business assigned to an insurer is related to the amount of business written by the insurer in the voluntary market. Accordingly, an insurer that writes a large amount of business will incur greater expense than an insurer that writes a small amount of business. In addition, specialty writers may utilize the PAIP's approved rating system for the writing of certain private passenger automobiles, even though it may not have a rate on file for such type of vehicle for its voluntary business. Further, such insurers may choose to transfer their obligations to service PAIP business through the utilization of LAD carriers or LAD servicing carriers. Finally, insurers receive assigned risk credits for voluntary risks written in designated territories or for ineligible risks written in accordance with the insurer's approved rating system. The Department therefore believes that the other provisions eliminate any undue burden that may be imposed on *de minimis* companies and specialty writers. This will also ensure that PAIP assignments are equitably distributed among all insurers transacting personal private passenger automobile insurance.

The Department notes that the exemption provision as described above will be reproposed shortly, and all interested parties will be afforded an opportunity to comment on those provisions at that time.

COMMENT: One commenter suggested that N.J.A.C. 11:3-2.5(a)1, which provides that eight members of the governing committee shall be salaried employees of an insurer which is a paricipant in PAIP, be revised to provide that the insurer be a member of the PAIP, with each insurer responsible to provide a representative. The commenter believes that this has advantages in providing for substitutes and succession where an individual employed by the insurer leaves that insurer or is temporarily unavailable. The commenter stated that this is the method of appointment of member insurers and representatives in most other states utilizing assigned risk plans.

RESPONSE: The Department believes that this provision is reasonable and appropriate in that the Department has traditionally named individuals rather than entities to the various governing committees established under the laws of this State, and that these procedures have not posed problems in the past. Further, such procedures are consistent with the provisions set forth in the CAIP plan of operation. Finally, the Department believes that the current provisions provide for substitutes and successors where the individual employee is no longer available in that N.J.A.C. 11:3-2.5(e) provides for the designation of alternates.

COMMENT: One commenter objected to N.J.A.C. 11:3-2.5(g)2i which provides that the conditional appointment or termination of the PAIP manager is subject to approval by the Commissioner. The commenter stated that there is no need to require the Commissioner's approval of such an action in that the governing committee has the requisite knowledge and expertise to make such determinations. Further, the assets of the insurer members are at risk and the interest of the other governing committee members are also involved.

The commenter therefore suggested that N.J.A.C. 11:3-2.5(g)2i be revised to eliminate the requirement that appointment of the PAIP manager be subject to approval by the Commissioner.

RESPONSE: Upon review of the commenter's concerns, the Department has determined not to change this provision. The Department believes that requiring the appointment or termination of the PAIP manager be subject to the Commissioner's approval is appropriate and necessary because of the significant role and duties of the manager, and therefore, the impact of actions of the manager on the PAIP. The Department also notes that this issue is essentially moot as the Commissioner has already approved the recommended choice of the PAIP manager.

COMMENT: Several commenters objected to N.J.A.C. 11:3-2.5(g)11i, which provides that the Commissioner or his other alternate may serve as an ex-officio, non-voting member of any technical committee appointed by the governing committee. The commenters stated that in most other states utilizing assigned risk plans, the commissioner does not sit on technical committees. The commenters believe that there is no need for such a provision in these rules and therefore suggested that N.J.A.C. 11:3-2.5(g)11i be deleted in its entirety.

RESPONSE: Upon review of the commenters' suggestion, the Department has determined not to change this provision. The Department believes that it is reasonable and appropriate to permit the Commissioner or his or her alternate to serve as an ex-officio, non-voting member of technical committees to facilitate the Commissioner's oversight and approval responsibility regarding the PAIP. The Department does not believe that this should be of concern since the rule permits the Commissioner or his or her alternate to attend these meetings without authority to vote. The purpose of this rule is to ensure that the Commissioner is provided access to records and discussions and thereby facilitate an understanding of issues raised and the basis for decisions reached. The Department further believes that the PAIP has benefited from this procedure through the assistance in the development of the plan of operation which has, in turn, streamlined the process for approval of the plan.

COMMENT: Several commenters objected to N.J.A.C. 11:3-2.6(c)3, which authorizes the Commissioner to certify proposed amendments two days after copies of the proposal are provided to the governing committee for good cause shown. The commenters believe that there is no justification to "strip the governing committee of its authority to draft the plan of operation and amendments thereto." The commenters stated that the Commissioner has the authority to approve or disapprove proposed amendments of the governing committee and act as an ex-officio member of the governing committee. The commenters believe that this provides sufficient regulatory supervision of the governing committee and plan of operation by the Commissioner.

One commenter additionally objected to the provision of N.J.A.C. 11:3-2.6(c)3, which provides that if the governing committee does not adopt amendments acceptable to the Commissioner acceptable within 30 days, then the Commissioner may certify amendments and their effective date to the governing committee. For all of the reasons discussed above, the commenters suggested that the second and third sentences of proposed N.J.A.C. 11:3-2.6(c)3 be deleted.

RESPONSE: Upon review of the commenters' objections, the Department has determined that no change is required. The Department believes that it is reasonable and appropriate to provide a mechanism by which the Commissioner may certify amendments deemed necessary for the operation of the PAIP that the governing committee is unwilling or unable to effectuate within a reasonable period of time. This provision is consistent with the current MTF plan of operation, as well as the authority granted the Commissioner over other statutorily created entities for which the Commissioner has oversight responsibilities (see N.J.S.A. 17:30A-9 and 17B:32A-9). The Department does not believe that these procedures "strip" the governing committee of its authority to draft the plan of operation or amendments thereto since the governing committee retains the authority to submit amendments to the plan at any time pursuant to N.J.A.C. 11:3-2.6(c).

COMMENT: Several commenters objected to N.J.A.C. 11:3-2.7, which provides that increased limits of liability coverage and uninsured and underinsured coverage be provided by the PAIP. The commenters stated that increased limits should not be available to "ineligible persons" because they are "objectively bad drivers." The commenters further believe that the PAIP should not be required to provide high risk drivers with increased limits or physical damage coverages which are not required by law. The commenters stated that if the PAIP is to act as a true residual market, it should be required to offer only the minimum liability limits required by law.

One commenter specifically stated that maximum limits are not usually higher than $100,000/$300,000 in other assigned risk plans. Another commenter specifically suggested that to promote simplification and reduce confusion to applicants, several packages of limits be offered through the PAIP rather than the entire array of limits, deductibles, etc. as required by these rules.

Another commenter specifically stated that if increased limits beyond $100,000/$300,000/$500,000 are essential, then the governing committee should be the body to determine when such limits are written in the PAIP on a case by case basis.

Another commenter specifically stated that N.J.A.C. 11:3-2.7(b) requires the PAIP to provide increased bodily injury liability and property damage liability and uninsured and underinsured motorist coverage up to $250,000/$500,000/$100,000 or a combined single limit of $500,000. The commenter stated that it does not offer any combined single limit and suggested that the liability coverages and uninsured and underinsured coverages be capped at the level the company offers its voluntary business.

RESPONSE: N.J.A.C. 11:3-2.7 requires that the PAIP provide the minimum levels of coverages required by law and increased limits up to a specified maximum. The rule does not specify the intermediate limits that must be provided. The Department believes that it is appropriate to require that the PAIP provide increased limits of liability and uninsured and underinsured coverages so that insureds may meet the minimum requirements for personal excess or umbrella policies. The Department also notes that the maximum limits set forth in N.J.A.C. 11:3-2.7 reflect those generally available in the voluntary market. Since insurance through the PAIP will be transitory for individual insureds, the Department believes it appropriate to require that the PAIP provide similar optional limits to avoid disruptions in an insured's coverage and the confusion that would undoubtedly result from sudden changes to an insured's coverages. The Department also notes that these increased limits are consistent with those offered by the Association, MTF and assigned risk plans of other states (such as New York and Connecticut).

The Department further disagrees that provision of increased limits beyond $100,000/300,000/500,000 should be left to the discretion of the governing committee on a case by case basis. The limits to be provided by the PAIP are a part of its rating system subject to the Commissioner's approval. Therefore, all available limits must be offered consistently to all PAIP insureds.

Finally, the Department disagrees that coverages be capped at the level the member company offers its voluntary business. As noted previously, the limits of coverage offered by the PAIP are part of its rating system and must be applied consistently to all PAIP insureds. Therefore, no insurer may utilize the applicable rate in the PAIP for the writing of such limits even though it may not have a rate on file for such limits for its voluntary business. Adoption of the commenter's suggestion would result in variations in available limits of coverage based on the random assignment of an insured to a particular company over which the insured has no control. The Department notes that a member insurer may "buy-out" of its obligation to insure PAIP risks through the use of a LAD carrier. A member insurer may also write a sufficient number of eligible persons as voluntary business and receive credit against its PAIP assignments to reduce or avoid any PAIP assignments. Further, N.J.A.C. 11:3-2.11(a)5 provides that no insurer whose surplus as regards policyholders is less than $1.5 million will be assigned a risk requesting or required by law to carry limits of liability in excess of 50/100/10. The Department thus believes that these provisions eliminate any undue burden on member insurers.

COMMENT: One commenter noted that N.J.A.C. 11:3-2.7 requires that the PAIP provide physical damage coverages at the minimum levels required by law. The commenter stated that physical damage coverage is not mandatory and therefore requested some clarification.

Another commenter specifically stated that if the PAIP provides physical damage coverage, the basic physical damage coverage should use a significantly higher deductible, with the PAIP insured being permitted to buy physical damage coverage with lower deductibles as an option.

RESPONSE: Although insureds are not required to obtain physical damage coverages, all insurers offer such coverage. As noted in a response to a previous comment, the Department believes it appropriate to require that the PAIP similarly provide physical damage. Further,

N.J.S.A. 17:29A-39 requires that every private passenger automobile insurance policy providing collision and comprehensive coverages provide for a deductible in a minimum amount of $500.00 for each collision and comprehensive coverages. The rules merely reflect this statutory minimum.

COMMENT: Several commenters objected to the requirement of N.J.A.C. 11:3-2.7 that the PAIP provide both split limits and a combined single limit. The commenters believe that requiring coverage be written both ways creates unnecessary programming and administrative expenses for the PAIP and the subscribing insurers. The commenters therefore suggested that insurers be required to offer either split or single limits, but not both.

Several commenters conversely stated that insureds should be provided a choice of either split or combined singled limits. One commenter specifically stated that the rule should specify that the choice is the insured's rather than the issuing carrier who receives the assignment. The commenter stated that this should be specifically stated in the plan of operation. The commenter additionally suggested that there be a statement on the application for insurance indicating that both options were offered to the insured to provide "protection" to the insurer and the producer should a question arise in the future.

Finally, one commenter specifically suggested that since the rules provide for a choice of either a combined limit or a split limit of liability, the PAIP provides only the combined single limit option as this is more cost effective, provides more flexibility at the time of loss and reduces the likelihood of "second guessing" the limits chosen under the split limit policy. The commenter believes that this lessons the possibility of hardship to consumers who would otherwise select split limits.

RESPONSE: The Department believes it appropriate that the PAIP offer both single limits and combined single limits. As noted previously, insureds will obtain coverage through the PAIP on a transitory basis, and therefore dislocations may result if insureds are required to suddenly change the type of coverage from that previously obtained through the voluntary market. The Department therefore believes that the decision of the type of limits (split or combined) should be the insured's option. The Department, however, does not believe that the rules need to be revised to specifically provide that the choice of either split or combined limits is the insured's rather than the servicing carrier's in that the PAIP is required to offer both split and combined limits. This general requirement therefore may not vary between servicing carriers. Finally, with respect to the comment that the application form should provide a statement as to which option was chosen, the Department notes that the coverage selection form, which must accompany the application and be signed by the applicant, will indicate the options chosen by the insured.

COMMENT: One commenter specifically stated that it believes that the statutory standard physical damage deductible is $500.00 with the insured having the option to purchase a lower deductible if desired. The commenter suggested that if the PAIP will not provide the insured the option of purchasing a lower deductible, this should be specifically stated. The commenter believes that it may be advisable not to provide the insured with the option of purchasing lower deductibles as this will not serve as an incentive to drive responsibly or seek to become eligible for the voluntary market.

RESPONSE: The rules currently provide this. N.J.A.C. 11:3-2.7(d) requires the PAIP to offer physical damage coverage with not less than the minimum deductible required by N.J.S.A. 17:29A-39 (that is, $500.00), and higher education deductibles as required by N.J.A.C. 11:3-13.3. The Department does not believe further clarification is necessary.

COMMENT: Several commenters suggested that N.J.A.C. 11:3-2.8, which sets forth the eligibility requirements to obtain insurance through the PAIP, be amended to address applicants which were previously cancelled for nonpayment of PAIP premium.

One commenter specifically stated the problem with many residual market mechanisms are applicants who make an initial deposit payment to obtain insurance to register the vehicle, and then fail to make further payments. Further, the commenter stated that the initial deposit payment may be inadequate because the applicants check bounced or the insured may have misrepresented himself as being in a lower rated classification. The commenter stated that this process is costly and that the PAIP should not facilitate such practice by allowing that person to apply again for PAIP coverage with a different randomly assigned insurer when the insured again needs to renew the registration on his vehicle.

The commenter therefore suggested that the rules provide that the PAIP assign an applicant who was previously cancelled for nonpayment of PAIP premium to the same carrier who had done the previous PAIP nonpayment cancellation. The commenter stated that the applicant's deposit premium would first go to satisfy any outstanding premium balance owed on the previous policy, and the remainder of the policy premium would go to the policy applied for. The commenter believes that these measures would help eliminate the problems noted above in that the PAIP insurer would be in a better position to recognize such action and, therefore, PAIP applicants may be deterred from avoiding the payment of premium in the future.

The commenter also stated that the carrier who had previously cancelled the PAIP applicant for nonpayment of premium where earned premium is owned would have the opportunity to recoup that earned problem.

In order to effectuate this change, the commenter suggested that N.J.A.C. 11:3-2.8 be amended to add a new subsection (h) as follows:

"Where a PAIP applicant had been previously cancelled for nonpayment of PAIP premium, them that applicant shall be assigned to the insurer that previously cancelled him or her for nonpayment of PAIP premiums unless that insurer is now exempt from receiving PAIP assignments. That insurer shall use the deposit premium to first pay any amount owed by the applicant for earned premium on the PAIP policy or policies that had been cancelled for nonpayment of premium. The balance of the deposit premium shall be used for the PAIP policy applied for."

Several commenters additionally stated that N.J.A.C. 11:3-2.8(d) should be amended to provide that no person may be deemed a qualified applicant if they owe premium on a prior insurance policy or have been previously cancelled for nonpayment of premium.

One commenter additionally specifically stated that the eligibility requirements should include a requirement that all earned premium from prior policy periods be paid in full. The commenter stated that like "eligible persons" for voluntary market coverages, applicants who have been cancelled for nonpayment of premium should be required to pay the entire premium in advance.

RESPONSE: Upon review of the commenters' concerns, the Department has determined not to change this provision. N.J.A.C. 11:3-2.8 sets forth the eligibility requirements to obtain insurance through the PAIP. It does not address the manner by which applicants are assigned to member insurers. The rule sets forth a regulatory framework through which a plan of operation may be developed. The details addressing concerns relating to assignment would be more appropriately addressed by the governing committee in the plan of operation.

Further, the rules specifying eligibility are not intended to address collection of unpaid premium and should not provide for a bill collection system. Additional restrictions on which applicant is qualified, such as those suggested by the commenters, would be inconsistent with the purpose of the PAIP, which is to provide automobile insurance coverage in the residual market. According to N.J.S.A. 17:33B-13, a person is not eligible to obtain coverage in the voluntary market if cancelled for nonpayment of premium. However, if that voluntary market provision were applied to the residual market, as the commenters suggest, the applicant would have no other place from which to obtain mandatory automobile insurance. The Department, however, recognizes the problem of persons cancelled for nonpayment of premium within the last two years being considered qualified applicants for the PAIP when the applicant could not pay 100 percent of the premium up-front to a voluntary insurer. The concern is that the PAIP would not be a true residual market mechanism if it gets filled with insureds who were cancelled for nonpayment. However, "non-pays" must be included in some fashion. Pursuant to a suggestion made by the PAIP governing committee, changes to the rules defining "eligible person" (N.J.A.C. 11:3-34) have been proposed (see 24 N.J.R. 2812(a)) to clarify the length of time coverage must lapse after cancellation for nonpayment for a person to be deemed ineligible. This change is intended to clarify the intent of N.J.A.C. 11:3-34 to avoid persons becoming ineligible for coverage through the voluntary market through inadvertence or mistake. This should also reduce the number of persons with eight automobile eligibility points or below becoming eligible for the coverage through the PAIP.

COMMENT: One commenter noted that N.J.A.C. 11:3-2.9 requires that the governing committee file rates, rules and forms for prior approval by the Commissioner, and contains provisions regarding experience rating of certain levels of coverage. The commenter believes

it would be more appropriate to require that PAIP rates be "cost based" using the experience of the PAIP to the maximum extent possible. The commenter believes that this would comply with the statutory requirement that rates not be excessive, inadequate or unfairly discriminatory, as well as satisfy the experience rating requirements of N.J.S.A. 17:29D-1. The commenter stated that PAIP insureds are objectively bad drivers and that charging objectively bad drivers cost-based rates is fully consistent with the intent of the Fair Automobile Insurance Reform Act of 1990 (FAIR Act). The commenter further stated that N.J.A.C. 11:3-2.9 need not dictate further rate review procedures which might conflict with the requirements of N.J.S.A. 17:29A-1 et seq. and N.J.A.C. 11:3-16 (relating to the filing of private passenger automobile insurance rates). The commenter therefore suggested that N.J.A.C. 11:3-2.9 be deleted and, in its place, should read:

a. The governing committee shall develop a rating system including rates, rules and forms which shall be used by the insurers writing risks through the PAIP. Such rates shall be cost-based so that the PAIP produce no profit or loss on an incurred basis, not on a cash-flow basis, using the experience of the PAIP to the maximum extent possible for all coverages, classes and limits consistent with generally accepted actuarial practices.

b. The governing committee shall file such rating system including rates, rules and forms in the manner required by N.J.S.A. 17:29A-1 et seq. and related regulations.

RESPONSE: Upon consideration of the commenter's suggestion, the Department has determined not to change this provision. Pursuant to N.J.S.A. 17:29A-1 et seq., all rates for private passenger automobile insurance shall not be excessive, inadequate or unfairly discriminatory. N.J.A.C. 11:3-2.9(a) provides that proceedings to review rate filings of the PAIP shall be in accordance with N.J.S.A. 17:29A-1 et seq. The Department does not believe further revision is necessary. The Department further notes that while the commenter suggested that the rules provide that rates for the PAIP be "cost-based," it failed to define this term or demonstrate that such term is consistent with the statutory standard for automobile insurance rates set forth in N.J.S.A. 17:29A-1 et seq.

COMMENT: Several commenters objected to N.J.A.C. 11:3-2.10(a), which requires that the PAIP provide an installment premium payment option in the plan of operation; that such payment option must provide that the minimum initial deposit shall be no more than 30 percent of the estimated total premium; and that the schedule for the payment of premiums on an installment basis shall be over a period of not less than nine months.

Several commenters stated that assigned risk plans in other states generally provide for an installment payment plan over six months rather than nine months.

One commenter specifically suggested that the installment payment option be deleted in its entirety due to the costs it would entail. These costs relate to: (a) the minimum downpayment may not be enough if the application is misrated by the producer or because of misrepresentation by the applicant; (b) late payments of installments which may extend the due date to the point where unearned premium paid may not cover the time on the risk up to the installment's next due date, and possible conflicts between the sending of a new bill with a cancellation notice for nonpayment of premium which was sent out for the previous installment; (c) similar problems as noted above regarding extension of due date when overdue payments are received which could delay the renewal processing for the next renewal period; and (d) loss of earned but uncollected premium. The commenter further stated that there is no statutory requirement to provide a 10-pay plan as was required of the MTF; and that since the MTF and the PAIP are two different entities, there is no need to carry over certain MTF features to PAIP in that PAIP will be a market for objectively bad risks and there is no public policy reason for providing ineligible persons with such a costly installment payment option. Finally, the commenter stated that the type of installment plan to be offered is a technical matter for the governing committee to determine and should not be dictated by rules. The commenter finally suggested that rather than a 10-pay plan, an alternative plan (such as a 40-30-30 plan) could provide an installment payment option which could minimize problems previously discussed.

RESPONSE: Upon review of the commenters' concerns, the Department has determined that no change is required. The Department believes that it is appropriate to provide for an installment payment plan in the residential market mechanism. The rule includes standards from the present MTF plan of operation which has worked relatively well by providing affordable installments. The Department further notes that the MTF plan provides for six installment payments over nine months, not 10 installment payments as the commenters suggest. The Department further believes the 30 percent initial deposit is reasonable and sufficient as a minimum initial deposit. Moreover, N.J.A.C. 11:3-2.10(g) complies with the provisions regarding cancellation set forth at N.J.A.C. 11:3-7.6, as has the MTF plan. Finally, N.J.A.C. 11:3-2.10(g) does not require a "10-pay plan," as the commenters believe, but requires only that the total number of installments be spread over nine months.

The Department believes that further details to address the commenter's concerns should be addressed by the governing committee in the plan of operation consistent with the minimum standards in the rule. The Department believes that the standards in the rule are reasonable, appropriate and provide the governing committee flexibility to develop a reasonable installment payment plan.

COMMENT: One commenter noted that N.J.A.C. 11:3-2.10(c) provides that return premiums resulting from changes in a policy shall be returned immediately after offsetting any balance due. The commenter suggested that the rules provide a "de minimus exemption." The commenter stated that mailing a return premium check for $.36 or $1.32 is costly and inappropriate.

The commenter further stated that the rules do not define the word "immediately" and that requiring that any amounts be returned within 30 days would be more appropriate.

The commenter thus suggested that N.J.A.C. 11:3-2.10(c) be amended to read: "If the outstanding balance is eliminated, any amount remaining, **if $2.00 or greater** shall be returned **within 30 days** [immediately]." (Boldface language is to be added; bracketed language is to be deleted.)

RESPONSE: The Department agrees that the PAIP should not be required either to return or collect de minimis amounts to avoid unnecessary administrative costs associated with the collection or return of such amounts. The Department believes, however, that the actual amount should be determined by the governing committee and set forth in the plan of operation approved by the Commissioner as the amount considered "de minimis" is subject to change over time. The Department similarly agrees that the rules should be revised to require that amounts be returned within 30 days, for the reasons expressed by the commenter. The rules are changed upon adoption to reflect these clarifications.

COMMENT: Several commenters expressed concern regarding N.J.A.C. 11:3-2.11, which provides that the assignment of PAIP risks to insurers shall be based on the proportion that the insurer's share of the voluntary market for personal private passenger automobile insurance (including the insurer's apportionment share for the depopulation of the MTF pursuant to N.J.S.A. 17:33B-11(c)(5)) relates to the Statewide total of the voluntary market for personal private automobile insurance in this State. The commenters stated that there is no rationale for the requirement that an insurer's apportionment share of PAIP risks take into account its depopulation share. One commenter stated that the insurance industry's so-called "uniform plan," which provides the rules for the determination of assigned risk quotas, refers to the "second prior year" as the base year for determining a company's apportionment share of assigned risks. The commenter stated that the rules make no such reference, but instead purport to incorporate by reference the apportionment methodology used to depopulate the MTF. The commenter believes that it would be inappropriate to allocate the PAIP quota based on participation going back as far as 1983 and 1981 as is the case for the MTF depopulation formula. The commenter believes that the Department is intending to reward some insurers while penalizing others depending upon past events which are not relevant to the creation and operation of PAIP. The commenter therefore suggested that the parenthetical language in N.J.A.C. 11:3-2.11(a) be deleted and language from the "uniform plan" be used in its place.

Another commenter specifically supported the inclusion of an insurer's apportionment share of risk for depopulation from the MTF in determining assignment of business. However, it noted that at some point the industry will have fulfilled its obligations and that this language would become unnecessary.

Another commenter specifically supported the Department's position to use apportionment share in the distribution of PAIP risks rather than the direct written premium of the second prior calendar year. The commenter stated that using the direct written premium of the second prior calendar year could have the effect of rewarding those carriers who are not meeting their depopulation quotas or who will fail to comply with the "take-all-comers" provisions, while punishing those carriers which meet or exceed their quotas and have been complying with the

"take-all-comers" provisions. The commenter stated, however, that in the future, the measure for the distribution of PAIP risks could be the net direct written premium for the second prior calendar year.

RESPONSE: Many of the commenters have apparently misconstrued N.J.A.C. 11:3-2.11. The rule merely requires that the governing committee establish procedures to distribute PAIP risks to member insurers on an equitable basis based on each member's market share for voluntary personal private passenger automobile insurance (including its depopulation share) in this State. The rule does not specify the basis for making such determination (that is, number of exposures, prior year premium, second prior year premium, market share in 1981 or 1983, etc.). Such detail will be contained in the plan of operation. The purpose of requiring that the insurer's market share include its share of depopulation is not to dictate a basis for determining market share, as the commenters have suggested, but merely to require that assignments be based on what an insurer's market share should be at the time of assignment, rather than where it may actually be. Some insurers have met their depopulation quota while others have not. The Department believes that it would be inequitable to "penalize" those insurers that have met or that are meeting their depopulation obligations. The Department agrees that this language referring to depopulation may be unnecessary when all depopulation has been completed. The Department will propose any necessary amendments to the rule at that time.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-2.11(i), which require that agreements between insurers and LAD carriers be approved by the Commissioner, and which require that the plan of operation place parameters for fees paid to LAD carriers. The commenters stated that LAD carrier agreements are private contracts between insurers authorized to do business in New Jersey. Similarly, the plan of operation should not contain parameters as to the fees that should be charged under a LAD carrier agreement. The commenters stated that this should be left to open competition and that placing parameters on fees may restrict the market as well as discourage innovative fee agreements. The commenter stated that fee agreements will not impact PAIP administration so there is no need for fees to be regulated in the rules or the plan of operation.

One commenter additionally stated that if a LAD carrier agreement would possibly impair a party to the agreement, the Commissioner could proceed against that carrier as provided under the authority of other laws of this State regarding solvency and therefore no additional authority is needed in these rules.

Another commenter specifically stated that the requirements in N.J.A.C. 11:3-2.11(i) and (j) (which provide for Commissioner approval and regulation of LAD servicing carriers) impair the contract rights of both LAD carriers and LAD servicing carriers.

The commenters thus suggested that N.J.A.C. 11:3-2.11(i) and (j) be deleted.

RESPONSE: N.J.A.C. 11:3-2.11(i) provides that the governing committee shall establish procedures in the plan of operation permitting an insurer by mutual agreement to transfer its obligations to accept assignments to another insurer (to be known as a LAD carrier). The Department believes that the use of LAD carriers affects the level of service provided to the public and that the regulatory oversight and control proposed in N.J.A.C. 11:3-2.11(i) is a necessary element to assure an adequate level of such service. The rule sets forth the minimum requirements within a regulatory framework. The Department will not approve individual contracts or regulate actual fees per se, but rather will review the general or "prototype" contract and fee structure developed by the governing committee for LAD carrier "buy-out" arrangements. Any deviations from the standard approved contract or fee structure however would have to be approved. The Department believes that the rule provides appropriate standards to assure an adequate level of service an financial stability, while providing the governing committee with flexibility to develop appropriate standards. The Department believes it appropriate to review the structure of these arrangements to ensure that such arrangement will not result in the insurer's operations being hazardous to the public or its policyholders. While the Commissioner possesses the authority to take action against insurers in a hazardous financial condition, the goal of these provisions is to avoid the occurrence of such condition, rather than to react to it after the fact.

The Department also disagrees that these provisions "impair the contract rights" of LAD carriers and LAD servicing carriers. Since insurance is a regulated industry, reasonable regulation on operations relating to the provision of automobile insurance may be anticipated. The Department does not believe that the general regulation of LAD carriers and LAD servicing carrier arrangements unconstitutionally impairs the contract rights of those parties. The Department further notes that the commenter failed to specify the manner by which the rule impairs the contract rights of LAD carriers or LAD servicing carriers.

COMMENT: Several commenters suggested that the 10 percent cap on PAIP risks provided by N.J.A.C. 11:3-2.11(a)3 be revised to read, "as provided by statute." Several commenters noted that the 10 percent cap is mandated by statute but suggested if that the statutory cap should change, the regulations would have to be amended accordingly, which could take time.

Another commenter stated that the volume caps should be repealed. However, short of repeal, the commenter stated that the rules should clarify the procedures by which the cap will be administered (for example, when will the Department determine that the cap has been reached; how will the Department account for reporting and statistical lags; how and when will the Commissioner reopen the PAIP; what happens when the cap is reached; and will risks with over eight points have a right to coverage in the voluntary market at standard rates if the non-standard market is also closed by the Commissioner).

Another commenter suggested that the cap be removed and that it be flexible depending upon the type of risks that are deemed to be eligible for placement in the assigned risk plan.

RESPONSE: Upon review of the commenters' suggestions, the Department has determined that no change is required. The 10 percent cap limitation set forth in N.J.A.C. 11:3-2.11(a)1 and 2 reflects the statutory limitation set forth in N.J.S.A. 17:29D-1d. This statutory requirement may not be altered by rule. The Department further does not believe that it is necessary to revise the rule to provide "as provided by statute." There is no indication that the Legislature is considering revision to the 10 percent limitation. If the Legislature should revise the 10 percent limitation, such change would supersede this rule and would become operative at the effective date of such legislation. The Department would then amend the rule to reflect any statutory change. Finally, since the PAIP is not yet operational, and there is no indication that the 10 percent limitation will be reached upon the PAIP beginning operation, the Department believes that it would be premature to provide procedures by which the PAIP will cease and resume accepting new business at this time. The Department will provide such procedures in the future.

COMMENT: One commenter suggested that the rules state that the PAIP cannot be operated at deficit.

RESPONSE: N.J.A.C. 11:3-2.9(a) provides that rates shall not be excessive, inadequate or unfairly discriminatory. The Department believes that this language is sufficient and conforms to the statutory standard.

COMMENT: One commenter suggested that an annual independent audit of the PAIP be required.

RESPONSE: N.J.A.C. 11:3-2.5(g)7 requires the governing committee to arrange for an annual independent audit for the PAIP.

COMMENT: One commenter stated that stringent producer qualification standards should be included in the plan to reduce misconduct, such as misappropriation of funds, to a minimum.

RESPONSE: As previously noted, these rules are designed to provide only a regulatory framework by which a plan of operation for the PAIP may be established. N.J.A.C. 11:3-2.6(a)2, 3 and 4 direct the governing committee to provide standards and procedures for appointment and compensation of producers as well as a producer certification program, in the plan of operation.

COMMENT: One commenter stated that a ratemaking methodology inconsistency exists in the rules in that the rules require that PAIP rates may not be excessive, inadequate or unfairly discriminatory, but require that there be rate subsidies for the basic limits of coverage. The commenter stated that there should be no rate subsidies in the PAIP.

RESPONSE: The Department believes that the commenter has misconstrued the "experience rating" definition provisions contained in N.J.A.C. 11:3-2.9(b). The rules do not require rate subsidies for basic limits of coverage. The Department interprets "experience rated" as used in N.J.S.A. 17:29D-1 to mean that rates for liability coverages with limits in excess of the amount specified, or for physical damage coverage for vehicles with a value over the specified amounts, shall reflect the experience of those risks insured by the PAIP with liability coverages with those limits, and physical damage coverage on vehicles valued over the specified amounts. The Department believes that the provisions of the rule provide an adequate regulatory framework based upon statutory provisions. Thus, the Department interprets the "experience rated"

language of N.J.S.A. 17:29D-1 to require that the experience of those policyholders with increased limits or with physical damage coverage on vehicles over the specified amount be reviewed separately to establish a separate rate (that is, the rate should not simply be the basic rate multiplied by a fixed factor). The Department, therefore, does not believe any inconsistency exists between these rules and relevant statutory provisions.

COMMENT: One commenter stated that the definition of "automobile" in N.J.A.C. 11:3-2.2 refers to three categories of vehicles (private passenger, pickups/vans and motorcycles). The commenter stated that the requirement for ownership of a vehicle by an individual or husband and wife appears only to apply to pickups and vans not customarily used in the insured's occupation, business or profession. The commenter suggested that clarification be provided since the rules as currently worded appear to permit corporate-owned vehicles to be written in the PAIP even though such vehicles were not eligible for coverage under the Association or MTF.

RESPONSE: The definition of "automobile" in N.J.A.C. 11:3-2.2 is consistent with the definition of "automobile" set forth at N.J.S.A. 17:30E-3B. The Department believes it appropriate that the definition of "automobile" in the PAIP be the same as in the prior residual market mechanism. However, pursuant to a suggestion made by the PAIP governing committee, the definition of "automobile" and "private passenger automobile insurance" are revised to include vehicles owned jointly by resident individuals. This recognizes that vehicles may be owned jointly by individuals who are residents of the same household, but who are not necessarily husband and wife. This will also ensure that vehicles owned in such a manner will be eligible for coverage through the PAIP.

COMMENT: One commenter stated that the definition of "private passenger automobile insurance" should be expanded to include motor homes, motorcycles, antique automobiles and recreational vehicles. The commenter believes that these vehicles may be insured by the PAIP and premiums should be included in the distribution algorithm.

RESPONSE: The definition of "automobile" in N.J.A.C. 11:3-2.2 is consistent with the definition of automobile in N.J.S.A. 17:30E-3b and specifically includes motorcycles. Further, the Department has consistently interpreted this definition to include motor homes, antique cars and recreational vehicles used for personal use. The Department is reluctant to disturb the prior definition because to do so may imply that such vehicles were not included.

COMMENT: One commenter stated that N.J.A.C. 11:3-2.5(e) should require, rather than permit, the designation of an alternate by members of the governing committee. The commenter stated that since the governing committee is responsible for overseeing operation of the PAIP, it is important that membership be represented by either the designated individual or by an alternate.

RESPONSE: The Department believes that the rules as drafted sufficiently address the designation of alternates. The rules permit each member to designate an alternate. The Department believes that this effectively addresses the commenter's concerns. The Department also notes all governing committee members have appointed alternates.

COMMENT: One commenter suggested that the Department eliminate the requirement that the producer certification program established by the governing committee may not exclude producers with no affiliation with a voluntary market insurer (N.J.A.C. 11:3-2.5(g)1iii and 2.6(a)4). The commenter stated that if this provision remains, a new category of producer will be established (that is, one who can only place insurance for an ineligible risk and who cannot service any other insurance needs of the applicant or continue servicing insurance needs once the driver has improved his record and becomes eligible).

The commenter further questioned the ability of such a producer to certify that an applicant was unable to obtain coverage in the voluntary market since that producer has no such affiliation.

Finally, the commenter stated that if this requirement is left unchanged, the rules would require a producer with a voluntary source of coverage to submit applications which are rejected before an applicant may approach the "newly created category of producer" to process a PAIP application, with the second producer receiving a commission.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The Department does not believe it would be fair or equitable to exclude licensed producers in this State, otherwise qualified under the producer certification program established by the governing committee and approved by the Commissioner, from servicing PAIP business solely because the producer does not have an affiliation with a voluntary market insurer. No similar restriction exists in the voluntary market (for example, a person may go to a licensed broker who then places business with a company), and did not exist in the Association or MTF.

Further, the comment that such producers will not be able to certify that an applicant was unable to obtain coverage in the voluntary market is misplaced. Pursuant to N.J.A.C. 11:3-2.8(e), the applicant, not the producer, is required to certify that he or she was unable to obtain insurance in the voluntary market.

Finally, the rules do not require, as the commenter suggests, that a producer with an affiliation with a voluntary market insurer first submit the application to that insurer for rejection. If the producer is aware that the applicant is not an eligible person as defined at N.J.A.C. 11:3-34, that producer may then place the applicant in the PAIP.

COMMENT: One commenter stated that N.J.A.C. 11:3-2.5(g)11 should be clarified to provide that the appointment to legal, actuarial, claims and other committees need not be from members of the governing committee, but rather from participating companies or other employees of insurance companies represented on the governing committee.

RESPONSE: The Department agrees and has adopted the commenter's suggestion to include "qualified nonmembers" at N.J.A.C. 11:3-2.5(g)11.

COMMENT: One commenter suggested that N.J.A.C. 11:3-2.8, which sets forth eligibility requirements to obtain insurance through the PAIP, be clarified to address the issue of which cars may be insured in the PAIP when they are driven by a combination of eligible and ineligible drivers. The commenter stated that neither the rules nor any other law or rule addresses the issue of how the eligibility for PAIP is to be determined for a two-car risk driven by two operators, one of which is an occasional driver (30 percent user of both automobiles), is ineligible (has more than eight eligibility points), and the other two principal operators are point free. The commenter suggested that the rules be amended to clearly state that all vehicles driven by an ineligible person may be insured in the PAIP.

RESPONSE: The Department disagrees. The commenter's concerns stem from attempting to redefine which individuals are eligible for the PAIP. The Department believes that this is inappropriate and inconsistent with the FAIR Act. Pursuant to the FAIR Act, all insurers are required to provide automobile insurance to eligible persons as defined in N.J.A.C. 11:3-34 and in accordance with their underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35. The determination of eligibility for coverage in the voluntary market is governed by N.J.A.C. 11:3-34, which addresses the commenter's concerns. If a person is not eligible for coverage in the voluntary market, that person may obtain coverage through the PAIP. Adoption of the commenter's suggestion would essentially provide that a person eligible for coverage in the voluntary market may obtain coverage through the PAIP, which would be inconsistent with the FAIR Act.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-2.8(c)1, which provides that a qualified applicant to the PAIP includes a member of the United States military forces when the vehicle is registered in another state and garaged in New Jersey or when the vehicle is owned by a resident who is stationed in another state whose automobile is registered in this state and garaged in another state. The commenters stated that while the PAIP should accommodate military personnel stationed in New Jersey, those members of the armed forces registered in New Jersey and garaged out-of-State are best served in the state in which the vehicle is garaged. The commenter stated that the PAIP could be required to maintain rates for other states and accommodate the laws of all other jurisdictions because the laws of those jurisdictions may apply. This in turn would result in "enormous" administrative burdens and administrative costs.

One commenter additionally stated that all residual markets require that a military service applicant be eligible for their program. Another commenter specifically questioned the Commissioner's authority to provide for such a requirement.

The commenters, therefore, suggested that this provision be deleted. One commenter noted, however, that an exception to the extension for coverage for a vehicle garaged out-of-State would be a full-time undergraduate student away at school who may be deemed to have a vehicle garaged in New Jersey as is currently provided under N.J.A.C. 11:3-2.8(c)2.

RESPONSE: The commenters have apparently misconstrued the purpose of the rule. Under Federal law, a New Jersey resident in the military may continue to hold a New Jersey driver's license and auto-

mobile registration even though stationed in another state. That person is nevertheless required to maintain compulsory automobile insurance pursuant to N.J.S.A. 39:6A-3. The rule merely permits such military personnel to obtain insurance through the PAIP if they are not eligible to obtain such coverage in the voluntary market. Similarly, if a person in the military who is a resident of another state is stationed in this State, such person must obtain mandatory automobile insurance. The person's state of residence may not require mandatory coverage, and the person may not be eligible to obtain coverage in the voluntary market in this State. If the person were not permitted to obtain coverage through the PAIP, he or she would be unable to obtain insurance. The rule merely permits such individuals to obtain coverage through the PAIP. Any conflicts of law issues that may arise would be no more than those which arise through the insurance of such individuals in the voluntary market. The Department therefore believes that it is reasonable, appropriate and authorized pursuant to N.J.S.A. 17:29D-1 to require that the automobile insurance assigned risk plan provides coverage to military personnel and resident students as set forth in N.J.A.C. 11:3-2.8(c).

COMMENT: One commenter suggested that N.J.A.C. 11:3-2.8(e), which provides for the application for coverage to the PAIP, require that all information requested on the application be completed, not just that information needed to place coverage in force. The commenter stated that while a policy may be issued absent adequate rating information, such a practice should not be permitted.

RESPONSE: Upon review of the commenter's concern, the Department has determined not to change this provision. The Department does not believe that the rules as drafted require that a policy be issued absent adequate rating information. N.J.A.C. 11:3-2.8(e) merely provides that an applicant certifying that he or she is qualified for assignment must be considered if made in good faith. An application is considered in good faith if the applicant reports all information of a material nature. Further, N.J.A.C. 11:3-2.8(d) provides that no person will be deemed a qualified applicant if the principal operator fails to furnish "the information necessary to effect insurance . . ." The Department thus believes that these provisions effectively address the commenter's concerns.

COMMENT: Several commenters requested that the provisions of N.J.A.C. 11:3-2.9 be clarified regarding the provision that rates be determined by experience for coverage in excess of certain limits. Several commenters stated that the references to "experience" rated for rates for coverage in excess of certain limits is confusing and appears to suggest that other basic limits will not be determined by experience. The commenters recognize that this language reflects the statutory language in N.J.S.A. 17:29D-1 but suggested that the rules be amended to clearly indicate that all rates will be established by experience.

Several commenters further stated that the requirements in N.J.A.C. 11:3-2.9(a)1 and 2, which provide that rates established for increased coverages will be experience rated, are confusing, and requested an interpretation of how these provisions would operate on sample policies.

One commenter specifically stated that if the meaning of the section is that experience of PAIP risks with similar risk characteristics will be used in establishing rates for those risks, the commenter believes that N.J.A.C. 11:3-2.9(a), which provides that all rates shall reflect the experience of risks insured by the PAIP and shall not be excessive, inadequate or unfairly discriminatory, already establishes this requirement. The commenter stated that increased limits factors and simple relativities can be adjusted to appropriately reflect the loss experience of the risk specifically identified as requiring special pricing treatment. The commenter stated that if the intent of the cited section is different, the meaning of the provision should be clarified.

Another commenter specifically stated that while PAIP rates must not be excessive, inadequate or unfairly discriminatory, this section appears to mandate rate subsidies for coverages within stated limits and thus establishes inadequate rates for those lower limits. The commenter further stated that N.J.A.C. 11:3-2.1(b)3 states that one of the purposes of the rules is preserving to the public the benefits of price competition by encouraging maximum use of the voluntary private system. The commenter stated that to the extent that PAIP rates are artificially low, the PAIP would discourage rather than encourage maximum use of the voluntary private insurance system by those ineligible risks which have a choice between the voluntary market and the PAIP.

Several commenters further stated that the rules should specifically provide that all classes of insurance and all coverage limits should be experienced rated. The commenter stated that there should not be any rate subsidy for any particular class of business or specified layer of coverage and that the Department should clarify that the rules do not require such a subsidy.

Finally, several commenters stated that while the rules require that PAIP rates be based on the experience of the risk insured, since there is no experience of the PAIP, the initial rates should be based on MTF results. Subsequent rates could be based on PAIP experience. The commenters therefore suggested that the rules provide that Association and MTF data may also be used. One commenter specifically stated that for the first several years of the PAIP, rates must be developed based on Association, MTF and possibly voluntary market data. Another commenter specifically suggested that N.J.A.C. 11:3-2.9 be amended to provide that all rates shall reflect the experience of the risk insured by the PAIP as available and shall not be "excessive, inadequate or unfairly discriminatory." Another commenter suggested that the rule provide that "all rates under the PAIP shall be actuarially credible and in accordance with generally accepted actuarial principles shall reflect the experience of the risks insured by the NJAFIUA, the MTF and the PAIP."

RESPONSE: Upon review of the commenters' concerns, the Department has determined that no change is required. The Department initially notes that questions regarding the interpretation of "experience rated" have been addressed in a response to a previous comment. The Department also notes that N.J.A.C. 11:3-2.9(a) provides that all rates shall reflect the experience of risks insured by the PAIP. Moreover, the Department does not believe it appropriate to speculate how the rating system will operate on sample policies. Rates for the PAIP may not be excessive, inadequate or unfairly discriminatory and must be experience rated as required by N.J.S.A. 17:29D-1 as implemented pursuant to N.J.A.C. 11:3-2.9. The governing committee is required to develop and submit for approval a rating system (consisting of rates, rules and forms) consistent with the statutory standard. The Department must then review the rating system to ensure that it is consistent with the statutory standard. Speculation as to the appropriate rating system at this time would only serve to limit the governing committee on the rating system to be submitted as more than one rating system may be developed in compliance with the statutory standard.

Regarding one commenter's concerns with respect to rate subsidies and artificially low PAIP rates, as previously indicated, the rules do not require rate subsidies. The rules provide that the Commissioner shall approve only rates for the PAIP which are not excessive, inadequate or unfairly discriminatory.

The Department also disagrees that the rules should require that all classes of insurance and all coverages be "experience rated." Such a system would be problematical to implement and would not provide credible data. For example, there are over 250,000 classes of risks, which translates to a small number of risks in each class. Attempting to base rates on the experience of a few risks would not be practical or credible.

Finally, while the Department recognizes that there is no current experience in the PAIP, the Department does not believe it appropriate to revise the rules as suggested by the commenters. The initial rates for the PAIP should be based on all credible data that assists the governing committee and Commissioner in determining a rate that is not excessive, inadequate or unfairly discriminatory. Such data may include the experience of the Association, MTF or voluntary market. The Department believes that any addition to the rules will only add confusion and serve to limit the ability of the governing committee and Commissioner to review all probative data in determining rates.

COMMENT: Several commenters expressed concern with the provisions of N.J.A.C. 11:3-2.4, which provides exemptions from participation in the PAIP, as they relate to insurers seeking to withdraw from this State.

One commenter stated that it has currently withdrawn from all personal lines of insurance in New Jersey and is no longer authorized to write new private passenger automobile insurance business in this State. The commenter stated that the exemption provided by N.J.A.C. 11:3-2.4(b)4 comes the closest to exempting this commenter (this section exempts insurers "transacting personal private passenger automobile insurance in New Jersey subject to a plan of orderly withdrawal"). The commenter believes that the Department intended insurers that have withdrawn from writing automobile insurance but that no longer "transact" this business to be covered within this exemption. The commenter believes however that it would not fall within the strict reading of the exemption. The commenter thus suggested that the language be amended to include those insurers who "transact or have transacted" personal private passenger automobile insurance business in New Jersey and who

have withdrawn from this line of business pursuant to a plan of orderly withdrawal.

Another commenter stated that insurers who seek to withdraw from the State and who have filed a formal notice to withdraw and plan to withdraw should be exempted from obligations under the PAIP. The commenter stated that these insurers do not seek to avail themselves of the privilege of doing business in this State. Further, the commenter believes that assigning policies to withdrawing insurers would exacerbate rather than minimize adverse effects of withdrawal.

Another commenter conversely suggested that the rules be clarified to specifically not exempt insurers who withdraw or petition for withdrawal. The commenter believes that those insurers should receive assignments under the PAIP, and that to do otherwise would impose an unfair financial burden on all other insurers who are required to participate in the PAIP.

RESPONSE: The Department initially notes that, as stated previously, N.J.A.C. 11:3-2.4 will not be adopted at this time but will be reproposed to address commenters' concerns noted previously. The Department, however, anticipates that the reproposed exemption provision as it relates to withdrawing insurers will remain unchanged from that originally proposed.

First, the Department does not believe that any change is necessary to address the case of an insurer that has already withdrawn and is no longer authorized to transact private passenger automobile insurance in this State. The rules apply to insurers admitted to transact private passenger automobile insurance in this State. N.J.A.C. 11:3-2.1. Therefore, the rules do not apply to an insurer that has completed its withdrawal, surrendered its certificate of authority, and is actually no longer authorized to transact business in this State. It is unnecessary to exempt an insurer from compliance with the rules if the rules do not apply to the insurer in the first instance.

The Department similarly disagrees that the rule should specifically exempt or not exempt insurers that have filed a plan of orderly withdrawal. Adoption of the commenters' suggestions would limit the Commissioner's ability to approve a plan of orderly withdrawal designed to minimize market disruptions, and thus would be inconsistent with N.J.A.C. 11:2-29. The Department notes that while generally insurers seeking to withdraw must continue to fulfill all statutory obligations during the period of withdrawal, nothing in the rules is designed to prohibit an insurer from submitting a plan of orderly withdrawal that provides that it will be exempt from PAIP assignments, nor prohibits the Commissioner from approving such a plan. However, the Department believes that these issues should be addressed in the review and approval process of an insurer's plan of orderly withdrawal on a case by case basis.

COMMENT: One commenter stated that the Commissioner should not have prior approval authority over the development and maintenance of a statistical plan and manual as is provided under N.J.A.C. 11:3-2.6(a)10. The commenter stated that this is the responsibility of the governing committee with the input of the Commissioner as a member of that committee.

RESPONSE: N.J.S.A. 17:29A-5 provides the Commissioner with general authority over statistical plans; N.J.A.C. 11:3-2.6(a)10 merely references this statutory authority. Adoption of the commenter's suggestion would essentially preclude the establishment of a separate statistical plan for the PAIP since statistical plans must be approved by the Commissioner.

COMMENT: One commenter stated that it is critically important that rates in the PAIP be adequate and therefore the rules and plan of operation should specifically require that rates be actuarially sound and self-sustaining. The commenter suggested that the rules incorporate language in N.J.S.A. 17:30E-13(e) which provides, "the Commissioner shall direct the board to prepare, adopt and file with the Commissioner rates which are based upon past and prospective loss experience of the risks underwritten by the Association and the expenses attendant thereto, and which maintain the Association on a self-sustaining basis."

The commenter further stated that the rules should clarify that no rate cap exists. The commenter stated that when the FAIR Act was first introduced, it provided that assigned risk rates would be capped between 160 and 165 percent of the voluntary market rates. The commenter stated that during debate of the FAIR Act and during the litigation challenging its facial constitutionality, the Commissioner and several legislators "disclaimed" the rate cap.

RESPONSE: The Department believes that N.J.A.C. 11:3-2.9(a) adequately provides for the establishment of PAIP rates consistent with the statutory standard. The Department further notes that neither the FAIR Act as introduced or as adopted, nor these rules provide that assigned risk rates are capped between 160 and 165 percent of the voluntary market rates.

COMMENT: One commenter noted that N.J.A.C. 11:3-2.11(j) authorizes an insurer or other entity to perform certain duties of the participating insurer (to be known as a LAD servicing carrier) in accordance with requirements established by regulation by the Commissioner. The commenter suggested that this requirement be revised to provide that the requirements will be established by the governing committee.

RESPONSE: The Department has separately proposed rules regarding LAD servicing carriers (see 24 N.J.R. 519(a) and adoption published elsewhere in this issue of the New Jersey Register). N.J.A.C. 11:3-2.11(j) provides a cross-reference to these proposed rules. The Department believes that the proposed rules regarding LAD servicing carriers are necessary for proper regulatory oversight, and that the reference in N.J.A.C. 11:3-2.11(j) is consistent with the pending rule when adopted. The appointment of LAD servicing carriers authorizes an insurer to delegate certain duties, such as underwriting and claims processing, to other insurers and entities other than insurers. The actions of these entities, particularly in the area of underwriting, may have a substantial impact upon the financial condition of the insurer. Further, an insured who purchases a policy from the insurer has contracted with that insurer for services, and is not aware that many of the services to be performed by the insurer will actually be performed by some other entity. The Department believes that there are significant differences between LAD carriers and LAD servicing carriers, and disagrees that the utilization of LAD servicing carriers should be regulated solely by the governing committee.

COMMENT: One commenter stated that N.J.A.C. 11:3-2.7(c) be revised to clarify that the option of offering medical expense coverage above $250,000 as permitted by N.J.S.A. 39:6A-10 is not required to be offered nor will it be offered by the PAIP. The commenter stated that it does not offer additional PIP benefits.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined that no change is required. As the commenter notes, N.J.S.A. 39:6A-10 does not require that excess PIP benefits be offered by insurers in the voluntary market. These rules merely provide that the PAIP shall offer additional limits of PIP coverage required to be offered pursuant to N.J.S.A. 39:6A-10. The Department does not believe it appropriate to make any further revision as it would only serve to limit the ability of the PAIP to offer such coverage as contained in its rating system approved by the Commissioner.

COMMENT: One commenter stated that N.J.A.C. 11:3-2.11(e) appears to contain a typographical error in that "insureds" should read "insurers."

RESPONSE: This Department agrees. This change has been made upon adoption.

COMMENT: One commenter suggested that N.J.A.C. 11:3-2.9, which provides for the filing of rates and forms to be used by insurers writing coverage through the PAIP, be amended to afford those insurers the right to participate in any such filing. The commenter stated that insurers writing through the PAIP will be directly and substantially impacted by the outcome of any proceeding to determine the rates and forms which may be utilized for PAIP business.

RESPONSE: The Department believes that it would be impractical and unwieldly to provide for public participation in the PAIP rate filing process. The Department notes that the PAIP governing committee is made up of representatives of insurer, producer and consumer groups. Further, N.J.A.C. 11:3-2.9 provides that review of rate filings shall be pursuant to N.J.S.A. 17:29A-1 et seq. Should a hearing be required, N.J.A.C. 1:1-16, which governs the intervention of parties in contested cases, would apply.

COMMENT: One commenter suggested that insurers be provided a copy of the plan of operation for review and the opportunity to submit comments on the provisions contained therein.

RESPONSE: The Department believes that providing for public participation in the development of the PAIP plan of operation would be unwieldly and time consuming, and could impede the ability of the PAIP to become operational within the statutory deadline. If insurers are provided such an opportunity, all interested parties (the general public, consumer groups, producers, etc.) would have to be afforded the same opportunity. The Department also notes that the governing committee already includes representatives from insurer, producer and consumer groups. If all interested parties were permitted to review and

comment on the plan of operation prior to submission, the resulting delays and restrictions on flexibility could unduly hamper the ability of the PAIP to function. Finally, the Department notes that it has historically not provided such review and comment by interested parties regarding other statutorily created entities (for example, the CAIP and the New Jersey Property-Liability Insurance Guaranty Association).

COMMENT: One commenter suggested that the rules provide for a credit plan similar to that provided in New York, except rather than making credits dependent upon market share penetration, credits should be dependent upon the rate adequacy for the territory (that is, the greater the territorial rate inadequacy caused by the restrictions imposed by law, the greater the need to provide additional credits to an insurer that writes risks in that territory).

RESPONSE: N.J.S.A. 17:29D-1f, as reflected in N.J.A.C. 11:3-2.11(a)4, currently provides a "two for one credit" for risks in designated urban territories. The Department believes that this credit program is adequate.

COMMENT: One commenter stated that since rates are theoretically self-supporting for the PAIP, if any shortfall occurs because of an inadequacy or statutory cap, the commenter believes that such shortfall should be captured in an insurer's voluntary rates.

RESPONSE: This comment addresses ratemaking in the voluntary market. Regulations governing the establishment of voluntary market personal private passenger automobile rates are set forth at N.J.A.C. 11:3-16. These rules are not intended to revise or affect application of those rules.

COMMENT: Several commenters objected to the limitation of payment of physical damage claims to $30,000 under N.J.A.C. 11:3-2.7(d)1. The commenters stated that since N.J.S.A. 17:29D-1 and the rules require that coverage for vehicles with a value of over $25,000 be experienced rated, insurers will be able to collect premium commensurate with the risk. The commenters therefore believe that the $30,000 limitation is unrealistic and inappropriate.

Another commenter specifically stated that the proposed limit of $30,000 for physical damage coverages to the "maximum loss payable" is confusing and will cause problems for both the consumer and producer. The commenter stated that when there are high value vehicles, the producer assists the consumer in procuring excess coverage through the surplus lines market. Utilizing "actual cash value" and "maximum loss payable" would make it difficult to determine when excess coverage is needed. The commenter stated that neither the producer nor the coonsumer is in a position to determine the actual cash value of the vehicle. Traditional determinations are through the symbol and age group of the vehicle. The commenter therefore recommended that for both statistical purposes and to assure that the consumer is not adversely affected, traditional valuation be utilized and that vehicles with a cost new of up to $45,000 be allowed (or the equivalent symbol for cost new).

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The $30,000 limitation is based on the most recent "exportable list" promulgated pursuant to N.J.S.A. 17:22-6.43. The current exportable list is premised upon a finding that physical damage coverage for automobiles with an actual cash value over $30,000 is not generally available in the admitted market. The Department, therefore, believes that it is reasonable to limit the maximum amount of coverage in the PAIP to that generally available in the admitted market.

The Department also believes it appropriate and reasonable to limit physical damage coverage based on the "maximum loss payable," rather than "cost new," as this will ensure that all applicants may obtain a basic level of physical damage coverage through the PAIP. The Department further notes that this is consistent with the assigned risk plan in New York. The Department does not believe that this should pose a burden on the producer as the issue of excess coverage will only arise in the case of older, high-priced automobiles. Further, there are numerous publications that provide the value of automobiles by model year. Tying the provision of physical damage coverage to an actual cost new of up to $45,000, as the commenter suggests, would actually preclude the provision of coverage to any individuals seeking to insure a vehicle with a high "cost-new," regardless of its current value (for example, an applicant with a 1985 vehicle with a cost-new of $50,000, but which is worth only $25,000 at time of application to PAIP would be precluded from obtaining any physical damage coverage). The Department, therefore, believes that these provisions are reasonable, appropriate, provide flexibility to consumers and should not impose any undue burdens on producers or consumers.

COMMENT: One commenter objected to the establishment of an assigned risk plan in that it opposed any reorganization that would increase rates to pay for high risk drivers and make up the deficit of the MTF.

RESPONSE: N.J.S.A. 17:29D-1 requires that the Department establish an assigned risk plan. Nothing in these rules require increased rates in the voluntary market, nor do they address or affect the MTF.

Summary of Agency-Initiated Changes:

N.J.A.C. 11:3-2.11(a)5 is revised to add the phrase "or a combined single limit of $100,000" at the end of the paragraph to ensure consistency with N.J.A.C. 11:3-2.7(b), which requires the PAIP to offer both split and combined limits.

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

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

11:3-2.1 Purpose and scope

(a) This subchapter establishes a plan pursuant to N.J.S.A. 17:29D-1 for the providing and apportionment of personal private passenger automobile insurance coverage for automobiles which are owned or operated by qualified applicants.

(b) The purposes of this subchapter are:

1. To provide the coverages described herein, subject to the conditions stated;

2. To establish a procedure for the equitable distribution of risks assigned to insurance companies; and

3. To preserve to the public the benefits of price competition by encouraging maximum use of the voluntary private insurance system.

(c) The provisions of this subchapter shall apply to all insurers admitted to transact private passenger automobile insurance in this State and all qualified applicants for automobile insurance through the PAIP, except as otherwise provided in this subchapter.

11:3-2.2 Definitions

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

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or camper type vehicle used for recreational purposes, owned by an individual or *[by a husband and wife]* ***jointly by individuals*** who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching; and solely for the purpose of this plan, a motorcycle as defined in N.J.S.A. 39:1-1. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets this definition, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of automobiles, including, but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance, and uninsured and underinsured motorist insurance.

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

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person or persons, corporation, association, partnership, company, or other legal entity authorized to transact the business of private passenger automobile insurance in this State, except any residual market mechanism created by or pursuant to statute.

"LAD carrier" means a limited assignment distribution carrier which is a participating insurer which agrees to accept the assign-

ments of another insurer pursuant to this subchapter and procedures set forth in the plan of operation.

"LAD servicing carrier" means a limited assignment distribution servicing carrier which is an insurer or other qualified entity appointed by a participating insurer in accordance with requirements established by regulation by the Commissioner to perform certain duties, such as underwriting and claims processing, but which shall not assume any of the risk of the participating insurer.

"PAIP" means the Personal Automobile Insurance Plan established pursuant to this subchapter.

"Personal private passenger automobile insurance" means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or *[by a husband and wife]* ***jointly by individuals who are residents of the same household***, and used for personal, family, or household needs.

11:3-2.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of personal private passenger automobile insurance for qualified applicants to be known as the New Jersey Personal Automobile Insurance Plan, hereafter referred to as "PAIP."

(b) The PAIP shall be administered by a governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the PAIP shall be located within the State of New Jersey.

11:3-2.4 *[Exemptions]* ***(Reserved)***

*[(a) Every insurer shall participate in the PAIP to the extent required by this subchapter and the plan of operation.

(b) The requirements of this subchapter shall not apply to the following:

1. Insurers that have not issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983;

2. Insurers that have issued or renewed policies of private passenger automobile insurance in New Jersey since December 31, 1983, only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1 et seq.;

3. Insurers with less than 1,000 private passenger automobile in-force exposures as of December 31, 1983 and as of September 30, 1988. An insurer authorized to transact private passenger automobile insurance after September 30, 1988 shall be exempt from this subchapter until such time as the insurer has 1,000 or more private passenger automobile in-force exposures;

4. Insurers transacting personal private passenger automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent provided by the terms of the approved plan of orderly withdrawal; or

5. Insurers transacting private passenger automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-23 and 24, but only to the extent provided by the terms of the order.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of private passenger automobiles (for example, mobile homes, recreational vehicles or antique automobiles) shall participate in the PAIP, but only for the particular types of private passenger automobiles currently being insured.

(d) Insurers identified within the provisions of (b) or (c) above shall comply with the following:

1. Such insurers shall file with the Department no later than 60 days from the effective date of this rule a certified statement containing the following information:

i. The insurer's name, including the NAIC group number;

ii. A statement that the insurer is not required to participate in the PAIP or receive assignments through the PAIP;

iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with this subchapter;

iv. The particular provision of this rule under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer's information, knowledge and belief, based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the Department at the following address:

ARM Unit
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325]*

11:3-2.5 Governing committee

(a) The PAIP shall be administered by a governing committee of 14 members.

1. Eight members shall be salaried employees of an insurer which is a participant in PAIP.

2. Three members shall be licensed producers.

3. Two members shall be public representatives who are knowledgeable about automobile insurance matters but who are not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner shall be an ex-officio, non-voting member of the committee. The Commissioner may designate an alternate.

(b) The following organizations shall each nominate two members to represent participants of PAIP:

1. The Alliance of American Insurers;

2. The American Insurance Association; and

3. The National Association of Independent Insurers.

(c) Insurers which are not members of the organizations in (b) above shall nominate two members to represent participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;

2. Insurance Brokers Association of New Jersey; and

3. Professional Insurance Agents of New Jersey.

(e) All members shall be appointed by the Commissioner *[and]* ***. The members of the initial governing committee appointed pursuant to this subchapter shall serve for two years or until a successor is appointed. Thereafter, all members*** shall serve for one year or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(f) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(g) The governing committee shall have the power and duty to:

1. Develop and submit for approval to the Commissioner:

i. A plan of operation;

ii. A rating system, including rates, rules and forms; and

iii. A plan for a producer certification program, which may not exclude those producers with no affiliation with an insurer.

2. Appoint, conditionally appoint or terminate:

i. A PAIP manager, subject to approval by the Commissioner, which shall be located in this State, to be responsible for the conduct and administrative affairs of the PAIP; and

ii. Other employees, professionals, and contractors required to administer the PAIP.

3. Enter into contracts as are necessary or proper to carry out the provisions of this subchapter;

4. Sue or be sued in the name of the PAIP, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members. A judgment against the PAIP shall not create any direct liability against the governing committee or its individual members, or the individual participating members of the PAIP. The PAIP shall not be liable for claims made on or pursuant to individual policies issued through the PAIP;

5. Budget expenses, levy assessments, and disburse funds;

6. Investigate complaints and hear appeals from applicants, insureds, producers, LAD carriers, LAD servicing carriers or insurers about any matter pertaining to the proper administration of the PAIP;

7. Arrange for the independent audit of the PAIP each year;
8. Furnish all insurers with:
i. An annual written operations report;
ii. The approved annual budget upon request;
iii. A copy of the annual audit upon request;
iv. A copy of the plan of operation, and all amendments;
v. A copy of all policy forms, rates, rules and manuals upon request; and
vi. A copy of the minutes from all meetings upon request;
9. Audit the records of any insurer relating to the subject matter of PAIP and establish such policies, records, books of account, documents and related material which shall be maintained for the proper administration of PAIP;
10. Indemnify each member of the governing committee and PAIP employees for any and all claims, suits, costs of investigations, cost of defense, and settlements or judgments against them on account of an act or omission in the scope of the member's duties or employee's employment. The PAIP shall refuse to indemnify if its determine that the act or failure to act was due to actual fraud, willful misconduct or actual malice;
11. Appoint from among its members ***or from qualified nonmembers*** appropriate legal, actuarial, claims, and other committees as necessary to provide technical assistance in the operation of the PAIP, policy and other contract design, and any other function within the authority of the PAIP;
i. The Commissioner may serve as an ex-officio, non-voting member of any committee established pursuant to this section. The Commissioner may designate an alternate; and
12. Perform such other functions as may be necessary and proper to administer PAIP in accordance with this subchapter and the approved plan of operation.

11:3-2.6 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient provision of personal private passenger automobile insurance to qualified applicants. The plan of operation shall provide for, among other matters:
1. The internal organization and proceedings of the governing committee;
2. Standards and procedures for:
i. The appointment, compensation, and termination of producers, the PAIP manager, and other employees, professionals and contractors required to administer the PAIP;
ii. The appointment, compensation, and termination by insurers of LAD carriers and LAD servicing carriers (consistent with any requirements established by regulation by the Commissioner);
3. Performance standards for insurers, producers, LAD carriers, LAD servicing carriers, the PAIP manager, and other employees, professionals and contractors required to administer the PAIP;
4. A producer certification program, which may not exclude producers with no affiliation with a voluntary market insurer;
5. The extent of coverage to be offered by PAIP to qualified applicants;
6. Procedures to apply for coverage;
7. Commissions to be paid producers;
8. Procedures for cancellation or the nonrenewal of policies;
9. Methods and means for the collection, investment and disbursement of funds;
10. Development and maintenance of a statistical plan and manuals incorporating that plan, which shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation; and
11. Such other provisions as are deemed necessary by the governing committee for the operation of the PAIP.

(b) The governing committee shall, by *[March]* ***May*** 1, 1992, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. The governing committee may propose an amendment to the plan of operation at any time.

(c) The proposed plan and any amendments shall be submitted to the Commissioner for his or her review and approval. If approved, the Commissioner shall certify approval to the governing committee.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment, he or she shall return same to the governing committee with a statement that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation by *[March]* ***May*** 1, 1992, or a new plan which is acceptable to the Commissioner within 30 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee.

3. The Commissioner may review the plan of operation at any time and may propose amendments to the governing committee. If the governing committee does not adopt amendments acceptable to the Commissioner within 30 days, the Commission may certify amendments and their effective date to the governing committee. For good cause shown, the Commissioner may certify proposed amendments two days after copies of the proposal are provided to the governing committee.

11:3-2.7 Coverage

(a) PAIP shall provide to qualified applicants bodily injury liability, property damage liability, personal injury protection, uninsured/underinsured motorists and physical damage coverages at the minimum levels required by law, including all options related thereto.

(b) PAIP shall provide a variety of increased limits for the above coverages up to the following:

1. $250,000 per person/$500,000 per accident for bodily injury liability coverage, and $100,000 for property damage liability coverage, or a combined single limit of $500,000 for bodily injury liability and property damage liability coverage;

2. $250,000 per person/$500,000 per accident for uninsured/underinsured motorists bodily injury liability coverage and $100,000 for uninsured/underinsured motorists property damage liability coverage, or a combined single limit of $500,000 for uninsured/underinsured bodily injury liability and property damage liability coverages.

(c) The PAIP shall provide additional personal injury protection coverages as set forth in N.J.S.A. 39:6A-10.

(d) The PAIP shall provide physical damage coverages with no less than the minimum deductibles required pursuant to N.J.S.A. 17:29A-39. PAIP shall offer higher deductibles as provided by N.J.A.C. 11:3-13.3.

1. All physical damage coverages shall be on an "actual cash value" basis, less deductible, subject to a maximum loss payable of $30,000***, or such amount at which physical damage coverage may be placed in the surplus lines market as set forth on the exportable list promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43***.

2. For purposes of this section, "actual cash value" means the replacement cost of the automobile, less physical depreciation.

11:3-2.8 Eligibility

(a) The PAIP shall not provide coverage to an eligible person as defined in N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.

(b) PAIP shall provide coverage to all qualified applicants. For purposes of this subchapter, a "qualified applicant" means:

1. A person who is not an "eligible person" as defined in N.J.A.C. 11:3-34.2; and

2. A person domiciled in New Jersey, who is an owner of an automobile registered and principally garaged in this State or will be registered and principally garaged in this State within 60 days.

(c) "Qualified applicant" shall also include:

1. A member of the United States military forces, if otherwise eligible for insurance coverage insured by the PAIP, with respect to an automobile if, at the time application is made, the applicant is either a nonresident who is stationed in this State, whose automobile is registered in another State and garaged in this State; or a resident who is stationed in another state, whose automobile is registered in this State and garaged in another state; and

2. A resident student attending a school in another state who holds a valid New Jersey driver's license, whose automobile is registered in this State and garaged in another state.

(d) No person shall, however, be deemed a qualified applicant, if the principal operator of the automobile to be insured does not

hold a driver's license which is valid in this State; or if a regular operator of the automobile other than the principal operator does not hold such a license; or if timely payment of premium is not tendered; or if the principal operator of the automobile does not furnish the information necessary to effect insurance; or if such person rents or leases automobiles to others which are used for commercial purposes.

(e) As a prerequisite to consideration for assignment under the PAIP, the applicant must certify, in the prescribed application form approved by the Commissioner, that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in the State and that he or she is a qualified applicant as set forth in (b), (c) and (d) above. An applicant so certifying shall be considered for assignment upon making application in good faith to the PAIP. An application shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form approved by the Commissioner.

(f) The governing committee shall establish procedures in the plan of operation with respect to documentation to be provided by the applicant and producer showing the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;
2. Reasons for termination and effective date of termination;
3. Claim history for the preceding three years;
4. Driving history for each operator; and
5. Copies of vehicle registration(s).

(g) The governing committee shall establish procedures for the cancellation or nonrenewal of policies to persons who are not or are no longer qualified applicants.

11:3-2.9 Rates and policy forms

(a) The governing committee shall file for prior approval by the Commissioner, a rating system including rates, rules and forms which shall be used by insurers writing risks through the PAIP. Proceedings to review rate filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall reflect the experience of the risks insured by the PAIP and shall not be excessive, inadequate or unfairly discriminatory.

1. Rates established for liability insurance coverages with limits in excess of $50,000 per person and $100,000 per accident for bodily injury or death and $25,000 for property damage, or in lieu thereof, $100,000 for a combined single limit of liability, shall be experience rated with respect to the rate applicable to the coverage in excess of those limits;

2. Rates established for collision and comprehensive coverages on automobiles with a value of $25,000 or more at the time those coverages are issued or renewed shall be experience rated, and for automobiles with a value of more than $15,000, but less than $25,000 at the time those coverages are issued or renewed, that part of the rate applicable to the value between $15,000 and $25,000 shall be experience rated.

(b) For purposes of this subchapter, "experience rated" means that rates for liability coverages with limits in excess of the amount specified in (a)1 above, or for collision and comprehensive coverages for automobiles with a value over the amount specified in (a)2 above, shall reflect the experience of those risks insured by the PAIP with liability coverages with limits, and collision and comprehensive coverages on automobiles valued over, the amounts specified in (a)1 and (a)2 above. "Experience rated" shall not be construed to mean retrospectively rated.

11:3-2.10 Installment payment option

(a) The PAIP shall provide for an installment premium payment option in accordance with procedures established by the governing committee in the plan of operation. With respect to the installment premium payment option, the plan of operation shall specify:

1. The minimum initial deposit required, which shall be no more than 30 percent of the estimated total premium;

2. The schedule for the payment of premiums on an installment basis which shall provide for installment payments over a period of not less than nine months;

3. Installment charges;

4. The minimum "per installment" amounts; and

5. Any other procedures deemed necessary by the governing committee.

(b) Additional premium ***in excess of an amount set by the governing committee in the plan of operation*** resulting from changes to the policy shall be spread over the remaining installments, if any, or may be billed immediately as a separate transaction.

(c) Return premium resulting from changes to the policy shall be used to reduce the outstanding balance. If the outstanding balance is eliminated, any amount remaining ***in excess of an amount set by the governing committee in the plan of operation*** shall be returned *[immediately]* ***within 30 days***. If an outstanding balance remains, the number and amounts of the remaining installments shall be adjusted accordingly, except when the return amount is less than $20.00, in which event it may be treated as a separate transaction.

11:3-2.11 Determination and fulfillment of quotas

(a) The governing committee shall establish procedures in the plan of operation to distribute risks eligible for coverage to insurers on an equitable basis based on the proportion that the insurer's share of the voluntary market for personal private automobile insurance (including the insurer's apportionment share for the depopulation of the Market Transition Facility pursuant to N.J.S.A. 17:33B-11c(5)) relates to the Statewide total of the voluntary market for personal private passenger automobile insurance in the State.

1. The PAIP shall not provide insurance coverage for more than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State.

2. The PAIP shall cease acceptance of applications for new policies upon certification by the Commissioner that the Plan has reached or exceeded 10 percent of the private passenger automobile non-fleet exposures.

3. The PAIP shall resume acceptance of applications for new policies upon certification by the Commissioner that the PAIP is insuring less than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile market in the State.

4. Each insurer shall receive credit against its respective portion of assigned risks for private passenger automobile risks written voluntarily in the State that are garaged in those urban territories designated by the Commissioner. Such credit shall be given in the amount of one assigned risk credit for every two voluntary risks written in those designated territories. Each insurer shall also receive one assigned risk credit for each risk which is not an eligible person written in accordance with the insurer's approved rating system, regardless of the territory in which the risk is located.

5. No insurer whose surplus as regards policyholders is less than $1,500,000, as reported on page three of the most recent statutory annual statement, shall be assigned a risk requesting or required by law to carry limits of liability in excess of 50/100/10 ***or in excess of a combined single limit of $100,000***.

(b) An insurer that issues only policies that provide physical damage coverage shall not be subject to assignments from the PAIP, but shall be entitled or obligated, as the case may be, to receive or pay a cash settlement of its obligation, in lieu of receiving assignments, for the current year, in accordance with procedures established by the governing committee in the plan of operation.

(c) Each insurer or statistical agencies designated by such insurers shall report to the PAIP manager all data necessary to comply with the distribution procedures. Each insurer shall permit its statistical agent to release such data to the PAIP manager and shall permit its statistical agent to furnish the PAIP manager with statements of its PAIP experience.

(d) There shall be no exceptions to the type or class of risks assigned to an insurer other than as provided in this subchapter nor shall there be any agreement with an insurer to refrain from assigning risks in any territory or area of the State.

(e) The PAIP shall not suspend assignments to an insurer for any period of time, for any reason, other than a suspension of insurer

obligations granted by the Commissioner pursuant to N.J.S.A. 17:33B-23, 17:33B-24 and N.J.A.C. 11:2-35. The PAIP shall promptly notify all *[insureds]* ***insurers*** of such action.

(f) If an insurer is ordered or permitted to discontinue writing automobile insurance in this State in accordance with a plan of orderly withdrawal approved pursuant to N.J.A.C. 11:2-29, or other Order of the Commissioner, or Order by a court of competent jurisdiction, the insurer's obligations to pay assessments, receive assignments and run-off existing business shall be pursuant to such Order of the Commissioner or Order of a court of competent jurisdiction.

(g) In the event an insurer is merged with another insurer, there is a consolidation of insurers, or an insurer acquires another insurer's book of business, the continuing insurer shall receive the assignments and assessments of the insurer merged, consolidated, or acquired until the quota of such merged, consolidated, or acquired insurer, as established by its writings prior to such merger, consolidation, or acquisition has been filled; provided, however, the continuing insurer may be relieved from such obligations if another insurer has agreed, in a manner satisfactory to the governing committee, to assume such obligations.

(h) Groups of insurers under the same ownership and management shall be treated as a single insurer. Groups of insurers under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(i) The governing committee shall establish procedures in the plan of operation permitting an insurer by mutual agreement to transfer its obligations to accept assignments to another insurer (to be known as a LAD carrier). All agreements and LAD carriers shall be separately approved by the Commissioner. With respect to the transfer of an insurer's obligations to accept assignments to a LAD carrier, the plan shall address the following:

1. Eligibility criteria for an insurer to act as a LAD carrier and accept additional assignments;
2. The maximum number of additional assignments a LAD carrier may assume;
3. Minimum provisions for contracts between insurers and LAD carriers, including the minimum time duration for such contracts;
4. The parameters for fees to be paid to LAD carriers by the participating insurer for the assumption of the insurer's assigned risk quota;
5. Procedures by which the allocation of assignments to LAD carriers are adjusted to reflect additional assignments as a result of entering into a contract to assume additional assigned risks; and
6. Any other procedures deemed necessary to provide for a LAD carrier distribution system.

(j) An insurer which seeks to appoint an insurer or other entity to perform certain duties of the participating insurer, such as underwriting and claims processing, but which shall not assume any of the risk of the participating insurer (to be known as a LAD servicing carrier) may appoint such an insurer or entity in accordance with requirements established by regulation by the Commissioner.

11:3-2.12 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, LAD carrier, LAD servicing carrier, or insurer may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.
2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.
3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of 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.

11:3-2.13 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Limited Assignment Distribution Servicing Carriers

Adopted New Rules: N.J.A.C. 11:3-3

Adopted Amendment: N.J.A.C. 11:1-32.4

Proposed: February 18, 1992 at 24 N.J.R. 519(a).
Adopted: August 28, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: August 28, 1992 as R.1992 d.371, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8; 17:1-8.1; 17:1C-6(e); 17:23-1 et seq.; and 17:29D-1.

Effective Date: September 21, 1992.
Expiration Date: January 31, 1996, N.J.A.C. 11:1;
January 4, 1996, N.J.A.C. 11:3.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received eight timely written comments from insurers, a reciprocal insurance exchange and an insurer trade association as follows:

1. Selective Insurance Company of America;
2. Reciprocal Management Corporation (Attorney-in-Fact for New Jersey Citizens United Reciprocal Exchange);
3. Allstate Insurance Company;
4. Motor Club of America Insurance Company;
5. Royal Insurance;
6. The Alliance of American Insurers;
7. New Jersey Manufacturers Insurance Company; and
8. State Farm Mutual Automobile Insurance Company.

COMMENT: One commenter, while recognizing that the Department has an interest in ensuring the proper handling of business undertaken by limited assignment distribution (LAD) servicing carriers, did not believe that servicing carrier contracts should be subject to prior approval by the Commissioner as required by these rules. The commenter believes that this will result in unreasonable delays due to the prior approval process, and that prior approval of a contract with a vendor is excessive regulation. The commenter believes that the Department has other methods through which it may monitor contracts of insurers (for example, financial and market conduct examinations). The commenter also stated that the Department annually receives a loss reserve opinion from an actuary attesting to the adequacy of the insurer's reserves. If the LAD servicing carrier is permitted to set reserves on any of the insurer's business, those reserves would be included with the scope of the loss reserve opinion statement. Finally, the commenter stated that the provisions of the Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1 et seq., may be utilized in those instances where an intercompany arrangement is established to handle assigned risk business. The commenter thus suggested that the Department delete the provision for prior approval of LAD servicing carrier contracts.

The commenter stated, however, that if the Department believes that prior approval is necessary, the rules should apply to all lines of business entrusted to the servicing carrier and not just to personal automobile insurance written through the assigned risk plan.

The commenter alternatively suggested that the Department may require that copies of executed agreements be filed with the Department after the fact so that any provisions which appear troublesome can then be reviewed and discussed with the parties.

RESPONSE: Upon review of the commenter's suggestions, the Department has determined not to change this provision. The appointment of LAD servicing carriers pursuant to these rules authorizes an insurer to delegate certain duties, such as underwriting and claims processing, to other insurers and entities other than insurers. The actions of these entities, particularly in the area of underwriting, may have a substantial

impact upon the financial condition of the insurer. Further, an insured who purchases a policy from the insurer has contracted with that insurer for services, and is not aware that many of the services to be performed by the insurer will actually be performed by some other entity.

The rules, however, do not require prior approval of LAD servicing carrier contracts per se. In order to ensure that there is proper oversight by the insurer of its LAD servicing carrier, the rules specify minimum provisions for contracts between an insurer and its LAD servicing carrier. In order to ensure that that contract between the insurer and the LAD servicing carrier satisfies the requirements set forth in the rules, and that the operations under the contract will not be hazardous to the applicant, insurer, public or policyholders, the rules require that any person applying to act as a LAD servicing carrier submit a copy of the proposed contract(s) between the LAD servicing carrier and the insurer. The Department does not believe that this will result in delays in the processing of applications of persons seeking to act as LAD servicing carriers since review of the proposed contract is encompassed within the application process. If the application is approved and a certificate of registration is issued to the LAD servicing carrier, the insurer may then appoint the LAD servicing carrier and must report such action to the Department. In order to ensure that the contract actually entered into complies with the requirements of the rules, the insurer is also required to submit a copy of the executed contract with a statement of any differences between the contract entered into and the proposed contract originally submitted as part of the application process. The appointment of the LAD servicing carrier takes effect within 60 days after the notification to the Department unless it is disapproved by the Commissioner prior to that date. The Department believes that these procedures are reasonable and are not excessive, arbitrary, capricious or result in excessive delays.

Further, with respect to the comment that any reserves set by the LAD servicing carrier would be included within the scope of the loss reserve opinion statement submitted to the Department, it must be noted that ensuring adequate reserves is just one aspect of the review process. As noted previously, the Department believes that it is necessary and appropriate to ensure that any contracts entered into between the insurer and the LAD servicing carrier conform to all of the requirements set forth in the rules.

The Department also disagrees that the Holding Company Act may be utilized in instances where an inter-company arrangement is established to regulate actions between an insurer and LAD servicing carrier. The Holding Company Act governs only the acquisition of control of domestic insurers by other entities and transactions between affiliates within a holding company. The Holding Company Act is not specifically designed to address the delegation of certain duties to other entities and would not apply to all insurers that appoint LAD servicing carriers.

The Department also disagrees that financial and market conduct examinations may be utilized in lieu of review of proposed servicing carrier contracts. As previously noted, the Department believes it necessary and appropriate to review proposed LAD servicing contracts as part of the application process for a certificate of registration to act as a LAD servicing carrier to ensure that such contracts conform to the requirements of these rules. Similarly, the Department does not believe that it would be appropriate to review the contracts after the fact and then "discuss any troublesome provisions with the parties." These rules set forth guidelines for the delegation of certain duties by insurers to LAD servicing carriers to help ensure that such delegation will not be hazardous to the insurer, its policyholders or the public. The adoption of the commenter's suggestion could result in a situation wherein the contract between the insurer and the LAD servicing carrier fails to comply with the requirements of these rules, or results in the insurer's or LAD servicing carrier's operations being hazardous to the public or the policyholders. The purpose of prior review is to avoid such a circumstance rather than to react to it after the fact.

Finally, with the respect to the comment that the rules should be applied to all lines of business entrusted to the servicing carrier rather than only to private passenger automobile insurance written through the assigned risk plan, the statutory authority for the regulation of LAD servicing carrier arrangements is set forth at N.J.S.A. 17:29D-1, which governs the provision of private passenger automobile insurance. Accordingly, the rules are limited in application to insurers seeking to delegate authority to service private passenger automobile insurance. The rules are changed upon adoption to clarify this intent.

COMMENT: One commenter suggested that the definition of insurer at N.J.A.C. 11:3-3.2 be revised to delete reciprocal insurance exchanges. The commenter stated that reciprocal insurance exchanges are regulated exclusively by N.J.S.A. 17:50-1 et seq. and that the authority for these rules (N.J.S.A. 17:23-1 et seq. and 17:29D-1) do not apply to reciprocal insurance exchanges established pursuant to N.J.S.A. 17:50-1 et seq.

RESPONSE: Upon review of the commenter's concern, the Department has determined not to change this provision. The Department has consistently construed the exemption language in N.J.S.A. 17:50-1 to apply to organizational and initial capitalization and deposit requirements for reciprocal exchanges as well as to those aspects of a reciprocal exchange's operation specifically addressed by N.J.S.A. 17:50-1 et seq. The Department has not construed the statute to exempt a reciprocal insurance exchange from all other requirements imposed on an insurer providing the same coverages, to the extent such other requirements are not inconsistent with N.J.S.A. 17:50-1 et seq.

The Commissioner has the general authority and responsibility to ensure that the operations of a reciprocal exchange, which must be licensed by the Commissioner, are not hazardous to the public or its subscribers. Further, the operations of a reciprocal insurance exchange are not unique in that their operations closely resemble that of a mutual insurer. In fact, the Property-Liability Insurance Guaranty Association (PLIGA) is responsible for the payment of covered claims of a reciprocal if it becomes insolvent. A reciprocal exchange is also required to pay premium taxes in the same manner as insurers. The Department further notes that reciprocal insurance exchanges are members of the New Jersey Personal Automobile Insurance Plan (PAIP) established pursuant to N.J.A.C. 11:3-2. No reciprocal insurance exchange objected to this requirement or submitted comments on those proposed rules. The Department anticipates that the LAD servicing carrier rules will be primarily utilized in connection with assignments of assigned risks under the PAIP. The Department therefore does not believe that it has exceeded its statutory authority by providing a system by which entities that provide automobile insurance and that are required to participate in the assigned risk plan may delegate certain duties to servicing carriers. As noted in the response to the previous comment, the conduct of a LAD servicing carrier may have a substantial impact on the financial condition of the insurer. The claims of insolvent reciprocal insurance exchanges are covered by the PLIGA, which is funded by assessments on member insurers, which is ultimately borne by policyholders. The Department therefore believes it appropriate, necessary, reasonable and supported by statutory authority to ensure that actions of the reciprocal are not hazardous to the public or policyholders of this State by regulating the delegation of certain duties to servicing carriers.

The Department therefore believes that application of these rules to reciprocal exchanges is reasonable, appropriate and consistent with N.J.S.A. 17:50-1 et seq.

COMMENT: One commenter stated that the Department should clarify that these rules do not apply to LAD carriers which are permitted to assume business of member insurers of the PAIP set forth in N.J.A.C. 11:3-2. The commenter additionally stated that the terms of a contractual relationship between an insurer that transfers its obligations under the PAIP to a LAD carrier should not be dictated by the Commissioner. The commenter stated that any LAD carrier system for the PAIP should resemble the LAD carrier programs in other states. The terms of buy-out contracts between the insurer and the LAD carrier should be determined by the contracting parties. In addition, the LAD carrier should assume all responsibilities of the buy-out insurer, including underwriting risks. The commenter believes that the LAD carrier program at most should establish minimum requirements for a LAD carrier eligibility. Finally, the commenter specifically incorporated by reference other comments dated March 4, 1992 regarding proposed N.J.A.C. 11:3-2.

RESPONSE: These rules do not address the appointment of "LAD carriers" by which an insurer that is a member of the PAIP enters into a "buy-out" agreement with another member insurer to assume the other insurer's assignments under the PAIP. The requirements governing the appointment of a LAD carrier to assume an insurer's PAIP business will be provided in the PAIP Plan of Operation as developed in accordance with N.J.A.C. 11:3-2. Finally, to the extent that the commenter incorporates by reference other comments dated March 4, 1992 regarding proposed N.J.A.C. 11:3-2, the Department similarly incorporates all responses to those comments.

COMMENT: One commenter stated that the phrase "LAD carrier" in N.J.A.C. 11:3-3.5(e) should read "LAD servicing carrier."

RESPONSE: The Department agrees. The rules have been changed upon adoption to reflect this clarification. The rules at N.J.A.C. 11:3-3.4(a) are similarly changed as a matter of form.

COMMENT: One commenter stated that N.J.A.C. 11:3-3.3(b)5, which requires persons other than insurers licensed in New Jersey seeking to act as a LAD servicing carrier to submit a plan of operation, including information on staffing levels and activities proposed in this State, apparently requires that the applicant be located in New Jersey. The commenter stated that there are numerous out-of-State servicing carriers that may not qualify as a LAD servicing carrier under the proposed rules. The commenter believes that policyholders are entitled to "the best servicing carrier available regardless of location." The commenter thus suggested that the rule be amended to require that the applicant include information on staffing levels and activities "proposed for handling New Jersey business." The commenter believes that this should adequately address the Department's concern that New Jersey business be properly handled.

RESPONSE: The Department did not intend, nor do the rules require by their terms, that a LAD servicing carrier be located in this State. The Department notes that the plan of operation must detail proposed activities as well as staffing levels in this State. However, in order to clarify the Department's intent, the rules have been changed upon adoption to incorporate the change to N.J.A.C. 11:3-3.3(b)5 suggested by the commenter.

COMMENT: One commenter noted that N.J.A.C. 11:3-3.4(a)11 requires that the contract between the insurer and the LAD servicing carrier specify the rates, rules, policy forms and underwriting guidelines of the insurer to be used by the LAD servicing carrier. The commenter stated that rate and rule filings may change over time. Therefore, the commenter believes that a contract between an insurer and a LAD servicing carrier could be inadvertently deemed void because the contract itself did not incorporate the most current rates, rules and underwriting guidelines used by the insurer. The commenter thus suggested that the provision be amended to require only that the insurer make available rates, rules, policy forms and underwriting guidelines on a current basis to the LAD servicing carrier.

RESPONSE: The Department agrees. For the reasons expressed by the commenter, the rules have been changed upon adoption to reflect this clarification.

COMMENT: One commenter stated that N.J.A.C. 11:3-3.5(d), which provides that any agreement to terminate the contract between the insurer and LAD servicing carrier shall take effect 90 days after the date of the execution of the agreement, is vague. The commenter suggested that the provision be revised to provide that any agreement to terminate shall take effect 90 days after the agreement to terminate is signed and executed.

RESPONSE: The Department believes that N.J.A.C. 11:3-3.5(d) as currently drafted is virtually identical to the proposed language provided by the commenter. The Department therefore believes that no change is required. It must also be noted that while the commenter stated that this provision is vague, it failed to provide a detailed explanation as to why it is vague and why its suggested language is more appropriate.

COMMENT: One commenter stated that the proposed rules impose burdensome oversight responsibilities upon insurers who choose to "pass along" private passenger automobile insurance risks to servicing carriers, and removes incentives for insurers to enter into these agreements. The commenter stated that, traditionally, LAD programs allow insurers to contract between themselves for the assignment of the duty and responsibility for servicing private passenger automobile insurance risks received under an automobile assigned risk plan. Insurers that do not feel capable of managing or handling assigned risk policies on a cost-effective basis have the option of assigning these risks to another insurer who may be better to able handle the servicing of these risks on a cost-effective basis. The commenter stated that the key to the cost saving aspect of LAD programs is the ease by which insurers may enter into contractual arrangements between themselves and effectuate the transfer of the handling of these risks. The commenter believes that these rules make the use of the LAD program more expensive for some insurers than if no LAD program were provided at all under the PAIP. The commenter therefore suggested that the Department reconsider these rules and examine LAD programs in other states.

The commenter noted however that there may be some insurers that prefer to retain some oversight or responsibility for the risks, but use a servicing carrier to perform some or many of the other ministerial functions with regard to servicing policies. The commenter stated that the Department may wish to provide this option for some insurers, but that such requirements should not be universally applied to all potential LAD situations.

RESPONSE: As noted in a response to a previous comment, these rules do not apply to the appointment of a LAD carrier by which a member insurer of the PAIP enters into an agreement with another member insurer to assume its PAIP business. These rules apply only to the appointment of LAD servicing carriers as defined in the rules.

COMMENT: One commenter stated that the Producer Licensing Act (N.J.S.A. 17:22A-1 et seq.) will impact the operation of LAD servicing carriers since LAD servicing carriers' employees will most probably be engaged in activities requiring licensure. The commenter suggested that the Department clarify the applicability of the Producer Licensing Act to LAD servicing carriers in these rules to ensure that prospective applicants are aware of their statutory and regulatory obligation.

RESPONSE: These rules are not intended to impact or modify the requirements of N.J.S.A. 17:22A-1 et seq. or any administrative rules promulgated thereunder. Obligations under N.J.S.A. 17:22A-1 et seq. or any rules promulgated thereunder are not affected by adoption of these rules.

COMMENT: One commenter noted that N.J.A.C. 11:3-3.3(e) provides that a certificate of registration is valid from the date of issuance to June 30 immediately following and may be renewed by submitting required information by June 1 of the following year. The commenter stated however that the termination of a LAD servicing carrier contract does not take effect for 90 days pursuant to N.J.A.C. 11:3-3.5(d). The commenter notes that the 90-day provision provides insurers time to make alternative arrangements to service business. The commenter stated, however, that if the LAD servicing carrier simply decides not to renew on June 1, the insurer would, in effect, have less than 30 days notice to make alternative arrangements to service the business. The commenter therefore suggested that N.J.A.C. 11:3-3.3(f) be amended to require renewal by April 1 of each year, which will provide the insurer 90 days notice that the services of the LAD servicing carrier will no longer be available.

RESPONSE: Upon review of the commenter's concern, the Department has determined that no change is required. The rules set forth minimum contractual provisions between insurers and LAD servicing carriers. Insurers may provide or require other contractual provisions deemed appropriate which are not inconsistent with the rules. Insurers may therefore provide for timely notice of termination for any reason, including the LAD servicing carrier's intention not to renew its certificate, so long as such notice is at least 90 days.

COMMENT: One commenter recommended that the requirements set forth in these rules be extended to carriers participating in similar "servicing" relationships in the voluntary market.

RESPONSE: As indicated in a response to a previous comment, the authority for the regulation of LAD servicing carrier arrangements is set forth at N.J.S.A. 17:29D-1, which pertains to the provision of private passenger automobile insurance. Accordingly, application of the rule is limited to servicing arrangements for private passenger automobile insurance.

COMMENT: One commenter noted that the rules state that a LAD servicing carrier "is a person with whom an insurer enters into a contract to perform certain duties of the insurer, such as underwriting and claims processing, but who does not assume any of the risk of the insurer" (N.J.A.C. 11:3-3.1(a)). The commenter stated that under the rules, an independent claims adjuster who services one claim for an insurer, or an affiliated carrier whose employees may service a PAIP claim or who handle some of the underwriting processing for an insurer, would be considered a LAD servicing carrier. The commenter stated that it is very common for an insurer to use independent claim adjusters, employees and computers of affiliated carriers, or outside computer processing on a regular basis. The commenter stated that under these arrangements the insurer retains control of claims payments and underwriting. The commenter stated that where an insurer cedes control of these functions, a managing general agent-type agreement is executed.

The commenter believes that if the scope of the rules is not narrowed, all independent claims adjusters, affiliated insurers, and some computer services would be required to register as LAD servicing carriers to continue current business relationships. The commenter stated that the registration and renewals fees, as well as the expense of filing and contract supervision requirements, would be burdensome to those outside organizations as well as on the insurers who use these services. The commenter also believes that it would impose additional burdens

on the Department since the Department would be required to process and review these extensive filings thus making it more difficult to focus on true servicing carrier agreements. The commenter does not believe that the Department intended this result.

The commenter thus suggested that the scope of the rules be narrowed to those LAD servicing carriers to whom the insurer has ceded control over underwriting or claims. In order to effectuate this goal, the commenter suggested that N.J.A.C. 11:3-3.1(a) be amended to read: "A limited assignment distribution servicing carrier under these rules is a person with whom an insurer enters into a contract to perform certain duties of the insurer, such as underwriting and claims processing **and to whom the insurer cedes control over such contracted functions,** but who does not assume any of the risk of the insurer" (boldface language to be added).

RESPONSE: The Department did not intend to apply these rules to those situations in which the insurer enters into a contract with an entity to perform only certain services related to policy administration or claims administration (such as data processing, loss appraisal or policy coverage verification). The Department intended that the rules apply where the insurer delegated the authority to another entity to perform substantially **all** functions related to policy administration or claims administration. The Department believes however that the language suggested by the commenter may be confusing as no definition of "control" is provided. The Department nevertheless agrees that the rules should be clarified to reflect the Department's intent. Accordingly, N.J.A.C. 11:3-3.1 is changed upon adoption to provide that a LAD servicing carrier is a person or persons to whom an insurer delegates the authority to perform substantially all functions related to policy administration or claims administration for any policy. The rules shall not apply where the insurer enters into a contract with another entity to perform only certain aspects of policy or claims administration (such as data processing, loss appraisal and policy coverage verification). Finally, the rules are changed upon adoption to clarify that they do not apply to licensed affiliated insurers of the insurer since it is customary in holding company arrangements to have employees of one affiliate perform duties for other members of the group. The Department believes that adequate regulatory oversight is maintained since the Department retains oversight authority over the licensed affiliated insurer performing duties on behalf of another insurer within the group.

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

11:1-32.4 Fees; general

(a) (No change.)

(b) The following fees shall be paid for services provided by the Commissioner in addition to those set forth in (a) above as follows:

1.-11. (No change.)

12. Processing an application for the issuance of a Certificate of Registration pursuant to N.J.A.C. 11:3-3—$1,000; processing an application of renewal of Certificate of Registration—$250.00.

SUBCHAPTER 3. LIMITED ASSIGNMENT DISTRIBUTION SERVICING CARRIERS

11:3-3.1 Purpose and scope

(a) The purpose of this subchapter is to set forth application and procedural requirements for insurers or other qualified entities which seek to become a limited assignment distribution servicing carrier and all insurers which seek to appoint a limited assignment distribution servicing carrier as referenced in N.J.S.A. 17:29D-1c. A limited assignment distribution servicing carrier under these rules is a person *[with]* ***or persons to*** whom an insurer *[enters into a contract]* ***delegates the authority*** to perform *[certain duties]* ***substantially all of the functions related to policy administration or claims administration for any policy of private passenger automobile insurance*** of the insurer*[, such as underwriting and claims processing]*, but who does not assume any of the risk of the insurer. ***A person with whom an insurer contracts to perform only certain aspects of policy administration or claims administration (including, but not limited to, data processing, loss appraisal, policy coverage verification and rate pursuit) shall not be deemed to be a limited assignment distribution servicing carrier for purposes of these rules.***

(b) This subchapter applies to all insurers and other qualified entities which seek to become a limited assignment distribution servicing carrier and to all insurers which seek to appoint a limited assignment distribution servicing carrier. ***These rules shall not apply to any arrangements entered into between licensed affiliated insurers.***

(c) The Commissioner shall, *[within two years from the effective date of this subchapter]* ***by September 21, 1994***, review and reevaluate the feasibility of maintaining the system established herein, and make any revisions that he or she may deem necessary.

11:3-3.2 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Insurer" means an entity authorized to transact the business of property and casualty insurance in this State pursuant to N.J.S.A. 17:17-1 et seq., N.J.S.A. 17:32-1 et seq., or N.J.S.A. 17:50-1 et seq.

"LAD servicing carrier" means an insurer or other qualified entity registered as a limited assignment distribution servicing carrier in this State pursuant to this subchapter.

"Person" means any individual, insurer, corporation, association, organization, society, partnership, syndicate, trust, company or other legal entity.

11:3-3.3 General requirements; registration

(a) No person shall act as, offer to act as, or hold itself out to be a LAD servicing carrier in this State unless registered as a LAD servicing carrier pursuant to the subchapter.

(b) Persons, other than insurers licensed in this State, seeking to act as a LAD servicing carrier in this State shall make an application to the Commissioner for a Certificate of Registration. The application shall be on a form approved by the Commissioner and include or be accompanied by the following information and documents:

1. All basic organizational documents of the applicant, including articles of incorporation, articles of association, partnership agreements, trade name certificate, trust agreement, shareholder agreement, other applicable documents, and all amendments to such documents;

2. The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

3. The names, addresses, official positions and professional qualifications of the individuals who are responsible for the conduct of affairs of the applicant; including the following:

i. All members of the board of directors, board of trustees, executive committee or other governing board or committee;

ii. The principal officers, in the case of a corporation, or the partners or members, in the case of a partnership or association;

iii. Shareholders holding directly or indirectly 10 percent or more of the voting securities of the applicant; and

iv. Any other person who exercises control or influence over the affairs of the applicant;

4. Annual financial statements or reports for the two years immediately preceding the date of application audited by a certified public accountant, and such other information as the Commissioner may request in order to review the current financial condition of the applicant;

5. A plan of operation, including information on staffing levels and activities proposed ***for handling business*** in this State. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in various areas including, but not limited to, claims processing, recordkeeping, accounting, underwriting, customer service and producer relations;

6. A copy of the proposed contracts between the LAD servicing carrier and the insurer;

7. The application fee set forth in N.J.A.C. 11:1-32.4(b)12; and

8. Such other information as the Commissioner may request.

(c) An insurer licensed in this State which seeks to obtain a Certificate of Registration shall submit, in lieu of all of the requirements in (b) above, a plan of operation which contains the information set forth in (b)5 above, a copy of the proposed contract as set forth in (b)6 above, and the application fee as set forth in (b)7 above.

(d) Upon a finding that the applicant has satisfied all of the requirements set forth in (b) or (c) above, and that its proposed methods of operation are not such as would render its operation hazardous to the public or policyholders, the Commissioner shall issue a Certificate of Registration to the applicant which shall authorize the applicant to act as a LAD servicing carrier in this State. The Commissioner may refuse to issue a Certificate of Registration if he or she determines that the applicant, or any individual responsible for the conduct of affairs of the applicant, is not competent, trustworthy, financially sound or of good personal and business reputation, or in the case of an insurer, has had an insurance license denied or revoked for cause by any state.

(e) A Certificate of Registration issued pursuant to (d) above shall remain in effect from the date of issuance until June 30 immediately following, and shall be renewed each year prior to June 30, unless surrendered, suspended or revoked by the Commissioner, for so long as the LAD servicing carrier continues in business in this State and remains in compliance with this subchapter and any other applicable laws.

(f) A LAD servicing carrier seeking to renew its certificate shall submit the following information to the Department by June 1 of the year of the expiration of the certificate:

1. A financial statement for the year immediately preceding the date of expiration of the certificate;

2. Any other information that is substantially different from the information provided in the original application or from information provided in the last renewal period; and

3. The renewal fee set forth in N.J.A.C. 11:1-32.4(b)12.

(g) A LAD servicing carrier shall immediately notify the Commissioner of any material change in its ownership, control, plan of operation, contract with the insurer or other fact or circumstance affecting its qualification for a Certificate of Registration in this State.

(h) The Commissioner shall require a LAD servicing carrier to submit a bond or deposit in an amount not less than $250,000, in a form acceptable to the Commissioner.

(i) The Commissioner may require the LAD servicing carrier to maintain an errors and omissions policy in a form and amount acceptable to the Commissioner.

11:3-3.4 LAD servicing carriers; contract provisions

(a) No entity shall act as a LAD ***servicing*** carrier on behalf of an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

1. All insurance charges or premiums collected by a LAD servicing carrier on behalf of an insurer or insurers, and the return of premiums received from that insurer or insurers, shall be immediately remitted to the person or persons entitled to them, or shall be deposited promptly in a fiduciary account established and maintained by the LAD servicing carrier in a Federally or state insured financial institution for each insurer with whom it has contracted. The written contract between the LAD servicing carrier and the insurer shall also provide for the LAD servicing carrier to render, at least quarterly, an accounting to the insurer detailing all transactions performed by the LAD servicing carrier pertaining to the business underwritten by the insurer;

2. If insurance charges or premiums are deposited in fiduciary accounts on behalf of or for one or more insurers, the LAD servicing carrier shall keep records clearly recording the deposits in, and withdrawals from, the separate account for each insurer. The LAD servicing carrier shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to such deposits and withdrawals;

3. The LAD servicing carrier shall not pay any claim by withdrawal from a fiduciary account in which premiums or insurance charges are deposited. Withdrawals from such account shall be made as provided in the contract between the LAD servicing carrier and the insurer. With respect to withdrawals from the fiduciary account, the contract shall address, but not be limited to, the following:

i. Remittance to the insurer for whom the fiduciary account is maintained;

ii. Deposit in an account maintained in the name of the insurer;

iii. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in (a)4 below;

iv. Payment to the LAD servicing carrier of its commissions, fees or charges; and

v. Remittance of return premium to the person or persons entitled to such return premium;

4. All claims paid by the LAD servicing carrier from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of the insurer and as authorized by the insurer;

5. If the contract provides for contingency-based compensation of the LAD servicing carrier (for example, contingent upon savings effected in adjustment, settlement and payment of losses, or upon premiums or charges collected or number of claims paid or processed), the contract shall so specify. The Commissioner may disapprove the contract based on such provision if he or she believes that such method of compensation may render the insurer's and/or LAD servicing carrier's methods of operation hazardous to the public or its policyholders. The Commissioner may, in lieu of disapproving the contract, condition approval upon modification of the compensation provision made as he or she shall deem necessary;

6. The LAD servicing carrier shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and shall be maintained for a period of not less than the longer of either:

i. Five years from the date of their creation; or

ii. Until the filing of the next financial condition examination by the insurer's state of domicile;

7. The Commissioner shall have access to books and records maintained by a LAD servicing carrier for the purposes of examination, audit and inspection. Any trade secrets containd in such books and records, including the identity and addresses of policyholders and certificateholders, shall be kept confidential, except that the Commissioner may use such information in any proceeding instituted by him or her against the LAD servicing carrier;

8. The insurer shall own the records generated by the LAD servicing carrier pertaining to the business of the insurer. The LAD servicing carrier shall nevertheless retain the right to continuing access to books and records to permit the LAD servicing carrier to fulfill all of its contractual obligations to insured parties, claimants, and the insurer;

9. In the event the insurer and the LAD servicing carrier cancel their agreement, notwithstanding the provisions of (a)7 above, the LAD servicing carrier may, by written agreement with the insurer, transfer all records to a new LAD servicing carrier rather than retain them for the time period set in (a)6i and ii above. In such cases, the new LAD servicing carrier shall acknowledge, in writing, that it is responsible for retaining the records of the prior LAD servicing carrier as required by (a)6 above;

10. The contract may not be assigned in whole or part by the LAD servicing carrier;

11. The *[contract shall specify]* ***insurer shall provide and make available to the LAD servicing carrier*** the ***current*** rates, rules, policy forms and underwriting guidelines of the insurer to be used by the LAD servicing carrier;

12. If the contract permits the LAD servicing carrier to settle claims on behalf of the insurer, the LAD servicing carrier shall comply with N.J.S.A. 17:29B-4(9), and any administrative rules promulgated by the Commissioner thereunder. In addition:

i. All claims shall be reported to the insurer in a timely manner; and

ii. A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim has the potential to exceed, or exceeds the limit set forth in the contract;

13. Where electronic claims files are in existence, the contract shall address the timely transmission of the data;

14. If the contract provides for a sharing of interim profits by the LAD servicing carrier, the contract shall specify the manner and the LAD servicing carrier's authority with respect to the determination of interim profits. The Commissioner may disapprove the contract based on such provision if he or she believes that such method of compensation may render the insurer's and/or LAD servicing carrier's methods of operation hazardous to the public or its policyholders. The Commissioner may, in lieu of disapproving the contract, condition approval upon modifications made as he or she deems necessary;

15. The LAD servicing carrier shall not, without the prior approval of the insurer:

i. Pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which amount shall not exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year; or

ii. Subcontract underwriting and claims processing; and

16. The LAD servicing carrier shall not assume any of the risk of the insurer.

11:3-3.5 Requirements for insurers appointing LAD servicing carriers

(a) The LAD servicing carrier shall retain on file an annual independent financial audit of a certified public accountant, directed and paid for either individually or jointly by all insurers with which it does business, in a form acceptable to the Commissioner.

(b) The insurer shall, at least semi-annually, conduct an on-site procedural review of the underwriting, financial and claims processing operations (including the establishment of any case basis reserves), of the LAD servicing carrier.

(c) If a LAD servicing carrier establishes loss reserves for an insurer, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the LAD servicing carrier. Such loss reserve opinion shall be in the format of and otherwise satisfy all requirements of N.J.A.C. 11:1-21.

(d) Within 30 days of executing or terminating a contract with a LAD servicing carrier, the insurer shall provide written notification of such appointment or termination to the Commissioner. In the case of the appointment of a LAD servicing carrier, the insurer shall provide with such notification a copy of the contract, and shall provide a statement describing any differences between the contract entered into and the proposed contract submitted pursuant to N.J.A.C. 11:2-3.3. The appointment of the LAD servicing carrier shall take effect 60 days after written notification thereof is filed with the Department, unless disapproved by the Commissioner prior to that date. In the case of the termination of a LAD servicing carrier, the insurer shall provide a statement that sets forth the manner and methods by which it intends to service the business and perform the duties delegated to the LAD servicing carrier. Any agreement to terminate shall take effect 90 days after the date of the execution of the agreement.

(e) The acts of the LAD servicing carrier shall be considered the acts of the insurer on whose behalf it is acting. The Commissioner may examine a LAD servicing carrier as if it were the insurer. Pursuant to N.J.S.A. 17:23-4, expenses of examinations shall be borne by the insurer or insurers on whose behalf the LAD ***servicing*** carrier is acting.

11:3-3.6 Application of rules to persons currently acting as LAD servicing carriers and insurers utilizing LAD servicing carriers

(a) Any person acting as a LAD servicing carrier and any insurer utilizing the services of a LAD servicing carrier prior to *[the effective date of this subchapter]* ***September 21, 1992*** shall, *[within 30 days of the effective date of this subchapter]* ***by October 21, 1992***:

1. Notify the Department in writing of the existence of such relationship; and

2. Certify that it intends to comply with the requirements of this subchapter *[within 90 days of the effective date of this subchapter]* ***by December 20, 1992***.

(b) Any person acting as a LAD servicing carrier prior to *[the effective date of this subchapter]* ***September 21, 1992*** may continue to act in such capacity provided the person satisfies the requirements set forth in (a) above.

11:3-3.7 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

EMERGENCY ADOPTIONS

INSURANCE

(a)

DIVISION OF PROPERTY/LIABILITY

Eligible Person Qualifications

Adopted Emergency Amendment and Concurrent Reproposed Amendment: N.J.A.C. 11:3-34.4

Emergency Amendment Adopted and Concurrent Reproprosed Amendment Authorized: September 3, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance

Gubernatorial Approval (N.J.S.A. 52:14B-4(c): September 2, 1992.

Emergency Amendment Filed: September 4, 1992 as R.1992 d.380.

Authority: N.J.S.A. 17:1C-6(e), 17:29D-1, 17:33B-13, and 17:33B-22.

Concurrent Proposal Number: PRN 1992-435.

Emergency New Rules Effective Date: September 4, 1992.

Emergency New Rules Expiration Date: November 3, 1992.

Submit comments by October 21, 1992 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 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, this amendment is proposed for adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency expiration date. The agency emergency adoption and concurrent reproposal follows:

Summary

The Fair Automobile Insurance Reform Act of 1990 (P.L. 1990, c.8) ("FAIR Act") provides that automobile insurance coverage shall be provided to all "eligible persons" as defined at N.J.S.A. 17:33B-13 (see N.J.S.A. 17:33B-15a). The Department of Insurance ("Department") adopted N.J.A.C. 11:3-34 in order to interpret and implement the statutory definition of "eligible person" set forth at N.J.S.A. 17:33B-13. This reproposed amendment to N.J.A.C. 11:3-34(a)6 modifies the definition of "eligible person" which excludes therefrom those individuals who have had policies of automobile insurance cancelled for nonpayment of premium or financed premium within the immediately preceding two-year period, unless the premium due on a policy is paid in full. This amendment excludes only those persons whose cancellation of insurance results in a lapse in automobile coverage of at least 30 days.

The Department recognizes that in certain circumstances, as the result of mere mistake or inadvertence, individuals have had policies of automobile insurance cancelled for non-payment of premium. The Department has determined that in those instances where an individual has acted quickly to restore coverage, the individual should not be unduly penalized by being disqualified for coverage in the voluntary market for two years. Applicants which are deemed ineligible for automobile coverage in the voluntary market are qualified for and are, therefore, required to seek coverage in a residual market mechanism such as the personal automobile insurance plan ("PAIP") created pursuant to N.J.S.A. 17:29D-1. The purpose of this amendment is to clarify the rule with regard to the length of lapse of coverage and to ensure that individuals who have acted quickly to remedy their mistakes are not foreclosed from obtaining coverage in the voluntary market.

The Department has determined that any individual that has restored cancelled coverage within a 30-day time period should be considered eligible to obtain coverage in the voluntary market. Thirty days is a reasonable period because it corresponds with the time frame which many insurers have traditionally allowed as a "grace period" for payment of premium upon renewal.

Because this amendment will reduce the number of "not-eligible" persons, the implementation of this reproposed amendment will also give reasonable effect to N.J.S.A. 17:33B-13 and 17:29D-1 by limiting the PAIP to those individuals whose driving record and previous insurance-related behavior warrants their disqualification from coverage in the voluntary market. This reduction in the number of "not-eligible" persons will prevent the incongruous result of placing individuals with bad driving records into the voluntary market, while continuing coverage in the PAIP for individuals whose coverage lapsed only briefly. Such a result certainly was not intended by the Legislature, and the Department believes that the proposed amendment is a reasonable interpretation of N.J.S.A. 17:33B-13.

A further amendment to this rule has also been incorporated into this proposal. The phrase beginning "... with a lapse ..." is intended to modify both "non-payment of premiums" as well as "financed premiums." A comma has, therefore, been deleted to avoid any mis-interpretation of the first sentence of N.J.S.A. 11:3-34.4(a)6, consistent with the original intent of the rule.

This reproposed amendment is now being emergency adopted because beginning September 30, 1992, when the Market Transition Facility (MTF) ceases issuing or renewing automobile insurance policies, all "eligible" persons as defined in this rule currently insured by the MTF will be required to seek coverage in the voluntary market. As stated above, it is important that beginning September 30, only "not-eligible" persons are placed in the PAIP, while "eligible persons" may obtain coverage in the voluntary market. In fact, this result is evidenced in the PAIP Plan of Operation, which qualifies for PAIP coverage those individuals whose coverage has lapsed for period of at least 30 days. However, under the current definition of "eligible person" in this rule, voluntary market insurers would be permitted to deny coverage to those otherwise "eligible persons" having a lapse in coverage of less than 30 days.

Accordingly, the emergency adoption of this amendment is essential to avoid the unintended result of these otherwise "eligible persons" being denied coverage in the voluntary market between September 30, 1992 and October 19, 1992, the earliest date this amendment could become effective under the normal rulemaking process.

This reproposal replaces and supersedes the notice of proposal for the amendment to N.J.A.C. 11:3-34.4 published August 17, 1992 at 24 N.J.R. 2812(a). Comments received in that proposal will be responded to in the readoption of this concurrent reproposal.

Social Impact

This reproposed amendment will have a positive social impact on consumers because fewer applicants will be "not-eligible persons" and therefore able to obtain automobile insurance in the voluntary market. The Department believes that the intent of the Legislature will be served by considering applicants to be eligible where a brief lapse in coverage for non-payment of premium, resulting from either mistake or inadvertence, is cured within a 30 day period. The reproposed amendment to the definition of eligible person will: (1) reduce the number of persons deemed ineligible; (2) promote an orderly mechanism for the issuance of automobile insurance to all drivers whose vehicles are registered or principally garaged in New Jersey; and (3) ensure that the PAIP is reserved for drivers with poor driving records and/or poor insurance histories.

Economic Impact

All insurers will be required to provide automobile insurance to eligible applicants despite a cancellation for non-payment of premium with a lapse in automobile insurance coverage of less than 30 days. Insurers will not suffer any undue economic burden as a result of this proposed rule since there is no data to indicate that the applicants to which this rule applies are higher risk drivers than others, and insurers are nevertheless required by law to insure all eligible persons.

The Department, however, may experience an attendant increase in costs which may result in the additional enforcement efforts necessary to ensure that this amendment is uniformly implemented by all insurers.

Regulatory Flexibility Analysis

The reproposed amendment will affect all insurers authorized to transact personal private passenger automobile insurance in New Jersey. A few such insurers in New Jersey are "small businesses" as defined by the Regulatory Flexibility Act at N.J.S.A. 52:14B-17.

The proposed amendment has been reviewed by the Department with regard to the Regulatory Flexibility Act. This rule interprets the law which defines the term "eligible person." The definition establishes an individual's right to obtain coverage from the insurer of his or her choice. The definition is to be applied uniformly by all insurers regardless of whether or not they are deemed to be small businesses. Small businesses are therefore not disproportionately affected by this amendment. Any exception to an insurer's obligation to issue policies to eligible persons is governed primarily by N.J.S.A. 17:33B-19 and N.J.A.C. 11:3-40.

Full text of the emergency adoption and concurrent reproposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:3-34.4 Eligible person qualifications

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

1.-5. (No change.)

6. Whose automobile insurance policy has been cancelled for nonpayment of premiums, or financed premium with a lapse of coverage **of at least 30 days** within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, "paid in full" shall not include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premiums;

7.-8. (No change.)

(a)

DIVISION OF PROPERTY AND CASUALTY

Producer Assignment Program

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-42

Emergency Rules Adopted and Concurrent Reproposed New Rules

Authorized: September 3, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance

Gubernatorial Approval (N.J.S.A. 52:14B-4(c): September 2, 1992.

Emergency New Rules Filed: September 4, 1992 as R.1992 d.381.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:33B-9.

Concurrent Proposal Number: PRN 1992-436.

Emergency New Rules Effective Date: September 4, 1992.

Emergency New Rules Expiration Date: November 3, 1992.

Submit comments by October 21, 1992 to:

Verice M. Mason
Assistant Commissioner
Deparment of Insurance
Legislative and Regulatory Affairs
CN 325
Trenton, NJ 08625

These new rules were 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 these emergency new rules 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 rules become 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 reproposal follows:

Summary

N.J.S.A. 17:33B-9c requires that the Commissioner of Insurance (Commissioner) establish a producer assignment program to be available upon application to any licensed insurance producer who: (1) is a producer for the New Jersey Automobile Full Insurance Underwriting Association (Association); (2) has no affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance; (3) had an affiliation with an insurance company for the placement of automobile insurance in the voluntary market which was terminated by the insurer on or after December 31, 1980; (4) has demonstrated to the Commissioner his competency, efficiency and effectiveness in servicing Association other insurance business as determined by a review of the producer for complaints, violations of the licensing law and other factors deemed relevant by the Commissioner; and (5) is located and services insurance in a geographic area which the Commissioner has determined to lack sufficient representation for the placement of automobile insurance in the voluntary market.

On July 2, 1991, the Commissioner issued Order No. A91-281 which established a Producer Assignment Program (Program) in accordance with N.J.S.A. 17:33B-9c for the assignment of eligible Association producers on an equitable basis to insurers writing private passenger automobile insurance in New Jersey's voluntary market. On August 5, 1991, the Department of Insurance (Department) proposed N.J.A.C. 11:3-42, which essentially codified the Program set forth in Order No. A91-281 (see 23 N.J.R. 2297(a)). As a result of public comments received on the proposed rules pursuant to N.J.S.A. 52:14B-4, and further review and evaluation of the existing Program set forth in Order No. A91-281 and the proposed rules, the Department determined to make substantive changes to the Program regarding the criteria for determining eligibility for producer assignments, the criteria by which an insurer may demonstrate that its marketing system provides sufficient access to the market and thereby receive an exemption from mandatory producer assignments, and to make other nonsubstantive clarifying changes. On July 2, 1992, the Commissioner issued Amended Order A92-226 which revised the Producer Assignment Program as described above. The Department then reproposed these rules (see 24 N.J.R. 2812(b)) to codify the existing procedures and requirements set forth in the revised Program established by the Amended Order. This reproposal replaces and supersedes that notice of reproposal published August 17, 1992. Comments received on that reproposal will be responded to in the readoption of this concurrent reproposal.

The Department is now reproposing these rules to further revise Section 8 of the Program by establishing the specific criteria to be used by the Department in evaluating an insurer's application for exemption from the Program. Accordingly, N.J.A.C. 11:3-42.9 identifies and describes the four criteria to be applied to an insurer's application for exemption from the Program, whereby the Department determines whether a particular insurer has adequately demonstrated that it provides reasonable access to the private passenger automobile insurance market for persons throughout the State, and particularly in the underserviced territories. The four tests measure whether an applicant met its most recent depopulation quota; whether an applicant's book of business includes an appropriate number of insureds from the inadequately serviced territories throughout the State; whether the applicant's growth in business in the inadequately serviced territories equalled or exceeded the growth in the same territories by the voluntary market as a whole; and whether other data submitted by the applicant indicated that sufficient efforts at solicitation were made by the insurer.

In accordance with Section 8 of the Program as revised by Order A92-226 and the Department's reproposed rules appearing at 24 N.J.R. 2812(b), 36 insurers on or before July 24, 1992 applied for exemptions from the Program's initial assignment of producers. By letter dated August 10, 1992 the Department notified 26 of the 36 insurers applying for an exemption that their applications were denied. As set forth in its August 10 letter, the Department applied the four-part test now being set forth in Section 8 of the Program and in reproposed N.J.A.C. 11:3-42.9 to determine that these 26 insurers are ineligible for exemption from the Program. Twenty-one of the 26 insurers determined to be ineligible appealed the Department's determination in accordance with Section 8 of the Program and reproposed N.J.A.C. 11:3-42.9, and the Department issued its decisions on those appeals on August 31, 1992.

The Department believes that emergency adoption of these new rules will prevent an imminent peril to the public welfare. These new rules ensure that all eligible persons as defined at N.J.A.C. 11:3-34 will be provided access through traditional market channels to private passenger

automobile insurance coverage in the voluntary market throughout the State's 21 underserviced territories. The depopulation of the Market Transition Facility (MTF) as of September 30, 1992 will cause all those eligible persons currently insured in the involuntary market to seek coverage in the voluntary market. For these motorists, the most appropriate method of applying for and obtaining replacement coverage is through the producers with whom they have long-established business relationships. The Program was established for this reason and should be activated immediately to avoid disruption of the market. Additionally, immediate adoption of these new rules will permit producers who have developed expertise in servicing the market to continue doing business without interruption. Accordingly, emergency adoption of these new rules will prevent the massive disruption in the private passenger automobile insurance marketplace that will otherwise occur.

When these rules were previously proposed on August 5, 1991 (see 23 N.J.R. 2297(a)), the Department received 13 written comments from insurers, insurance trade organizations, and a producer organization, as follows:

1. Hannoch Weisman (on behalf of The Aetna Casualty and Surety Company);
2. State Farm Mutual Automobile Insurance Company;
3. Royal Insurance;
4. Farm Family Insurance Companies;
5. The Independent Insurance Agents of New Jersey, Inc.;
6. Allstate Insurance Company;
7. New Jersey Manufacturers Insurance Company;
8. LeBoeuf, Lamb, Leiby and MacRae (on behalf of United Services Automobile Association and USAA Casualty Insurance Company);
9. The American Insurance Association;
10. CNA Insurance Companies;
11. The Alliance of American Insurers;
12. The Prudential Property and Casualty Insurance Company of New Jersey; and
13. The Harleysville Insurance Companies.

COMMENT: Several commenters stated that the rules are arbitrary, unreasonable, arbitrary, capricious, and exceed the statutory authority granted the Commissioner pursuant to N.J.S.A. 17:33B-9c. The commenters generally object to the proposed rules as exceeding statutory authority in that they require insurers to contract with producers formerly representing the Association and the MTF, and further obligate insurers to assume those producers' Association/MTF books of business.

One commenter specifically stated that the Commissioner does not possess the authority to expand the scope of the statute to include voluntary market producers for companies no longer writing automobile insurance in this State.

Another commenter specifically stated that the Program established by these rules is illegal in that it would force companies to employ individuals without any choice in the selection of such individuals, or whether to employ such individuals. Another commenter specifically stated that there is no basis to conclude that the Legislature intended to create what amounts to an "employment agency" within the Department. The commenter does not believe that N.J.S.A. 17:33B-9C provides for mandatory assignment of producers and provides no basis for establishing a contractual relationship between producers and insurers. This commenter believes that the intent of the statute could be effectuated without resorting to "such drastic measures."

Finally, another commenter additionally stated that the statute only authorizes the Commissioner to establish a plan to encourage the broadening of authorities for those producers which are assigned under the plan, which has been accomplished through the producer voluntary placement plan.

RESPONSE: The Department disagrees. N.J.S.A. 17:33B-9c states: "The Commissioner shall, on or before October 1, 1991, establish a producer assignment program. The program shall be available upon application to any licensed insurance producer who [meets specified eligibility requirements]. The program shall provide for the assignment of qualified producers on an equitable basis to insurers writing private passenger automobile insurance in the voluntary market." Accordingly, the Legislature has mandated that the Commissioner establish a plan for the assignment of eligible Association producers. The statute does not provide, as the commenters suggest, that the Commissioner establish a plan for the "voluntary appointment" of eligible Association producers. The word "assign" means "to transfer to another or to appoint to a post or duty"; or "to fix or specify in correspondence or relationship" (Websters 9th New Collegiate Dictionary, 1983). In order to assign producers to insurers therefore requires that the insurer appoint the producer as its agent. It must also be noted that while the commenters stated that the intent of the Legislature may be effectuated without resorting "such drastic measures," they failed to suggest any alternative means by which producers may be assigned to insurers in accordance with N.J.S.A. 17:33B-9c.

The Department also disagrees that it is exceeding its statutory authority by requiring insurers to assume assigned producers' Association/MTF business. It is common practice and generally understood that producers own the expirations of their books of business. Implicit, therefore, in the requirement that the Commissioner establish a plan for the assignment of eligible Association producers, is that such producers retain their current book of business and have such business written by the insurer to whom the producer is assigned and appointed as agent. A producer assignment program would be meaningless if the producer was not provided a place to put his or her business. In addition, N.J.S.A. 17:29A-46b requires insurers to apply their underwriting rules uniformly and without exception, so that every applicant or insured conforming with its underwriting rules will be insured or renewed. If an insurer did not offer coverage to eligible persons that meet its approved underwriting rules included in the assigned producer's book of business, the insurer would be in violation of N.J.S.A. 17:29A-46b.

The Department similarly disagrees with the comment that the Commissioner lacks the statutory authority to include voluntary market producers for companies no longer writing automobile insurance. N.J.S.A. 17:33B-9c provides as one of the criteria for eligibility for assignment, that the producer "had an affiliation with an insurance company for the placement of automobile insurance in the voluntary market which was terminated by the insurer on or after December 31, 1990." If a producer is the representative of an insurer who has been permitted or ordered to cease writing automobile insurance, that producer has, in effect, been terminated since it no longer has an insurer with which it may place automobile coverage. The Department has, however, revised the eligiblity criteria to provide that an appointed representative of an insurer exempted from insuring all eligible persons pursuant to N.J.S.A. 17:33B-15 shall be eligible for assignment.

Finally, the comment that the statute only allows the Commissioner to establish a plan to encourage the broadening of authorities for producers which are assigned under the plan, is misplaced. N.J.S.A. 17:33B-9b requires that the Commissioner initiate a plan to encourage the broadening of authorities held by those producers who have been active as Association producers. This is independent from the requirement that the Commissioner establish a producer assignment program under N.J.S.A. 17:33B-9c.

COMMENT: Several commenters stated that the rules are unconstitutional. The commenters stated that the rules and the statutory language on which they are based are unconstitutional because they deprive the insurer of its rights under the U.S. Constitution under the Fifth and Fourteenth Amendments, and Article 1 paragraph 1 of the New Jersey Constitution, in that they require insurers to hire persons randomly chosen by the State in the manner proposed by the rules. One commenter additionally stated that the rules violate the Thirteenth Amendment to the U.S. Constitution in that they require employees to "work for a master not of their own choosing." The commenters stated that they have the right to hire their own agents. This right rests on basic concepts of the law of agency and the strong interest the insurer has in the identity of its agents who are part and parcel of the public image that the insurer projects, and the good will that it engenders with the public. The Program established by these rules substantially intrudes on this right by assigning agents to insurers regardless of the need for additional agents and regardless of whether the agents meet the insurer's job qualifications.

One commenter specifically stated that the rule violates the U.S. Constitution in that it results in the impairment of contract since N.J.S.A. 17:33B-9c and the rules impair vested contract rights and eliminate mutually inherent opportunities to enter into contracts. Several commenters also stated that the Program established by these rules will result in a denial of equal protection in that they require that agents be randomly appointed. The commenters believe that this may result in situations where existing agents believe their contractual agreement with a company has suddenly been restrained. The commenters stated that this is particularly compelling in consideration of the plight of insurers that do not sell through agents. Imposing a contractual burden relating to a whole new class of employees who are independent contractors appears on its face to be an unconstitutional denial of equal protection as an intrusion into corporate affairs.

RESPONSE: With respect to the comments that the underlying statute is unconstitutional, the Department notes that statutes are presumed to be constitutional absent a decision by a court of competent jurisdiction to the contrary. There has been no determination that N.J.S.A. 17:33B-9c is unconstitutional. The statute is thus valid and mandates that the Department establish a producer assignment program as provided by these rules. Since the statute has not been held unconstitutional and requires that the Commissioner establish a plan for the assignment of eligible Association producers, the Department does not believe that these rules are unconstitutional in that they require insurers to appoint as agents eligible Association producers who are assigned to them.

The Department similarly does not believe that these proposed rules result in an unconstitutional denial of equal protection or the impairment of contracts. To the extent the assignment of producers impairs any contract, it is not an unconstitutional impairment since insurance is a highly regulated industry, and therefore the passage of legislation or regulations which may affect established relationships may be anticipated. The Department similarly disagrees that the Program established by these rules violates the Thirteenth Amendment's prohibition against involuntary servitude since producers are neither compelled to participate in the Program nor to enter into a contract with the insurer to which it is assigned. Finally, the Department does not believe that these rules impose an unconstitutional burden on direct writers. N.J.S.A. 17:33B-9c provides that the producer assignment program shall provide for the assignment of producers "to insurers writing private passenger automobile insurance in the voluntary market." The statute does not provide an exemption for insurers based solely on their marketing system. The goal of the producer assignment program is to provide access to automobile insurance in the voluntary market in underserved areas. The Department therefore believes that it would be inappropriate, and contrary to the intent of the Legislature, to exempt insurers based solely on marketing structure. It must be noted that an insurer may be exempted from producer assignments if it demonstrates that its marketing system, through producers or otherwise, provides sufficient access to the public in inadequately serviced territories; if compliance would place the insurer in an unsafe or unsound financial condition; if it has approved uniform membership requirements as a condition of providing automobile insurance; or if the insurer had less than 1,000 private passenger automobile exposures on December 31, 1983 and September 30, 1988.

COMMENT: Several commenters stated that coupling an insurer's depopulation obligations with the imposition of mandatory assignment obligations (in that the rules require an insurer which is assigned producers to make an offer of coverage to each Association/MTF insured who is serviced by the producer and is an eligible person) is impermissible, in violation of N.J.S.A. 17:33B-9, and inconsistent with the case *In the Matter of the Assignment of Exposures to the Aetna Casualty & Surety Company,* 248 *N.J. Super.* 367, 383 (App. Div. 1991). The commenters stated that the statute is intended to ensure that drivers in the voluntary market have sufficient access to agents within their territory. There is no relationship between this statute and depopulation. In addition, the Appellate Division in *Aetna* found that the statute governing depopulation, N.J.S.A. 17:30E-14, prohibited requiring voluntary market insurers to write depopulation business through the former producer of the business, or requiring insurers to compensate those producers. Finally, the commenters stated that there is no basis upon which the Commissioner has the authority to afford exemptions from producer assignments to those insurers who have met or exceeded their depopulation quota in that there is no statutory relationship between depopulation and producer assignments, and these rules may not alter or amend this legislation.

RESPONSE: The Department disagrees. In *Aetna,* the Appellate Division found that the Department could not assign exposures to insurers, as required by N.J.S.A. 17:30E-14i(3), by assigning producers to the insurers with the producers' books of business. N.J.S.A. 17:30E-14i(3), which provides that the depopulation procedures established by the Commissioner may "neither prohibit nor require companies to write Association business through Association producers of record..." The court did not find that the Commissioner may not assign producers, but specifically recognized that N.J.S.A. 17:33B-9c "is intended to create a post-October 1, 1991 assignment program for certain JUA/MTF producers who wish to participate..." The court further noted that "[t]he goal of the assignment program is to protect producers who have built business and developed insurance expertise writing JUA/MTF policies, and at the time to encourage an auto sales and service presence in underserved urban areas." Thus, the establishment of a producer assignment program is not inconsistent with, and is exoressly recognized by, the *Aetna* decision. It must also be noted that P.L. 1991, c.462, enacted on January 18, 1992, amended N.J.S.A. 17:30E-14(3) and 17:33B-11c(5) to require that assigned exposures under a mandatory depopulation plan be serviced by the Association or MTF producer of record.

Further, the assignment of producers is not, as the commenters suggest, coupled with depopulation. The rules require the insurer to offer coverage to the eligible persons serviced by the assigned producer. As noted in a response to a previous comment, producers own their books of business. Implicit in the requirement that Association producers be assigned to insurers, is that they return their current business and place that business with the insurer to whom the producer is assigned and appointed as agent. In addition, as previously noted, insurers must offer coverage to the insureds serviced by the assigned producer appointed as an agent, pursuant to N.J.S.A. 17:29A-46b.

Finally, the Department disagrees that it lacks the authority to exempt insurers from producer assignments. The Program is intended to address the dual goals of protecting producers who have built businesses and developed expertise serving the residual market and of encouraging the sale and servicing of private passenger automobile insurance in inadequately serviced territories. Accordingly, assignment of producers on an equitable basis should consider whether an insurer's own marketing system has, in practice, provided reasonable access to persons in all areas of the State. When an insurer demonstrates that it provides such access, the Department believes it appropriate and equitable to exempt that insurer from producer assignments. It must be noted that the Department has substantially revised the exemption provisions to permit any insurer to apply for an exemption. See N.J.A.C. 11:3-42.9.

COMMENT: Several commenters stated that the proposed rules inappropriately assign producers which qualify under the rules without regard for qualifications established by each individual insurer. The qualifications established by the insurer may be much more stringent than those established by these rules and, accordingly, the rules should permit insurers to require that insurers meet at a minimum the qualifications imposed by that insurer for all other agents.

RESPONSE: The Department disagrees. N.J.S.A. 17:33B-9c specifically provides the criteria for qualification to participate in the Producer Assignment Program. The producer qualifications set forth in these rules reflect the qualification requirements set forth in the statute. To add further requirements as the commenters suggest would impair the right to participate by producers who meet the statutory criteria.

The Department further notes that under N.J.A.C. 11:3-42.7, the Department will conduct a detailed review of any application by a producer for assignment. This review will include a review of records relating to the producer's performance as an Association or MTF producer, complaints filed against the producer, disciplinary action taken by the Association or MTF with respect to the producer, and any records of bonafide complaints filed against the producer with the Department. In addition, under N.J.A.C. 11:3-42.8, an application for qualification under the Program will be disapproved for various grounds (for example, if the Department determines that the producer has failed to comply with insurance laws or regulations, or if the producer's affiliation with any voluntary market insurer has been terminated for reasons that adversely reflect on the producer's competency, efficiency or effectiveness in servicing business oor that otherwise indicate that the producer should not be qualified for the Program). The Department believes that while the qualification standards in the rules may not be as stringent as those imposed by individual insurers in all cases, the detailed review procedures provided by the rules should ensure that only producers who are statutorily qualified are assigned to insurers.

COMMENT: Several commenters objected to N.J.A.C. 11:3-42.9(a), which provides that an insurer may request an exemption from assignments under the Program if it demonstrates that its marketing system provides sufficient access to the public in inadequately serviced territories. The commenters stated that sufficient access is defined as the insurer meeting or exceeding all depopulation quotas and the minimum market penetration levels in all but two inadequately serviced territories. The commenters believe that the criteria established by the rules is too rigid and may result in insurers who just miss qualifying for the exemption.

One commenter specifically stated that because the exemption provision is new, insurers whose marketing system provides good access to the public in adequately serviced territories, but who just missed qualifying for the exemption, will not have had a chance to take steps

necessary to qualify for the exemption from the October 1991 producer assignment list. The commenter stated that an insurer could be in a situation of missing an exemption by a very small number of risks in one small territory. The commenter additionally stated that since the exemption was first published in Order No. A91-281 (issued on July 2, 1991), and the information on the total market size for each territory was not available from the Department until July 22, an insurer will not have had sufficient opportunity to make adjustments in it marketing system and correct deficiencies so as to qualify for the exemption from the April, 1992 producer assignment list. The commenter thus suggested that insurers whose marketing systems need only "fine tuning" to qualify for any exemption from producer assignments should be allowed some flexibility for the exemptions based on their April 1, 1991 and October 1, 1991 market shares by territory. The commenter also stated that N.J.A.C. 11:3-42.9(a)2ii, which provides the calculation for determining whether an insurer's market share in inadequately serviced territories is not significantly less than the State-wide average market share of the insurer, utilizes a 90 percent confidence interval of the normal distribution in that it utilizes a factor of 1.645. The commenter believes that the proper statistical distribution is the "T distribution," which is used where the standard deviation is unknown and must be computed from the data. The commenter stated that a 90 percent confidence interval using a T distribution with 26 degrees of freedom (the number of New Jersey territories minus one since the mean is also derived from the data) is 1.706.

In order to incorporate all of the changes discussed above, the commenter suggested that N.J.A.C. 11:3-42.9(a)2ii and iii be amended to read as follows:

ii. If the actual market share of an inadequately serviced territory is less than the State-wide average market share minus the product of the standard deviation and [1.645] **1.706,** the insurer does not provide sufficient access to the public in that territory.

iii. If the insurer's actual market share **in five or more inadequately serviced territories is below the level specified in (a)2ii above for the October 1991 producer assignment list, in four or more inadequately serviced territories is below the level specified in (a)2ii above for the April 1992 producer assignment list, or** in three or more inadequately serviced territories is below the level specified in (a)2ii above **for the October 1992 and April 1993 producer assignment list,** the insurer does not provide sufficient access to the public in inadequately serviced territories of the State and the request for an exemption shall be denied. (Language to be added is boldface; language to be deleted is bracketed.)

Another commenter specifically stated that the exemption provision in N.J.A.C. 11:3-42.9 will yield discriminatory results among insurance companies. For example, the commenter stated that assuming a normal distribution, if an insurer writes between nine and 11 percent of the market in each territory and averages 10 percent State-wide, the equation provided by the rules will disqualify that insurer from an exemption in five percent of the territories in which it writes even though it writes nine percent or more of the business in those territories. In contrast, an insurer that averages a 10 percent market share Statewide, but with territorial market shares ranging from zero to 20 percent (which will create a large standard deviation) will qualify for an exemption until it falls below nine percent in an inadequately serviced territory. The commenter believes that this outcome was not intended and believes that any formula designed around the standard deviation is flawed. The commenter suggested as an alternative to assess minimum amounts or develop a sliding scale of market share per territory that the Department believes meets public policy goals. For example, the commenter stated that if there are 50 insurers writing private passenger automobile insurance in New Jersey, the rules should provide an exemption to any insurer that has X percent or X percent of a sliding scale of the market in each inadequately serviced territory.

Another commenter specifically stated that the exemption provision assumes that all insurers service the public generally. However an insurer with uniform membership requirements of eligibility is only empowered to serve a defined public. For example, this commenter stated that it serves only those individuals that meet their membership criteria. In the case of such a "membership-type" insurer, therefore, sufficiency of access should be measured in relation to that insurer's defined market, rather than the total public market. The commenter believes that the proper tests to determine sufficiency of access for these types of insurers is whether they have provided sufficient access to their markets. Accordingly this commenter suggested that N.J.A.C. 11:3-42.9 be amended as follows:

An insurer that limits its insurance to persons in accordance with paragraph e of the definition of eligible person in N.J.S.A. 17:33B-13 shall be exempt from assignments under this Program if the insured demonstrates that its marketing system provides sufficient access to its insurance by all persons eligible for insurance, including those persons in inadequately serviced territories. Sufficient access in inadequately serviced territories shall mean the following:

1. The insurer's marketing system, either through its own producers, direct marketing or otherwise, is shown to have provided a reasonable opportunity to obtain its insurance to those in inadequately serviced territories during the preceding three year period or such shorter period during which the insurer has been licensed; and

2. The insurer's share of the market eligible for its insurance pursuant to paragraph e of the definition of eligible person in N.J.S.A. 17:33B-13 in inadequately serviced territories is not shown to be significantly less than its State-wide share of its eligible market. An insurer's eligible market shall be determined, under this paragraph, by the best available information possessed by the insurer or another source regarding its eligible market.

Finally, one commenter specifically suggested that the Commissioner be given additional leeway in allowing exemptions from assignment requests and suggested that N.J.A.C. 11:3-42.9(a) be amended to provide that if the requirements of N.J.A.C. 11:3-42.9(a)1 and 2 are not met, the Commissioner may in his discretion consider such other evidence he deems relevant in deciding whether to grant the exemption request.

RESPONSE: Upon review of the comments, the Department agrees that the exemption criteria set forth in the rules may yield inappropriate results and be problematical to implement. Accordingly, as previously noted, the reproposed rules provide that an insurer may request an exemption from producer assignments by demonstrating that it provides sufficient access to the public in inadequately serviced territories. An insurer seeking this exemption must submit information in support of its request, as set forth in the rules, depending on whether the insurer utilizes producers or is a direct writer. If the request is denied, the insurer may request a reconsideration of the denial by the Commissioner.

The reproposed rules additionally provide that, upon application, an insurer that has approved, uniform membership requirements as a condition of providing insurance, shall be exempt from producer assignments, provided that the insurer is not prohibited from using such membership requirements pursuant to N.J.A.C. 17:33B-26, and provided if the insurer is part of a group, and there are other insurers in the group authorized to transact private passenger automobile insurance that do not have approved membership requirements, producer assignments shall be made to the group as a whole.

Finally, the reproposed rules are revised to additionally provide a "de minimis exemption" to insurers which had less than 1,000 exposures on December 31, 1983 and September 30, 1988.

The Department believes that the revised exemption procedures are reasonable, appropriate and will provide insurers with the opportunity to "explain" their systems in place to provide access in inadequately serviced territories, while avoiding the rigidity of the purely statistical test contained in the original proposal. The Department further believes that the revised procedures should address the commenters' concerns that the prior statistical test does not allow for "fine tuning" of the insurer's marketing structure, may yield discriminatory results among insurers, and does not effectively address insurers with uniform, approved membership requirements.

COMMENT: Several commenters objected to the random assignment of producers, as provided by the rules, as arbitrary, capricious and unreasonable. The commenters stated that pursuant to the rules, two companies of equal size will be assigned an equal number of agents, even if one company makes no effort to meet its depopulation quota and another meets them but barely misses the minimum market penetration levels in specific territories required for an exemption.

One commenter specifically stated that there is no difference in assignments between a company which has terminated many agents who are now eligible for assignment under the producer assignment program and a company which has terminated no agents. Several commenters additionally stated that an insurer which has met its depopulation quota but misses the statistical test for an exemption, could be assigned a producer with a large volume of business in territories where the insurer is currently writing a large volume of business. The commenter suggested that producers be assigned on a more equitable basis in accordance with a distribution of business written by the producer and in territories where the companies have shown that they are inadequately represented.

RESPONSE: Upon review of the comments, the Department has determined that no change is required. The Department believes that it would not be feasible to review every insurer's book of business, efforts to meet depopulation quotas, history of agency terminations, and the books of business and mix of business of all qualified producers, and attempt to "match" appropriate producers and insurers prior to the assignment of producers to insurers. Even if such a process were feasible, it would undoubtedly take an inordinate amount of time to match up producers and insurers resulting in extensive delay in the implementation of the Producer Assignment Program.

Further, there is a correlation between the number of agents terminated by an insurer and its apportionment share of producers. Since an insurer's apportionment share of producers is the same as its apportionment share of exposures for mandatory depopulation, if an insurer terminated many agents and transferred that business to the Association or MTF, that insurer's depopulation quota would be greater than an insurer that terminated few agents.

The Department has, however, recognized that a rigid statistical test is inappropriate and has extensively revised the exemption procedures (see response to previous comment). Further, the Department recognized that an undue burden may result from the assignment of a producer with an inordinately large book of business in relation to an insurer's current book of business. Accordingly, the rules in N.J.A.C. 11:3-42.11(a)1 and 2 provide that no insurer whose total automobile exposures is greater than 1,000 will be assigned a producer whose book of business of eligible persons is greater than 25 percent of the total automobile exposures of that insurer; and no insurer whose total automobile exposures is less than 1,000 will be assigned a producer whose book of business of eligible persons is greater than 15 percent of the total automobile exposures of that insurer. An insurer may also request an exemption if compliance would place it in an unsafe or unsound financial condition.

Finally, the Department notes that insurers which voluntarily appoint producers will receive credits against their apportionment share of mandatory producer assignments. Accordingly, an insurer who "just misses" receiving an exemption under the criteria established by the rules may nevertheless appoint sufficient producers on a voluntary basis under the Producer Voluntary Placement Plan to satisfy its mandatory producer assignment obligations.

COMMENT: One commenter stated that these rules lack sufficient standards or guidelines for the determination of inadequately serviced territories by the Commissioner.

RESPONSE: The Department disagrees. The Department believes that standards and guidelines for the determination of inadequately serviced territories are sufficiently detailed in N.J.A.C. 11:3-42.5. It must also be noted that the commenter does not specify how the rules "lack specificity in the determination of inadequately serviced territories."

COMMENT: One commenter objected to basing the apportionment of producers upon each insurer's apportionment share as determined for purposes of depopulation, subject to any credits or exemptions provided other insurers. The commenter stated that this does not provide a suitable mechanism for planning purposes in that an insurer's assignment share is dependent upon exemptions granted to others.

RESPONSE: Upon review of the comment, the Department has determined not to change the provision. The Department believes that it is desirable for insurers to voluntarily enter into agreements with Association producers for the purpose of writing private passenger automobile insurance. In order to encourage and facilitate the establishment of such voluntary agreements, the Department believes that it is appropriate to provide procedures by which insurers may voluntarily appoint Association producers and receive credit toward producer assignments. All insurers are afforded the same opportunity to appoint sufficient Association producers voluntarily to satisfy mandatory assignment apportionment obligations. Obviously, qualified producers otherwise eligible for assignment must be redistributed among all remaining insurers subject to assignment. Such remaining producers however will be redistributed among the remaining insurers in the proportion that each of the remaining insurer's producer assignments bears to the total number of such assignments. The Department believes that such procedures are both reasonable, appropriate and equitable. Furthermore, uncertainty may exist as the number of producers eligible for assignment may vary for each assignment period. If a sufficient number of eligible producers are voluntarily appointed, the overall number of eligible producers to be assigned (and an insurer's corresponding apportionment share) may be reduced. It must also be noted that while the commenter stated that the procedures and the rules do not provide a suitable mechanism for planning purposes, it failed to suggest any alternative procedure.

COMMENT: One commenter noted that insurers are to receive one credit toward producer assignments for every five Category B producers located in inadequately serviced geographic areas. The commenter believes that this is burdensome and questions why the threshold is so high.

RESPONSE: The Department initially notes that N.J.A.C. 11:3-42.10(e) provides that for the initial implementation of the Program, an insurer receives one credit toward a producer assignment for every **four** Category B producers voluntarily appointed which are located in inadequately serviced geographic areas. The Department believes that this threshold is appropriate so as to ensure the Commissioner's ability to provide assignments for all or substantially all producers on each list of qualified producers. It must be noted that a "Category B" producer is a producer who is not otherwise eligible for assignment under N.J.S.A. 17:33B-9c. Accordingly, providing a "one-for-one" credit for the voluntary appointment of Category B producers could result in all insurers subject to assignment receiving sufficient credits so as to exempt them from any mandatory assignments, effectively precluding the assignment of qualified producers as intended by the Legislature. Nevertheless, as noted in a response to a previous comment, the Department believes that it is reasonable and appropriate to encourage voluntary relationships between insurers and producers for the purpose of placing private passenger automobile insurance, and accordingly has determined that it is appropriate to provide credits to insurers which voluntarily appoint producers who would not otherwise be eligible for assignment. It must also be noted that N.J.A.C. 11:3-42.10(e) specifies that the credit allowance shall be reviewed and adjusted on a periodic basis.

COMMENT: Several commenters objected to N.J.A.C. 11:3-42.12, which requires that where the insurer assigned a producer is a member of a group which utilizes different member insurers for the purpose of writing standard and non-standard risks, the producer must be appointed as an agent for all such insurers, and questioned the authority and necessity for this requirement.

One commenter specifically stated that it has established a wholly-owned subsidiary which will have both a standard and a nonstandard plan. The commenter itself will continue to write private passenger automobile insurance at standard rates only. The commenter therefore questioned whether the rule will compel the appointment of producers to the commenter (which will write only standard risks) as well as its wholly-owned subsidiary (which will write standard and non-standard risks).

RESPONSE: As was stated in a response to a previous comment, a Producer Assignment Program would be meaningless if the producer who is assigned to the insurer was not able to have all eligible persons in its book of business written by the insurer to which it is assigned and appointed as its representative. If a producer is assigned to an insurer which only writes standard risks or non-standard risks, the producer would not have an affiliation with an insurer to place all eligible persons within its book of business.

With respect to the comment involving the insurer that writes only standard risks and establishes a wholly-owned subsidiary which will have both a standard and non-standard plan, if one member of the group writes both standard and non-standard risks, appointing the producer as agent for the insurer that writes both standard and non-standard risks satisfies the requirements of N.J.A.C. 11:3-42.12, and such producer would not be required to be appointed as an agent to the member of the group that writes only standard risks. The rules as reproposed reflect this clarification.

COMMENT: Several commenters objected to N.J.A.C. 11:3-42.17, which provides the duration of producer appointments and the grounds upon which an insurer may terminate an assigned producer.

One commenter stated that the prohibition against terminating any appointed producer for two years, except in limited circumstances, is arbitrary, capricious, and not authorized by N.J.S.A. 17:33B-9. The commenter stated that this requirement should be eliminated. The commenter also suggested that this provision be amended to provide "failure to follow underwriting guidelines" as a reason for an acceptable termination within the two year period. The commenter stated that assigned producers should not receive more favorable treatment regarding termination than voluntary market producers and terminations should be made in accordance with New Jersey's agency termination statutes. This is especially true in light of the goal of this Program to treat assigned

producers as if they are voluntary market producers. Several commenters additionally suggested that "fraud" be added as a reason for acceptable termination.

Finally, one commenter stated that insurers should be permitted to apply their own standards for termination, so long as such standards are applied equally to other representatives of the insurer. This commenter believes that the termination provisions in the rules make it difficult for insurers to take action against agents who fail to comply with the company's requirements or who fail to provide minimum levels of customer service.

RESPONSE: As a general matter, the Department does not regulate agreements between insurers and producers. However, to the extent insurers have "termination at will" provisions in their agency contracts, the Department believes that insurers could utilize such a provision to terminate assigned producers immediately. This, in turn, would render the Program meaningless. In order to provide stability for a reasonable time and to achieve its goal of providing access to the voluntary market, the Department has placed a limitation on the termination of assigned producers for a period of two years. The Department believes that this time frame is reasonable to permit the Program sufficient time to function.

The Department recognizes however that there may be circumstances under which an insurer should be permitted to terminate the assigned producer prior to the expiration of the two-year period. These grounds are consistent with those set forth in N.J.S.A. 17:22-6.14A(e), which provides that if the agency termination is based on the producer's insolvency, abandonment, gross and willful misconduct, failure to pay monies due the insurer, or license revocation, the insurer is not required to continue to service the policy through the terminated agent and continue to pay commissions to the terminated agent. The Department believes that these procedures are reasonable and implement the intent of the Legislature as set forth in N.J.S.A. 17:33B-9c. The producer's failure to follow underwriting guidelines, under specified circumstances, is also a ground upon which an insurer may cease servicing business through a terminated agent. The rules as reproposed are revised to provide that a termination "for cause" includes the producer's violation of written underwriting guidelines of the insurer under the criteria set forth in N.J.S.A. 17:22-6.14A(1).

The Department however believes that it is unnecessary to include "fraud" as an additional ground for acceptable termination within the two-year period. One of the acceptable grounds is "gross and willful misconduct." The Department believes that "fraud" would be encompassed within this provision.

COMMENT: One commenter objected to the requirement in N.J.A.C. 11:3-42.18(b) that insurers provide notice of any refusal of assignment to the effected producer as unnecessary.

RESPONSE: The Department believes that the possibility of misunderstanding between the parties with respect to refusal of appointment may be considerable. Since the refusal of assignment by the producer precludes any further participation in the Program, the Department believes that it is appropriate and necessary to attempt to minimize any possible misconception on the part of the producer with respect to the refusal of an appointment. The Department therefore believes it appropriate that the insurer provide notice of any refusal to the affected producer. The Department believes that no undue burden is imposed on insurers since insurers must submit notice of the refusal of an appointment to the Department. This requirement merely mandates that the insurer provide a copy of this notice (which is only one page) to the producer.

COMMENT: Several commenters stated that the penalties provision, N.J.A.C. 11:3-42.20, which applies to insurers who violate the rules, should apply to producers as well.

RESPONSE: N.J.A.C. 11:3-42.20 states: "Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law." The penalties provision is thus not limited only to insurers but to any person to which the rules apply (that is, insurers licensed to transact private passenger automobile insurance in this State and qualified producers who seek to be assigned to insurers pursuant to the procedures set forth in the rules). Accordingly, N.J.A.C. 11:3-42.20 applies to producers as well as insurers.

COMMENT: Several commenters objected to the application of these rules to insurers with uniform membership requirements of eligibility (for example membership in the New Jersey Farm Bureau).

One commenter specifically objected to N.J.A.C. 11:3-42.13, which requires that an insurer assigned producers to make an offer of coverage to each Association/MTF insured serviced by the producer determined by the insured to qualify as an eligible person. The commenter stated that because it has a uniform requirement of eligibility for insurance, it is unlikely that the assigned producer's insureds would be "an eligible person." The commenter also stated that it would be burdensome for the assigned producer to explain membership requirements to each client in order to keep their business. Accordingly, the commenter suggested that N.J.A.C. 11:3-42.9, which provides exemptions from producer assignments, be amended to read as follows: "An insurer may request an exemption from assignments under this Program if the insurer demonstrates to the satisfaction of the Commissioner that its membership eligibility requirements would cause undue hardship to the assigned producer and assigned consumer."

Another commenter specifically stated that since the rules exclude a producer from further participation in the Program if he or she refuses an assignment, an assignment to insurers that require membership would create an unavoidable dilemma for the producer. The producer would be required to accept the assignment or be foreclosed from further participation in the Program. In either case, the rules effectively deny the producer access to a market in which he or she could place business. In order to address this problem, the commenter suggested that the rules be amended to permit the producer to decline an assignment in the event that the producer is assigned to a "membership-type" insurer, and specifically suggested that N.J.A.C. 11:3-42.12 be amended to include a new subsection (c) as follows:

1. A producer assigned to an insurer that limits its insurance is provided by paragraph e. of the definition of eligible person in N.J.S.A. 17:33B-13 may, notwithstanding the provisions of N.J.A.C. 11:3-42.18(a), decline such assignment and shall be reassigned, without penalty, to an insurer which does not so limit its insurance. Any such producer may decline such assignment by notifying the ARM Unit in writing.

2. An insurer that limits its insurance as provided in paragraph 1 hereof shall notify any assigned producer of the limitations on the availability of its insurance within 15 days following its receipt of notice of assignment.

The commenter additionally suggested that N.J.A.C. 11:3-42.18(a) be amended as follows: **Except as provided by N.J.A.C. 11:3-42.12(c),** any producer who refuses an assignment under this Program that provides for his or her appointment as the assigned insurer's agent on fair and equitable terms, or who is terminated within the two year period set forth in N.J.A.C. 11:3-42.17(a), shall be excluded from further participation in this Program. (Language in boldface is to be added.)

RESPONSE: Upon review of the comments, the Department agrees that it may be inequitable to require that producers be assigned to insurers with approved uniform membership requirements for the provision of automobile insurance in this State. Accordingly, as noted in a response to a previous comment, the reproposed rules provide that an insurer that has approved uniform membership requirements, and is not prohibited from using such membership requirements pursuant to N.J.S.A. 17:33B-26, shall be exempt from producer assignments upon application. Provided, however, that if the insurer is a member of a group and other insurers in the group authorized to transact automobile insurance do not have approved membership requirements, producer assignments shall be made to the group. The Department believes that where the insurer is a member of a group and other members in the group do not have membership requirements, no specific exemption is necessary since the assignment may be made to a group as a whole, which, in turn, will assign the producer to the insurer with no approved membership requirements.

The Department does not believe it appropriate or equitable to permit producers to decline appointment to "membership-type" insurers, as some commenters suggest, because all producers would undoubtedly decline such an appointment, thereby effectively exempting all insurers with uniform requirements regardless of whether the insurer is prohibited from using such requirements or is a member of a group where other members have no such requirements. The Department believes, however, that the procedures in the reproposed rules will eliminate any potential burdens imposed on producers in that an insurer with membership requirements will be either exempt from assignment; not be permitted to utilize its membership criteria under N.J.S.A. 17:33B-26; or, as a member of group, will not be assigned the producer.

COMMENT: One commenter objected to N.J.A.C. 11:3-42.4(a)5, which establishes as one of the eligibility criteria for producer assignment that the producer "has derived not less than $7,500 in commission income from Association/MTF policies combined in calendar year 1990." The

commenter stated that producers in lower rated territories will have more difficulty in reaching the commission requirement than those in higher rated territories (for example Newark or Jersey City). Accordingly, the commenter suggested that N.J.A.C. 11:3-42.4(a)5 be amended to state "or serviced not less than 150 policies during the same calendar year."

RESPONSE: The goal of the Program is to provide for the assignment of producers of which Association/MTF business represents a significant portion of their revenue. If a producer has received less than $7,500 in commission income from Association/MTF policies combined for calendar year 1990, the Department believes that commissions of Association/MTF did not represent a significant portion of their income.

COMMENT: One commenter suggested that the implementation date of the Program be delayed to allow sufficient time for the Producer Voluntary Placement Plan (Order No. A91-280 and N.J.A.C. 11:3-41) to function and possibly lessen or eliminate the need for mandatory assignment of producers.

RESPONSE: Insurers have had an opportunity to appoint producers under the Producer Voluntary Placement Plan for over one year. However, as indicated in Order No. A92-226 (amending Order No. A92-281), while some insurers established voluntary agreements under the Producer Voluntary Placement Plan, the industry as a whole has failed to appoint sufficient numbers of eligible producers, leaving over 200 producers eligible for assignment.

COMMENT: One commenter stated that the Program set forth in these rules represents bad public policy. The commenter believes that government should not protect a select group of displaced workers by forcing other employers to hire them. While this State may wish to establish a special program for displaced producers, the commenter believes this State may not force private employers to hire such producers.

RESPONSE: As stated in a response to a previous comment, the Legislature requires that the Commissioner establish a plan for the assignment of qualified Association producers. The Department is required to implement this Legislative mandate.

COMMENT: One commenter objected to N.J.A.C. 11:3-42.5(b)2, which provides that a rating territory shall be determined to be inadequately serviced, even if it is not inadequately serviced under the criteria established in the rules, if the volume of exposures insured in the voluntary market was achieved through the mandatory assignment of exposures pursuant to any mandatory depopulation plan. The commenter believes that business assigned to companies through mandatory depopulation should be considered as voluntary since the business is no longer in the Association or MTF, but is being serviced by the voluntary market. The commenter further stated that business transferred to insurers under this Program should be considered in determining whether insurers have satisfied their quotas for mandatory depopulation purposes.

RESPONSE: As was stated in a response to a previous comment, the goal of the Producer Assignment Program is to provide sufficient access to the public in the voluntary market. Since exposures written due to any mandatory depopulation plan were not voluntary, the volume of these exposures is not indicative of whether sufficient access by the insurer is being provided in those territories. Accordingly the Department believes that it is appropriate to provide that the territory will be considered inadequately serviced if the volume of exposures insured in the voluntary market was achieved through the mandatory assignment of exposures.

The Department similarly disagrees that insurers should receive "upfront" credits for exposures transferred to insurers under this Program. The Department does not believe it is appropriate to grant credits for depopulation purposes for business which is transferred to the insurer by virtue of the assignment of a producer as this business will not actually be in force until each policy comes up for renewal.

COMMENT: One commenter objected generally to these rules in that they would require it to adopt a scheme of marketing alien to their traditional operations since the commenter is a direct writer utilizing paid company employees. The commenter stated that the purpose of these rules is to alleviate the potentially disruptive impact on New Jersey policyholders caused by the termination of Association producers. The commenter stated that direct writers neither caused nor contributed to this problem and questioned the fairness of compelling direct writers to participate in this program.

RESPONSE: The Department disagrees. As previously noted, N.J.S.A. 17:33B-9c requires that the Commissioner establish a plan for the assignment of producers to "insurers writing private passenger automobile insurance in the voluntary market." The statute does not provide any exemption for insurers which are direct writers as opposed to those which employ agents. The Department therefore may not provide an additional exemption to these types of insurers employing a direct marketing system. Further, an insurer may request an exemption from producer assignments if, for example, it demonstrates that its marketing system provides sufficient access to the public in inadequately serviced territories, or if assignment would result in it being placed in a hazardous financial condition. The Department believes that this should reduce any undue burden imposed on insurers which are direct writers.

COMMENT: Several commenters expressed concern with respect to N.J.A.C. 11:3-42.14(c) which provides that, for companies which are direct writers, expenses for a direct marketing department and related support staff must be considered in determining the commission to be paid to assigned producers. One commenter stated that this language is rendered meaningless by N.J.A.C. 11:3-42.14(c)1, which requires that commissions be equivalent to the compensation paid to independent agents by insurers that utilize such agents. The commenter questioned how a company which is a direct writer may pay a commission "equivalent to the compensation paid to independent agents by insurers that utilize such agents" when no such allowance for these additional costs are presently contained in its rate structure. One commenter estimates that no more than one-half to two-thirds of its current acquisition expense would be available for the payment of commissions, which it believes would be considerably lower than the level of commission paid to independent agents. The commenter therefore suggested that the rules allow the producer to impose a service charge on the policy (to be paid directly to the producer by the consumer and not included in the premium) when he places the coverage in an amount not to exceed the present commission level in the MTF. The commenter alternatively suggested that the Department abandon the proposed compensation scheme and promulgate uniform rates, rules and commission levels for those insureds in the MTF whose producers qualify for the Program. The commenter believes that the latter alternative should cure inequities created by the Program in that the policyholder's premium and the producer's commission will vary significantly as a result of the arbitrary placement with a particular insurer.

Another commenter stated that in the industry, the rate paid to independent agents is usually the highest. Accordingly, the commenter contended that it is inequitable and not supported by any rational basis to require a direct writer to pay the highest commission rate in the industry. This requirement is inconsistent with the producer licensing law that provides for freedom of contract, and is contrary to the general requirement that the Program be equitable.

RESPONSE: Upon review of the comments, the Department has determined not to change this provision. As noted in a response to a previous comment, N.J.S.A. 17:33B-9c requires that the Commissioner establish a Producer Assignment Program to provide for the assignment of qualified producers to insurers writing private passenger automobile insurance in the voluntary market. The statute does not provide any exception for insurers which are direct writers. One goal of this statute is to provide access to former Association/MTF producers through normal market channels. The Department therefore believes it would be inappropriate and thwart the intent of the Legislature to exempt insurers which are direct writers.

In providing for the assignment of producers, the Department believes that insurers and producers should enter into agreements on fair and equitable terms. The Department does not designate what terms are fair and equitable. The Department believes however that parameters must be provided to ensure that both producers and insurers are treated equitably. Accordingly, the Program provides that in the case of companies that are direct writers, compensation to the producer shall be comparable to the compensation paid to independent agents by insurers that utilize such agents. This is not a definitive number as compensation paid to independent agents varies. The Department does not dictate the actual compensation level to be paid but merely has provided the parameters for such compensation. N.J.A.C. 11:3-42.15(c), as reproposed, provides that compensation shall be "comparable" rather than "equivalent" to clarify the intent of the provision. However, the Program also provides for business transferred from the MTF, an insurer authorized to use MTF rates, rules and forms shall compensate the producer for such business at the same commission level out of the MTF, the Program provides for uniform rates, rules and commission levels. With respect to the commission level paid to producers on any new business written through that producer, the Department believes that these amounts should be insignificant in relation to the insurer's current

market share as any new business written through the assigned producer would essentially represent normal growth in the market.

COMMENT: One commenter stated that the phrase "fair and equitable terms" as used in N.J.A.C. 11:3-42.18 is too vague to be effective and may result in unnecessary disputes. The commenter suggested that a more objective standard be established.

RESPONSE: As was stated in a response to a previous comment, the rules are not intended to dictate each and every term related to producer assignment, but merely provide certain limitations and parameters regarding termination and compensation deemed necessary and reasonable by the Department to implement the intent of the Legislature. The terms of agency agreements vary and the Department has attempted to provide the maximum flexibility to both insurers and producers with the limitations discussed above. Accordingly, the meanings of fair and equitable will vary and have no definitive meaning. It must also be noted that while the commenter suggested that "that a more objective standard be established," it failed to suggest any such standard.

COMMENT: Several commenters stated that N.J.A.C. 11:3-42.14, Producer compensation; company rates, should be codified as N.J.A.C. 11:3-42.15.

RESPONSE: The Department agrees. The reproposed new rules reflect this change.

COMMENT: One commenter stated that N.J.A.C. 11:3-42.13 does not specify the credit that an insurer will receive against its depopulation quota as a result of assuming the assigned producer's book of business. The commenter stated that the rules should provide such credits and that such credits should have general application to all insurers subject to producer assignments. The commenter further stated that credit amounts should be promulgated by rulemaking.

RESPONSE: As was stated in a response to a previous comment, the Department has determined that an insurer should not receive up-front credit for business assumed from a producer assigned pursuant to these rules since such business will not be in-force until each policy comes up for renewal. The insurer will receive credit for business assumed when the business is actually in-force.

COMMENT: One commenter stated that by providing producer credits under the Program for "ineligible producers" with whom an insurer voluntarily establishes a relationship, the Department is effectively circumventing the precise definition of producers eligible for assignment under the Program. An insurer may appoint a producer that would not otherwise qualify for assignment under the Program and nevertheless receive credit. The commenter believes that through this process the Department is undermining the purported equity of the Program.

RESPONSE: The Department disagrees. N.J.S.A. 17:33B-9b requires that the Commissioner initiate a plan to encourage the broadening of authorities held by brokers who have been active as Association producers in order to avoid disruption of established relationships between these Association producers and insureds. This requirement is in addition to the requirement that the Commissioner establish a producer assignment program. In order to implement the intent of the Legislature as expressed in N.J.S.A. 17:33B-9b, and to avoid disruptions associated with the termination of Association producers which are not eligible for assignment pursuant to N.J.S.A. 17:33B-9c, the Department developed the Producer Voluntary Placement Plan (Order A91-280, as codified in proposed N.J.A.C. 11:3-41). As noted previously, it is necessary and desirable to encourage insurers to voluntarily enter into agreements with Association producers for the purpose of writing private passenger automobile insurance as well as such other lines of insurance as may be mutually agreed upon by the insurer and producer. In order to facilitate the establishment of such voluntary agreements, the Producer Voluntary Placement Plan provides that insurers which voluntarily appoint Association producers may receive credit toward producer assignments made under these rules, as well as credit for business assumed toward their depopulation quota under N.J.S.A. 17:33B-11c(5). As previously noted, however, the credit received for producers which are not eligible for assignment under the Program is not a "one-for-one" credit, but is calculated to ensure the Commissioner's ability to provide assignments for all or substantially all qualified producers. The Department believes that this procedure is appropriate, equitable, furthers the Legislative intent as expressed in N.J.S.A. 17:33B-9b, and does not undermine the equity of the Producer Assignment Program.

COMMENT: Several commenters stated that these rules are inconsistent and contrary to the intent of the FAIR Act in that the FAIR Act turns on the equitable apportionment of policyholders or business, not agents. Under these rules, which are based on agents and not on the volume of business, one carrier could be required to accept agents that generate a volume of business far in excess of its depopulation quota while another carrier could be required to accept many agents and obtain very little business. As a result, the commenter believes that the rules are arbitrary, capricious, and inconsistent and contrary to the intent of the FAIR Act.

RESPONSE: The Department disagrees. N.J.S.A. 17:33B-9c specifically requires that the Commissioner establish a program for the assignment of qualified producers to insurers writing private passenger automobile insurance in the voluntary market. Accordingly, the Program established by these rules is not inconsistent nor contrary to the intent of the FAIR Act, but is specifically mandated. Further, N.J.A.C. 11:3-42.11(a) provides that no insurer whose total automobile in-force exposures at the end of the last quota period is greater than 1,000 will be assigned a producer whose book of business is greater than 25 percent of the total exposures of that insurer, nor will an insurer whose total automobile in-force exposures is less than 1,000 be assigned a producer whose book of business is greater than 15 percent of the total automobile exposures of that insurer. The Department believes that this should alleviate any undue burden that may result through the assignment of a producer with an inordinately large book of business in relation to the insurer to which the producer is assigned. It must also be noted that insurers may seek to avoid mandatory producer assignments by voluntarily appointing eligible Association producers who generate a volume of business that the insurer believes is the most appropriate given its market size. Finally, insurers that are providing sufficient access to the voluntary market and de minimis companies may seek an exemption from producer assignments under this Program. The Department believes that these "safety-valves" should reduce any undue burden on insurers which are assigned producers.

COMMENT: Several commenters objected to the requirement that insurers compensate assigned agents for Association/MTF business at the same commission rate and terms as the company's current schedule of commissions or other formula used to provide compensation to its agents.

One commenter further objected to any requirement that insurers provide assigned agents with support services and other benefits equal to those provided to voluntary market agents. The commenter stated that it is inequitable to require companies to incur various levels of commission expense. The commenter also stated that insurers with a higher commission schedule would be disadvantaged as opposed to direct writers who would be required to pay a minimum rate.

Another commenter specifically stated that this requirement exceeds statutory authority since N.J.S.A. 17:33B-9c merely requires that the Program provide for assignment of producers on "an equitable basis." The commenter believes that the Program should provide flexibility for an insurer to enter into special arrangements with agents assigned under the Program. In the special arrangement, the commenter stated that fees, commissions, and business relationships should be separately designed from the arrangements used with that insurer's existing agents. The commenter stated that the existing contracts were developed for use in a business relationship where the insurer voluntarily competed for sales staff. By their very nature, arrangements with its agents contain provisions which would be substantially different from those that should be made available to meet the minimum needs of an agent being assigned to an insurer.

RESPONSE: N.J.S.A. 17:33B-9c requires that the Commissioner establish a plan for the assignment of producers "on an equitable basis" to insurers. The Department interprets this provision to mean that the assignment of the producers (that is, the number or amount of producers assigned to an individual insurer) be equitable. The Department does not believe the statute was intended to create a "second class of producers." The goal of the statute is to provide for the appointment of eligible Association producers as agents in the voluntary market. Accordingly, the rules require that the terms of any appointment or agency contract between the eligible Association producer and the insurer be consistent with those terms utilized with its current agents. It must also be noted that insurers with commission schedules are not disadvantaged in relation to direct writers as direct writers are required to pay a commission comparable to compensation paid to independent agents pursuant to N.J.A.C. 11:3-42.15(c).

COMMENT: One commenter stated that N.J.A.C. 11:3-42.11, which requires a random assignment of producers to insurers, be revised to provide that a producer's book of business may be analyzed before it is assigned. The commenter stated that producers in underserved markets will have books of business that reflect different risk profiles. These risk

profiles should be reflected in the producer assignment that is made since the producer's book of business may be skewed to new drivers, accident-prone drivers, teenage drivers, drivers in high theft neighborhoods, etc. The commenter stated that this business risk translates into extra expense cost and claim cost for insurers, and that this financial impact must be recognized in the assignment process.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The financial impacts due to the different risk characteristics of the producer's book of business transferred to the insurer should be addressed by the insurer's standard/non-standard rating plan and other elements of its rating system. If an insurer receives a book of business with higher risk drivers, it is permitted to charge its non-standard rates. The insurer may also address this through the rate making process or other changes to its rating system. The Department does not believe that it is necessary, appropriate, or feasible to conduct an analysis of the risk characteristics of a producer's book of business before that producer's book of business is assigned to an insurer. Similarly, if an insurer were permitted to make this analysis, it could refuse to accept the producer due solely to the "mix" of the producer's business.

COMMENT: One commenter stated that the rules are not specific in addressing credits for producers that are voluntarily appointed by insurers pursuant to the Producer Voluntary Placement Plan. The commenter stated that insurers which voluntarily take agents should be granted exemptions from the mandatory assignment program.

RESPONSE: The Department believes that N.J.A.C. 11:3-42.10(b) specifically provides credits for insurers that voluntarily appoint producers. It must also be noted that while the commenter stated that the rules are "not specific enough when it comes to addressing the credits for companies that have voluntarily participated in a placement program," it failed to suggest alternative or additional language to address its concerns. An insurer may appoint sufficient eligible Association producers or Category B producers to satisfy its obligations under this Program.

COMMENT: One commenter suggested that the Department consider the Pennsylvania Clean Risk Assignment Program now used in that state's assigned risk plan. The commenter stated that that Program can yield depopulation benefits sought without the constitutional or financial harm caused by these rules. The commenter stated that under the Pennsylvania Program, clean risks are assigned to voluntary insurers at a uniform rate and commission level. The producer is offered the opportunity to move the business at subsequent renewal dates. If this is not done, the commenter stated that the business can be written voluntarily by the assigned company or turned to the assigned risk plan for future assignment.

RESPONSE: As was noted in response to a previous comment, these rules do not address the depopulation of risks, but provide for the assignment of producers pursuant to N.J.S.A. 17:33B-9c. The Department believes that the procedures provided by these rules effectively implement the intent of the Legislature. It must also be noted that the rules permit an insurer to compensate producers at the rate paid by the MTF if it is authorized to use MTF rates, rules and forms for policies transferred from the MTF.

COMMENT: One commenter suggested that the rules be modified to permit producers assigned to have only their Association/MTF business serviced by the assigned insurer, rather than allowing the producer the right to submit voluntary business to the insurer. The commenter stated that such an extension of the Commissioner's authority is unfounded and unconstitutional.

RESPONSE: The Department disagrees. As previously noted, one goal of the Producer Assignment Program is to provide access to the voluntary market through normal market channels. Prohibiting the assigned producer from writing new business would hinder such access and thus thwart the intent the Legislature as expressed in N.J.S.A. 17:33B-9c.

Further, N.J.S.A. 17:29A-46 requires insurers to apply their underwriting rules uniformly and without exception throughout the State, so that every applicant or insured conforming with the underwriting rules will be insured or renewed, and every applicant not conforming with the underwriting rules will be refused insurance. If the assigned producer were not permitted to effect new contracts of automobile insurance in accordance with the insurer's underwriting rules, the insurer would be in violation of N.J.S.A. 17:29A-46b in that it would be refusing to insure a person that otherwise meets its underwriting rules only because that person attempted to acquire insurance through an assigned producer. In addition, N.J.S.A. 17:33B-18a(1) requires that a licensed insurance agent, as a condition of licensure, provide each eligible person seeking automobile insurance premium quotations for the forms or types of automobile insurance coverages which are offered by all insurers represented by the agent or with which the agent places risks. The Department, therefore, believes that the requirement that the producer be authorized to solicit, negotiate and effect new contracts of automobile insurance is consistent with, and required by, these other statutory provisions and as such is not an unconstitutional extension of the Commissioner's authority.

COMMENT: One commenter suggested that the $7,500 commission income threshold in N.J.A.C. 11:3-42.4(a)5 is too low. The commenter suggested that the commission should be at least $20,000.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The Program is intended to provide access to producers to normal market channels whose primary source of income was through the servicing of Association/MTF business. Assuming that the average price of a private passenger automobile insurance policy is $800.00, the $7,500 commission income threshold translates into a requirement that the producer service at least 100 policies during 1990. Under these same assumptions, a commission level of $20,000 would translate into a requirement that the producer service upwards of 300 policies. In light of the depopulation of the Association/MTF over the past few years, the Department believes that the current threshold is both reasonable and appropriate.

COMMENT: One commenter objected to N.J.A.C. 11:3-42.5, which provides the criteria upon which the Commissioner shall determine whether a territory is inadequately serviced, as too broad. The commenter stated that the criteria established by this section unreasonably encompasses nearly every territory in New Jersey. The commenter further stated that since there has been a stay in the mandatory depopulation program as a result of court challenges, there is a significant aberration in the number of inadequately serviced territories. The commenter thus suggested that inadequately serviced territories include some statistical analysis beyond that provided in the rules.

RESPONSE: As noted in a response to a previous comment, determination of inadequately serviced territories is not related to mandatory depopulation of exposures. Therefore, no "aberration" has occurred as a result of the previous stay of mandatory depopulation. As noted previously, the Department believes that the basis by which inadequately serviced territories are determined is reasonable, appropriate, equitable and fully set forth in N.J.A.C. 11:3-42.5.

COMMENT: One commenter stated that the rules should provide an exemption to any company which meets its depopulation quota. The commenter stated that there is nothing in the statutes requiring depopulation which requires that a company meet depopulation on a territorial basis. Therefore, the commenter believes that any company which meets its depopulation quota should not be subject to any additional mandatory producer assignments. The commenter additionally stated that companies which have adequate market distribution channels throughout New Jersey, and have met the statistical requirements (that is, that they are writing business in all territories in New Jersey), should similarly be entitled to an exemption whether or not those companies have met their depopulation quotas.

RESPONSE: The Department disagrees. As stated in a response to a previous comment, the goal of the Program is to provide sufficient access to the voluntary market through normal market channels. Accordingly, if an insurer demonstrates that its current marketing system provides sufficient access to the market, it may request an exemption from mandatory producer assignments. The Department does not believe that an insurer that merely meets its depopulation quota is necessarily providing sufficient access to the public in inadequately serviced territories because, as the commenter points out, depopulation is not based on territory but is based on the insurer's Statewide market share. As noted previously, however, the Department has substantially revised the exemption provisions. The revised provisions provide that any insurer may apply for an exemption and may be exempted from producer assignments if it demonstrates that it is providing access in inadequately serviced territories.

COMMENT: One commenter suggested that assigned producers be prohibited from hiring sub-agents. The commenter further stated that an insurer should be permitted to terminate a producer who violates this prohibition, and such producer should be barred from further participation in the Program.

RESPONSE: As noted previously, the Department does not dictate the contractual terms between assigned producers and insurers, except

to the extent certain parameters or limitations have been deemed necessary to ensure that the Program implements the intent of the Legislature. Therefore, insurers and producers may negotiate in good faith to reach an agreement on fair and equitable terms, which should be consistent with agreements between the insurer and its other agents.

However, the Department does not believe it appropriate to permit an insurer to terminate a producer who violates any contractual provision. Such authority granted to the insurer would encompass a wide range of conduct ranging from innocuous to egregious. If an insurer terminates a producer under these rules, the producer may contest such termination with the Department. At such time the Department would be in a position to review all relevant facts involved, including treatment of the insurer's other agents for similar conduct.

COMMENT: Several commenters stated that assigned producers should not be permitted to be paid in accordance with the company's current commission levels.

One commenter believes that this would be inequitable for the producer, the insurer, and the consumer. If the producer is assigned to a company with a high commission level, that producer may be able to obtain more income based only on random luck as compared to another producer who is assigned to an insurer with a much lower commission level. The commenter additionally stated that insureds would also be required to pay rates which are different based on the same random luck of assignment to an insurer with either a high or low rating schedule.

Several commenters suggested that all assigned producers be paid the same commission and their customers pay the same rates no matter which company the producer or the insureds are assigned. The commenters thus suggested that the use of MTF rates and commission schedules be mandatory for all assigned producers.

RESPONSE: As previously noted, insurers which are authorized to utilize MTF rates rules, rules and forms for MTF business written by the producer, shall pay the producer the compensation rate paid by the MTF. Accordingly, the rules provide for a uniform commission level for business written through the MTF. To the extent MTF rates are not utilized, there may be variations among insurers. The commenter apparently requests that the Department establish a set commission rate applicable to all assigned producers, which may be either higher or lower than commissions paid by any particular insurer. The Department does not believe such action would be appropriate. One of the goals of the Program is to encourage long term business relationships which necessarily requires that the assigned producer be treated similar to the insurer's other producers. Furthermore, the insurer's methods of doing business and rating system presume the commission structure and other terms of agreements of producers that have been developed by the insurer over time. Accordingly, the Department has determined not to impose a fixed commission rate that would impact on these areas for new business written through assigned producers.

COMMENT: One commenter stated that any producer assignments beyond the two year period should not be permitted and after the two year period, if the producer cannot move his or her book of business to another insurer or into another market, the insurer should be entitled to terminate any obligation with the producer and to terminate that obligation without following the requirements of N.J.S.A. 17:22-6.14a(d). The commenter stated that the relationship between the insurer and the producer is not that of an agent voluntarily employed by the company, and thus the producer should not be afforded the protections provided by N.J.S.A. 17:22-6.14a(d). The commenter additionally stated that if the agent is assigned to a company which uses exclusive agents and owns the agents' expirations, the assigned producer should not enjoy the rights and privileges not afforded other agents employed by the company.

RESPONSE: As noted in a response to a previous comment, one goal of N.J.S.A. 17:33B-9c is to provide access to producers and insureds through normal market channels. If a producer were required to lose ownership of its expirations through the random assignment to an insurer which utilizes exclusive agents only, such producer would not be afforded access through normal market channels, thus thwarting the intent of the Legislature. The Department believes therefore that it is reasonable to provide that a producer assigned to an insurer retains ownership of its expirations and is entitled to commission on business it continues to service.

COMMENT: One commenter questioned the significance of the requirement that an insurer have an affiliation with a voluntary market insurer which was terminated after December 31, 1980 as one of the conditions of eligibility.

RESPONSE: The December 31, 1980 date is one of the statutory requirements for qualification set forth in N.J.S.A. 17:33B-9c.

COMMENT: One commenter questioned whether there is a distinction between "terminated by the insurer" as set forth in N.J.A.C. 11:3-42.4(a)3 and the phrase "who had such an affiliation" in the same provision. The commenter questioned if a producer was cancelled by insurer "X" after December 31, 1980, whether that producer would be an eligible Association producer for insurer "Y" to appoint, or whether the termination would be required to be from the insurer being assigned the producer.

RESPONSE: The Department does not interpret this provision to require that the termination be made by the insurer to which the producer is being assigned. Any termination of a voluntary affiliation with a voluntary market insurer for purpose of placement of automobile insurance satisfies the requirement in N.J.A.C. 11:3-42.4(a)3.

COMMENT: One commenter inquired how it may verify whether a prospective appointment has been validated as an eligible producer and ascertain the appropriate category.

RESPONSE: The Department shall establish a list of eligible producers determined to be qualified for assignment pursuant to the criteria set forth in the rules, on October 1 and April 1 of each year. An insurer may also separately request verification from the assigned producer that it is eligible, qualified and meets the criteria set forth in these rules.

COMMENT: One commenter stated that the industry has fallen approximately 275,000 exposures short of the depopulation quota. The commenter questioned when these delinquent insurers will begin receiving assignments.

RESPONSE: This comment relates to the mandatory assignment of exposures and is therefore outside the scope of these rules. It should be noted that an initial assignment of exposures to insurers that failed to meet their apportionment share was made on December 31, 1991, and subsequent assignments on May 20, 1992.

COMMENT: One commenter stated that the two-year prohibition against agency termination is inconsistent with prior determinations by the Department that producers be paid commissions on depopulated business for one year only.

RESPONSE: The one year commission schedule related to mandatory assignment of exposures by producers, which has been subject to litigation (see *Aetna*), has been revised pursuant to P.L. 1991, c.462 and is not related to these rules.

COMMENT: One commenter stated that N.J.A.C. 11:3-42.12, which requires insurers to appoint assigned producers as agents, is silent about the terms of the contract or the consequences if the insurer fails to agree to the contractual terms. The commenter stated that insurers should be permitted to offer a contract with terms similar to those offered to its other representatives. If an assigned producer refuses to accept the terms offered, the commenter stated that it should not be entitled to the appointment.

RESPONSE: This is the purpose of the Program. As previously noted, the Program established by these rules is designed to provide maximum flexibility in recognition of the fact that agency agreements vary among insurers. The Department however believes it appropriate to provide limitations and parameters with respect to duration and termination of producer assignments and compensation of assigned producers in order to further the intent of the Legislature. Except as otherwise limited, insurers and producers shall negotiate in good faith to reach an agreement on fair and equitable terms. The terms of such agreement should be similar to those terms contained in agency contracts currently in use by the insurer. An insurer is not only permitted, but is required, to offer a contract with terms similar to those offered to its other representatives. If an assigned producer refuses to accept an assignment under this Program that provides for his or her appointment as the insurer's agent on fair and equitable terms, the producer is excluded from further participation in the Program pursuant to N.J.A.C. 11:3-42.18.

The specific sections of the adopted emergency new rules and concurrent reproposed new rules are summarized as follows:

Proposed N.J.A.C. 11:3-42.1 sets forth the purpose and scope of these proposed rules.

Proposed N.J.A.C. 11:3-42.2 sets forth the definitions of terms used in this subchapter.

Proposed N.J.A.C. 11:3-42.3 provides for the establishment of a list of producers qualified for assignment.

Proposed N.J.A.C. 11:3-42.4 sets forth minimum requirements for producer eligibility.

Proposed N.J.A.C. 11:3-42.5 describes the method of the determination of inadequately serviced geographic areas.

Proposed N.J.A.C. 11:3-42.6 describes the application procedures for producers seeking to be assigned under this Program.

Proposed N.J.A.C. 11:3-42.7 provides the review procedures for producer applications.

Proposed N.J.A.C. 11:3-42.8 sets forth the standards for a producer to be qualified for assignment under the Program.

Proposed N.J.A.C. 11:3-42.9 provides exemptions for insurers from the Program and sets forth the four criteria to be used by the Department in determining insurer eligibility for exemption from the Program.

Proposed N.J.A.C. 11:3-42.10 describes the procedures for the apportionment of producers for assignment and credits against assignments for producers voluntarily appointed.

Proposed N.J.A.C. 11:3-42.11 describes the procedures for the assignment of producers under the Program.

Proposed N.J.A.C. 11:3-42.12 sets forth requirements for insurer appointment of assigned producers.

Proposed N.J.A.C. 11:3-42.13 sets forth procedures and requirements for the transfer of the appointed producer's Association or MTF business to the insurer.

Proposed N.J.A.C. 11:3-42.14 provides for the effectuation of new business by the insurer.

Proposed N.J.A.C. 11:3-42.15 and 42.16 provide procedures for the compensation of assigned producers.

Proposed N.J.A.C. 11:3-42.17 sets forth the requirements for the duration and terms of producer assignment.

Proposed N.J.A.C. 11:3-42.18 provides for the exclusion of producers from the Program under specified circumstances.

Proposed N.J.A.C. 11:3-42.19 provides special requirements for the initial implementation of the Program.

Proposed N.J.A.C. 11:3-42.20 sets forth the penalties for violations of the subchapter.

Social Impact

These reproposed new rules codify an existing mechanism by which the Commissioner may assign eligible Association producers to insurers pursuant to N.J.S.A. 17:33B-9c. This should reduce any market disruptions associated with termination of eligible Association producers, thus benefiting the public.

Economic Impact

Insurers authorized to transact private passenger automobile insurance in this State will be required to bear any costs associated with the appointment of eligible Association producers which are assigned pursuant to these rules. The Commissioner, however, may excuse an insurer from its obligations under these rules if an insurer demonstrates that it is in an unsafe or unsound financial condition. In addition, insurers may receive credits against producer assignments under these rules for appointing Association producers voluntarily in accordance with procedures set forth in Order No. A91-280, and for demonstrating that it has established voluntary market participation in inadequately serviced geographic areas. These credits should mitigate against any additional costs imposed by these rules.

These reproposed rules should also benefit the public by reducing costs associated with market disruptions due to termination of Association producers and due to the severing of established relationships between eligible Association producers and insureds.

The Department will be required to bear any costs associated with compiling the list of eligible Association producers and all other costs associated with the assignment of producers to insurers in accordance with these rules.

Regulatory Flexibility Analysis

These reproposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq. The reproposed new rules will apply to small businesses which are insurers authorized to transact private passenger automobile insurance in this State. These small businesses will be required to bear any costs associated with complying with these rules (for example, payment of compensation to producers appointed and assumption of business written by those producers). To the extent the proposed new rules apply to small businesses they may impose a greater impact on small businesses in that they may have to devote proportionately more staff and financial resources to comply with these rules.

Producers seeking to be assigned under this Program will be required to comply with the application procedures set forth in these rules. Insurers which are assigned producers pursuant to these rules are required to: appoint such producers as agents in accordance with the procedures set forth in these rules; comply with the procedures governing the transfer of business by assigned producers; provide for the compensation of assigned producers in accordance with these rules; and comply with the procedures governing the termination of assigned producers.

The reproposed new rules provide different compliance requirements specifically based on business size. The rules exempt insurers with less than 1,000 in force exposures on December 31, 1983 and September 30, 1988. Further, the rules provide that insurers with less than 1,000 exposures at the end of the last quota period will not be assigned a producer whose book of business exceeds 15 percent (or greater than 25 percent in the case of insurers with more than 1,000 exposures) of the total private passenger automobile exposure of that insurer. Thus, the rules provide relief for insurers with a small book of business. In addition, the assignment of Association producers is tied to the amount of business written both presently and in the past. Accordingly, an insurer that writes a large amount of business will incur greater expense than an insurer that writes a small amount of business. Further, the Commissioner may excuse an insurer from its obligations under these rules if the insurer is in an unsafe or unsound condition. Finally, as previously noted, insurers may receive credit towards mandatory producer assignments pursuant to these rules which in turn, should mitigate against any additional costs imposed. The Department believes that these provisions should reduce any additional costs which may be imposed on small insurers through implementation of these rules.

Full text of the emergency adoption and concurrent reproposal follows:

SUBCHAPTER 42. PRODUCER ASSIGNMENT PROGRAM

11:3-42.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:33B-9c and provides for the assignment of qualified producers on an equitable basis to insurers writing private passenger automobile insurance in the voluntary market.

(b) This subchapter applies to all insurers licensed to transact private passenger automobile insurance in this State, unless otherwise exempt pursuant to this subchapter, and all qualified producers who seek to be assigned to insurers pursuant to the procedures set forth in this subchapter.

(c) Producer assignments under the Program shall cease with any assignments made pursuant to the April 1, 1993 list of qualified producers. Notwithstanding the foregoing, the Commissioner may reactivate the assignment procedure in the event he or she determines that there are geographic areas in this State that lack sufficient representation for the placement of automobile insurance business in the voluntary market.

11:3-42.2 Definitions

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

"Association" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Automobile" is as defined in N.J.S.A. 17:30E-3b.

"Automobile insurance" is as defined in N.J.S.A. 17:30E-3c.

"Category B Association producer" means a producer who does not have a current affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance who:

1. Had such an affiliation with an insurer that was terminated by the insurer prior to December 31, 1980; or

2. Never had such an affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance.

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

"Department" means the New Jersey Department of Insurance.

"Geographic area" means any one of the 27 rating territories in this State approved by the Commissioner for use in private passenger automobile rating systems.

"MTF" means the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"Program" means the Producer Assignment Program established pursuant to N.J.S.A. 17:33B-9c and this subchapter.

"Voluntary market insurer" means an insurer authorized to transact private passenger automobile insurance in this State.

11:3-42.3 List of qualified producers

Except for the first assignment made under this Program, the assignment of producers shall be made on a biannual basis subsequent to the conclusion of the quota periods established pursuant to N.J.S.A. 17:33B-11, commencing with the October 1, 1992 quota. The Commissioner shall annually, on October 1 and April 1, establish a list of producers who have been determined to be qualified for assignment to voluntary market insurers pursuant to this Program.

11:3-42.4 Eligible producers

(a) For the purpose of this subchapter, "eligible producer" is a producer who:

1. Is licensed in this State as a resident insurance producer;

2. Had a valid Association producer contract in force on September 30, 1990.

3. Does not have a current affiliation with a voluntary market insurer for the purposes of placement of private passenger automobile insurance, but who had such an affiliation that was terminated by the insurer between December 31, 1980 and December 31, 1992;

4. Is located in a rating territory that is determined by the Commissioner to be inadequately serviced, as defined in N.J.A.C. 11:3-42.5; and

5. Has derived not less than $7,500 in commission income from Association or MTF policies combined in calendar year 1990.

i. A producer may also use any voluntary market private passenger automobile insurance commission income he or she received during 1990 to meet the $7,500 threshold.

(b) For the purpose of this section, a producer who does not have a current affiliation with a voluntary market insurer for the purposes of placement of private passenger automobile insurance shall include the appointed representatives of insurers that have been:

1. Exempted from meeting the requirements of N.J.S.A. 17:33B-15, provided that the producer was appointed before the exemption Order and wrote at least 10 policies for the insurer during the year preceding the application for assignment;

2. Ordered by the Commissioner to cease the writing of automobile insurance; or

3. Permitted by the Commissioner to cease writing automobile insurance pursuant to a plan of orderly withdrawal approved pursuant to N.J.A.C. 11:2-29.

11:3-42.5 Designation of geographic areas

(a) For the purposes of the Program, the State shall be divided into geograhic areas corresponding to the rating territories used by the Association/MTF to write private passenger automobile insurance. Each rating territory shall be designated as either adequately serviced or inadequately serviced. For the initial producer assignment to be made under this Program, the determination of whether a territory is inadequately serviced shall be as follows:

1. A territory shall be designated as adequately serviced if the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger non-fleet exposures in that territory meets or exceeds both the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 and the aggregate Statewide quotas established pursuant to N.J.S.A. 17:33B-11c(5), for the quota periods ending March 31, 1991 and September 30, 1991.

2. A territory shall be designated as inadequately serviced if the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger non-fleet exposures in that territory is less than the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 or pursuant to N.J.S.A. 17:33B-11c(5), for the quota periods ending March 31, 1991, or September 30, 1991.

(b) For quota periods ending after September 30, 1991, the Commissioner shall review the status of each rating territory at the conclusion of each quota period established pursuant to N.J.S.A. 17:33B-11c(5). A rating territory shall be determined by the Commissioner to be inadequately serviced:

1. If the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger automobile non-fleet exposures in that territory is below the aggregate Statewide quota for the quota period; or

2. If the territory is adequately serviced based on the criteria established in (b)1 above, but the volume of exposures insured in the voluntary market was not achieved in the territory substantially through the voluntary writing of exposures but was achieved through the mandatory assignment of exposures pursuant to any mandatory depopulation plan established by the Commissioner.

(c) Notwithstanding the foregoing, the Commissioner, in his or her discretion, may find that specific areas within a rating territory are inadequately serviced although the territory as a whole has been determined to be adequately serviced. The Commissioner's determination shall set forth the basis for his or her finding in such instances.

(d) Except as may be otherwise permitted by the Commissioner, producers shall be deemed to be located and servicing business in a single rating territory for the purposes of this Program. The producer shall be assigned to the rating territory in which the producer's principal business office is located, as reflected by the records of the Department's licensing records.

(e) The Commissioner shall annually, on May 15 and November 15, establish a list of those rating territories or, if applicable, areas within rating territories that are determined to be inadequately serviced based on a review of the results of the immediately preceding quota periods, that is, April 1 and October 1, respectively. Notice thereof shall be provided to all Association producers by bulletin.

11:3-42.6 Application procedures

(a) Any producer who is eligible for assignment to a voluntary market insurer pursuant to this Program shall make application to the Department on a form prescribed and furnished by the Department, incorporated herein by reference as Appendix A. The Department shall provide the form upon written request, within five working days of receipt of such request.

(b) All applications and accompanying documents shall be submitted to the Department. Applications premised on the May 15 list of inadequately serviced territories shall be filed with the Department no later than July 1 and applications premised on November 15 list shall be filed no later than January 1.

(c) In the event an application is not fully completed, or the information provided is inadequate or required documentation is missing, the application shall be disapproved and the producer so notified, in writing, within 10 working days of receipt of the application by the Department. The producer shall be afforded a reasonable opportunity to cure any deficiencies in the application, provided, however, that such deficiencies are cured and a completed application is filed with the Department by the filing dates specified in (b) above.

(d) The Department shall review each application to determine whether the producer meets each of the criteria established by the Commissioner pursuant to N.J.S.A. 17:33B-9c and shall advise the applicant, in writing, as to whether he or she is qualified for assignment under this Program. Disapproval of an application shall be made as provided in N.J.A.C. 11:3-42.8.

(e) Notifications to producers applying pursuant to the May 15 list of inadequately serviced territories shall be issued by the Department on or before September 1; notifications premised on the November 15 list of inadequately serviced territories shall be issued by the Department on or before March 1.

(f) Completed applications and other information required to be submitted pursuant to this subchapter shall be submitted to the Department at the following address:

ARM Unit/PAP
Department of Insurance
CN 325
Trenton, New Jersey 08625

11:3-42.7 Review of applications

(a) In determining whether a producer is qualified for participation in this Program, the Department's review shall include, but need not be limited to, the following:

1. Any records concerning the termination of the producer's affiliation with any voluntary market insurer(s) to determine whether:

i. The producer was terminated on or after December 31, 1980 (as provided at N.J.S.A. 17:33B-9c(3));

ii. The producer has violated any of the insurance laws of this State or rules promulgated pursuant thereto; and

iii. The reason for termination adversely reflects on the producer's competency, efficiency and effectiveness in servicing insurance business or otherwise indicates that the producer should not be qualified for this Program due to unworthiness, bad faith, lack of integrity, financial irresponsibility, dishonesty or other criteria deemed relevant by the Commissioner;

2. Any records relating to the appointment of the producer to act as an Association or MTF producer, his or her performance as an Association or MTF producer, any bona fide complaints filed against the producer with the Association, the MTF or any servicing carrier of these entities and any corrective or disciplinary action taken by the Association or MTF with respect to the producer;

3. Any records of bona fide complaints filed against the producer with the Department or any administrative action instituted by the Department (that is, issuance of an Order to Show Cause, issuance of an Order pursuant to N.J.S.A. 17:22A-20d etc.) with respect to the producer that has resulted in the imposition of fines or suspension or revocation of license privileges, including the imposition of such sanctions based on a Consent Order; and

4. Upon disclosure on the application or any other document reviewed by the Department of such administrative actions, any records relating to administrative actions instituted by any licensing authority of this or any other state or the Federal government with respect to the producer that has resulted in the imposition of fines, or suspension or revocation of license privileges.

11:3-42.8 Producer qualification standards

(a) An application for qualification under this Program shall be disapproved if, based on the Department's review as set forth in N.J.A.C. 11:3-42.7:

1. The producer is determined not to meet the eligibility criteria set forth in N.J.A.C. 11:3-42.4;

2. The producer has failed to comply with insurance laws and regulations and/or the producer performance standards established by the Association Plan of Operation, at Part III Operating Principles, Section 4: Producer Performance Standards, subsection 1, Performance Standards—General, or the MTF Plan of Operation, at Part III, Operating Principles, Section 4: Producer Performance Standards, subsection 1, Performance Standards—General;

3. The producer's affiliation with any voluntary market insurer has been terminated for reasons that adversely reflect on the producer's competency, efficiency or effectiveness in servicing insurance business or that otherwise indicate that the producer should not be qualified for this Program due to unworthiness, bad faith, lack of integrity, dishonesty, financial irresponsibility or other criteria deemed relevant by the Commissioner. This standard shall apply to all terminations of affiliation, including, but not limited to, agency appointments, brokerage arrangements and limited insurance representative appointments, any termination of an appointment made pursuant to the Producer Voluntary Placement Plan and any termination of an assigned appointment made under this Program;

4. The producer failed to file a completed application with the ARM Unit within the Department as provided in N.J.A.C. 11:3-42.6(c);

5. The producer knowingly withheld material information on the application or any accompanying document or intentionally made or caused to be made any false, deceptive or fraudulent statement during the application process, or otherwise qualified or attempted to qualify for this Program by fraud or material misrepresentation; or

6. The producer has been excluded from the Producer Voluntary Placement Plan or has previously been excluded from the Producer Assignment Program as provided in N.J.A.C. 11:3-42.18.

(b) An otherwise eligible producer whose application has been disapproved may reapply for the Program in a subsequent period except where such disapproval is for cause. For the purpose of this provision the term, "for cause," shall mean any willful and/or repeated violation of insurance laws or regulations, or Association or MTF performance standards, or any conduct that demonstrates unworthiness, lack of integrity, bad faith, dishonesty, financial irresponsibility or incompetency to transact business as an insurance producer.

(c) When the ARM Unit within the Department disapproves an application for assignment, the disapproval notice shall:

1. Include a written statement specifying the reasons for the rejection; and

2. Inform the producer of the his or her ability to request a review of the disapproval by the Commissioner, within 10 days of receipt of the disapproval.

i. A request for review by the Commissioner shall be in writing and made within 10 days of receipt of the disapproval and shall be accompanied by all supporting documentation, if any, disputing with specificity, the reasons for disapproval. A response to this request may be made by the ARM Unit within five days thereafter.

ii. The Commissioner shall issue a written decision with reasons upholding or reversing the decision of the ARM Unit within 30 days from receipt of the last written request or response whichever is later.

11:3-42.9 Exemption from program

(a) The Program is intended to address the dual goals of protecting producers who have built businesses and developed expertise serving the residual market and of encouraging auto insurance sales and service in inadequately served territories. Therefore, assignment of producers on an equitable basis should consider whether an insurer's own marketing system has, in practice, provided reasonable access to persons in all areas of the State. When an insurer has demonstrably provided such access, it may be exempt from assignments under the Program.

1. Requests for an exemption on this basis must be supported by the following information:

i. For an insurer utilizing producers to transact private passenger automobile insurance in this State:

(1) A report showing the distribution of producers by territory within the State of New Jersey for the period between October 1, 1990 to the present. The report should specify the appointment dates of any newly appointed producer during the report period, as well as the termination date of any producer terminated during the report period;

(2) A narrative and supporting documentation demonstrating that the insurer was actively soliciting private passenger automobile insurance in inadequately serviced territories for the period between October 1, 1990 and April 1, 1992. The narrative and supporting documentation should also include data reflecting the results of the solicitation efforts;

(3) A report showing the number of new business applications for private passenger automobile insurance by territory submitted by each producer for the period from October 1, 1990 to the present. For the purposes of this report, applications rejected by the insurer should be included;

(4) A report showing the number of new business private passenger automobile insurance policies issued by the insurer by territory for the period from October 1, 1990 to the present; and

(5) Any other supplemental information that the insurer may consider relevant to the request for an exemption.

ii. For insurers who conduct business as direct writers:

(1) A narrative and supporting documentation showing that the insurer was actively soliciting private passenger automobile insurance in the inadequately serviced territories, especially the most inade-

quately serviced territories, for the period from October 1, 1990 and to the present. The narrative and supporting documentation should also include data reflecting the results of the solicitation efforts; and

(2) Any other supplemental information that the insurer may consider relevant to its request for an exemption.

2. Requests for exemptions from this Program must be received by the Department no later than 45 days prior to the end of the quota period for which assignments are being made. Failure to submit a complete application by the due date may result in a denial of the insurer's request for exemption from assignments for that assignment period.

3. The review of requests for exemptions from this Program shall be conducted by the ARM Unit within the Department. The ARM Unit shall review the request and shall notify the insurer in writing as to its decision within 45 days of receipt of a complete exemption request.

i. In evaluating an insurer's application for an exemption, the Department shall apply four tests. Each test shall be weighted equally so that passing or failing one test shall not automatically result in the denial of an exemption. A passing result on each test carries a score of one, and, therefore, the maximum possible score is four. A score of three or better results in the granting of an exemption.

ii. The four tests are as follows:

(1) Whether the insurer met the most recent depopulation quota;

(2) Whether the insurer's distribution of business among all the rating territories for the most recent data available matches the distribution of business in the MTF on that same date. The Department uses a Standard Compliance Index for this measurement. A compliance index of 1.000 or more demonstrates a good match between the insurer's and MTF's distributions;

(3) Whether the insurer's rate of growth in the inadequately serviced territories as defined at N.J.A.C. 11:3-42.5 between September 30, 1990 and the most recent available quarterly report information equals or exceeds the rate of growth in those same inadequately serviced territories by the voluntary market as a whole; and

(4) Whether the information submitted by the insurer pursuant to this subsection indicates that the insurer, through its system of marketing insurance and efforts at solicitation of business, provided reasonable market access in the inadequately serviced territories, especially the most inadequately serviced territories.

4. When the ARM Unit rejects an exemption request, the notice of rejection shall:

i. Include a statement in writing specifying the reasons for the rejection; and

ii. Inform the insurer of the right to request a review of the rejection by the Commissioner, no later than seven days after receipt of the notice of rejection.

(1) A request for review by the Commissioner shall be made in writing no later than seven days after receipt of the notice of rejection and shall be accompanied by all supporting documentation, if any, disputing, with specificity the reasons for rejection. A response to this request may be made by the ARM Unit within five days thereafter.

(2) The Commissioner shall issue a written decision with reasons upholding or reversing the decision of the ARM Unit within 30 days from receipt of the last written request or response whichever is later. In deciding requests for review, the Commissioner may consider such additional information submitted by the insurer that shall promote the express intention of N.J.S.A. 17:33B-9c to assign qualified producers to insurers on an equitable basis.

(b) An insurer may also be exempted from this Program:

1. As part of relief from insurer obligations under the Fair Automobile Insurance Reform Act having been granted, pursuant to the requirements of N.J.A.C. 11:2-35;

2. In accordance with a plan of orderly withdrawal from the State which has been approved pursuant to N.J.A.C. 11:2-29;

3. If the insurer had fewer than 1,000 voluntary private passenger automobile exposures in-force on December 31, 1983 and September 30, 1988; or

4. If the insurer has, as a condition of providing coverage, uniform membership requirements which have been filed and approved by the Department pursuant to N.J.S.A. 17:29A-46 and N.J.A.C. 11:3-35 and the insurer is not prohibited from using its membership requirements by N.J.S.A. 17:33B-26. Notwithstanding the foregoing, if the insurer is a member of a group that includes other insurers that are authorized to transact private passenger automobile insurance in this State, but do not have approved membership requirements as a condition of providing coverage, producer assignments shall be made to the group.

(c) An insurer that has been exempted from this Program pursuant to (b)1 or 2 above or qualifies for exemption under (b)3 or 4 above shall notify the Department at least 45 days prior to the promulgation of the lists of qualified producers.

11:3-42.10 Apportionment of producers; credits

(a) Each insurer authorized to transact the business of private passenger automobile insurance in this State shall be subject to the assignment of qualified producers pursuant to the procedures and requirements set forth in this Program. Producer assignments shall be apportioned among insurers based upon each insurer's apportionment share as determined for purposes of depopulation pursuant to N.J.S.A. 17:30E-14 and 17:33B-11(c)5, subject to any exemptions as set forth in N.J.A.C. 11:3-42.9.

(b) Any insurer that has, pursuant to the Producer Voluntary Placement Plan, appointed eligible Association producers as defined in N.J.A.C. 11:3-42.4 shall receive credit against any producer assignments to be made under this Program on a one-for-one basis. The one-for-one credit shall be premised on a calculation of the insurer's apportionment share of the total number of producers who otherwise would have been eligible for assignment under this Program in the absence of any voluntary agreements entered into by those companies subject to assignment.

1. In the event that an insurer appoints sufficient eligible Association producers to meet or exceed the insurer's apportionment share of such producers for that assignment period, the insurer shall not be subject to producer assignment during that assignment period and the excess shall be credited against any subsequent assignments made by the Commissioner.

2. The excess shall not be credited against subsequent assignments to the extent that the insurer has terminated any appointments of producers prior to the next assignment period.

3. Credits against future assignments shall apply irrespective of whether the territory where a producer is located continues to be designated as inadequately serviced pursuant to N.J.A.C. 11:3-42.5.

(c) Any insurer that has, pursuant to the Producer Voluntary Placement Plan, appointed Category B Association producers who are located in territories that have been determined by the Commissioner to be inadequately serviced pursuant to N.J.A.C. 11:3-42.5, shall receive credits against any producer assignments based on the credit allowance set forth in (d) below.

1. In the event that an insurer appoints sufficient Category B Association producers to meet or exceed the insurer's apportionment share of eligible producers for that assignment period, the insurer shall not be subject to producer assignment during that assignment period and the excess shall be credited against any subsequent assignments made by the Commissioner.

2. The excess shall not be credited against subsequent assignments to the extent that the insurer has terminated any producer appointments prior to the next assignment period.

3. Credits against future assignments shall apply irrespective of whether the territory where a producer is located continues to be designated as inadequately serviced pursuant to N.J.A.C. 11:3-42.5.

(d) The credit allowance specified in (c) above shall be calculated so as to ensure the Commissioner's ability to provide assignments for all or substantially all producers on each list of qualified producers as set forth in N.J.A.C. 11:3-42.3. The credit allowance shall be reviewed and adjusted, if necessary, on a periodic basis. For the initial implementation of this Program, an insurer shall receive one credit toward a producer assignment for every four Category B producers appointed who are located in inadequately serviced territories.

(e) In calculating any insurer's apportionment share of any producer assignments made pursuant to this Program, the following procedures shall govern:

1. The apportionment shares of producer assignments of any insurers that are subject to exemption under the Program, pursuant to N.J.A.C. 11:3-42.9, shall be calculated and such shares redistributed among the remaining carriers in the proportion that each of the remaining insurers' market shares bears to the total market share of all such insurers;

2. Credits against an insurer's apportionment share of producer assignments earned pursuant to (b) above shall be calculated and the producers redistributed among the remaining insurers in the proportion that each of the remaining insurers' producer assignments (after application of the one-for-one credit) bears to the total number of such assignments; and

3. Credits against an insurer's apportionment share of producer assignments earned pursuant to (c) above shall be calculated and the producers redistributed among the remaining insurers in the proportion that each of the remaining insurers' producer assignments (after application of any credits under (c) above) bears to the total number of such assignments.

(g) In calculating credits under this section, the Department shall utilize the number of voluntary agreements that are in force at the end of the April 1 and October 1 quota periods, as applicable. Any credits that are earned by an insurer for a given assignment period that are premised on an appointment that is subsequently terminated shall be removed and adjustments made to the insurer's apportionment share in the next assignment period.

11:3-42.11 Producer assignments

(a) Each insurer subject to the assignment of producers pursuant to this Program shall be notified by Order subsequent to the Commissioner's establishment of each list of qualified producers as set forth in N.J.A.C. 11:3-42.3. Except as provided in (a)1 and 2 below, qualified producers shall be assigned to the insurers subject to assignments on a random basis.

1. No insurer whose total private passenger automobile in-force exposures at the end of the last quota period is greater than 1,000 will be assigned a producer whose eligible book of business is greater than 25 percent of the total private passenger automobile exposures of that insurer.

2. No insurer whose total private passenger automobile in-force exposures at the end of the last quota period is less than 1,000 will be assigned a producer whose eligible book of business is greater than 15 percent of the total private passenger automobile exposures of that insurer.

3. The Department shall consider the total in-force exposures of the insurer at the end of the last quota period in making assignments under this Program.

11:3-42.12 Appointment

(a) Any producer assigned to an insurer under this Program shall be appointed by the insurer as an agent of the company pursuant to N.J.S.A. 17:22A-15 and notice thereof provided to the Department as provided in N.J.A.C. 11:17-2.9. Contracts between the insurer and the assigned producer(s) shall be executed no later than 30 days following issuance of the Order specified in N.J.A.C. 11:3-42.11.

1. With respect to insurers that are members of a group, the notice to the Department shall specify the member companies to which the producer is appointed as an agent. Where the group utilizes different member insurers for the purpose of writing standard and nonstandard risks, the producer shall be appointed as an agent for all such companies. Insurers that are members of a group are not required to appoint the producer as an agent of all the companies in the group provided that the producer is appointed to one or more companies that have approved standard and non-standard rating plans.

(b) Pursuant to N.J.S.A. 17:22-6.14a(1)e, an insurer may use an insurance marketing system that provides for its agents to be compensated on a salary basis without commission or provides for its agents to represent the company exclusively. Such as insurer may utilize this system for producers assigned to it under this Program or may appoint such producers as independent agents.

11:3-42.13 Transfer of MTF business

(a) The insurer shall offer the same or equivalent automobile insurance coverage that was afforded under the MTF to each MTF insured serviced by the producer who is determined by the insurer to qualify as an eligible person pursuant to N.J.A.C. 11:3-34. Where the insurer does not have rates and rules filed and approved by the Department for the same or equivalent coverage presently afforded the insured under the MTF policy, the insurer shall offer to the insured the next broadest coverage for which the insurer has rates and rules filed and approved by the Department. The insurer is expressly prohibited from offering less coverage to the insured than the coverage afforded to such insured under the MTF policy. Examples of coverages that may be offered is set forth in Appendix B to this subchapter, incorporated herein by reference. In determining whether the MTF insured qualifies as an eligible person, insurers shall comply with N.J.A.C. 11:3-8.4. An insurer also may determine to make an offer of coverage to an insured who does not qualify as an eligible person.

(b) The transfer of the producer's MTF policies to the assigned insurer shall be accomplished through completion by the producer of a new business application and a coverage selection form for the insured. Pursuant to mutual agreement between the insurer and the producer, the new business application may be unsigned. However, a coverage selection form signed by the insured shall be submitted to the insurer.

(c) An insurer receiving assignments under this Program may make independent agreements with the servicing carriers for the exchange of electronic information or other arrangements involving the transfer of policies from the MTF to the insurer. An outline of the terms of any agreement and any copies of any written material that will be sent to insureds must be submitted in advance of its implementation to the Department. The MTF shall have no responsibility to provide coverage for insureds as a result of the failure of the servicing carrier to perform under the terms of the independent agreement.

11:3-42.14 New business

The producer shall be authorized to solicit, negotiate and effect new contracts of automobile insurance in accordance with all applicable laws and regulations and the insurer's underwriting guidelines, consistent with procedures applicable to the insurer's other representatives.

11:3-42.15 Producer compensation; company rates

(a) Where an insurer determines to use its own rates for former MTF insureds transferred to the insurer and/or new business written through the producer, the contract shall provide for the producer to be compensated based on the insurer's current schedule of commissions or other formula used to provide compensation to its agents. Policies transferred from the MTF shall be considered as new business with respect to providing producer compensation, for the assigned insurer's initial policy period.

(b) Where an insurer's compensation schedule contemplates support services, such as office space, equipment or advertising, or other employee benefits, and such services or benefits are not provided to the producer, the compensation schedule shall be adjusted to reflect accurately the value of such services or benefits so that the producer shall receive compensation that is equivalent to the compensation paid to, or on behalf of, the company's agents who receive such services or benefits.

1. For the purpose of this provision, the term "agent" shall be construed to have the broadest possible meaning, including, but not limited to, exclusive agents or independent agents.

2. Where an insurer has more than one schedule of commissions for its agents, it shall negotiate in good faith with producers assigned pursuant to this Program to determine the commission to be paid.

(c) In the case of companies that are direct writers, expenses for a direct marketing department and related support staff shall be considered in determining the commission paid to the assigned producer under (a) above.

1. The commission agreed to by any direct writer and an assigned producer under (a) above shall be comparable to the compensation paid to independent agents by insurers that utilize such agents.

2. Where an insurer that is a direct writer also maintains, through a subsidiary company or otherwise, a mechanism to accept business from producers who are not the normal, exclusive agents of the direct writers, the commission schedule applicable to such producers shall be utilized consistent with (a) above.

11:3-42.16 Producer compensation; MTF rates

Where the insurer is authorized by law to use MTF rates, rules and forms for policies written through the producer, it shall pay the producer the same commission paid by the MTF.

11:3-42.17 Duration and terms of producer assignment

(a) Any termination of an appointment of a producer assigned to an insurer pursuant to this Program shall be prohibited for two years following the date of contract, except where such termination is for cause. A termination for cause must be based on the producer's insolvency, abandonment, gross and willful misconduct or failure to pay over to the companies monies due to the company after his or her receipt of written demand therefor, or after revocation of the agent's license by the Commissioner. In addition, an appointment may be terminated for cause if the producer violates the written underwriting guidelines of the insurer in such a manner or with such frequency as to substantially affect the company's ability to underwrite or provide coverage.

1. Insurers shall provide producers with at least 45 days written notice of a termination for cause. The notice of termination shall include a detailed written explanation of the reasons for termination. A copy of the notice shall also be sent to the Department.

2. A termination for cause shall result in the exclusion of the producer from further participation in the Program. Producers may contest a termination notice pursuant to the procedures in N.J.A.C. 11:3-42.18(d).

3. In the case of a termination for cause, the insurer may reassign the producer's book of business to another active agent of the company or service it directly.

(b) At the conclusion of the two year period, the producer and insurer shall negotiate in good faith to do one of the following:

1. Irrespective of the marketing system customarily used by the insurer, appoint the producer as an independent agent, the termination of which appointment is governed by N.J.S.A. 17:22-6.14a(1)(d);

2. Where the insurer, pursuant to N.J.S.A. 17:22-6.14a(e), uses an insurance marketing system that provides for its agents to be compensated on a salary basis without commission or provides for its agents to represent that company exclusively, the insurer may appoint the producer under this system; or

3. Buy out the producer by paying to him or her an amount equivalent to at least one year's commission based on the book of business at the end of the two year assignment period.

(c) If the insurer and the producer cannot reach an agreement under (b) above, the producer shall be deemed a terminated agent who is subject to the provisions of N.J.S.A. 17:22-6.14a(d) and (i), notwithstanding N.J.S.A. 17:22-6.14a(l)e or the mode of appointment of the producer under this Program (that is, exclusive agent or independent agent).

11:3-42.18 Exclusion from program

(a) Any producer who refuses an assignment under this Program, that provides for his or her appointment as the assigned company's agent on fair and equitable terms, shall be excluded from further participation in this Program.

(b) Any producer who is terminated within the two year period set forth in N.J.A.C. 11:3-42.16(a) above shall be excluded from further participation in this Program.

(c) Insurers shall immediately provide notice of any refusal of assignment as provided in (b) above, respectively, in writing, to the Department in the format set forth in Appendix C to this subchapter, incorporated herein by reference. A copy of the notice shall be simultaneously delivered to the affected producer.

(d) A producer who has received a notice of termination for cause or a Notice of Refusal of Appointment may file a written response with the Department. Such response shall be made within 10 days of the insurer's notice. The Commissioner shall issue a written decision with reasons within 30 days.

11:3-42.19 Initial implementation of program

For the initial implementation of this Program, in-force voluntary agreements that are established by insurers with eligible Association producers and Category B producers located in inadequately serviced territories between October 1, 1990 and February 29, 1992 shall be used to determine any credits under N.J.A.C. 11:3-42.10.

11:3-42.20 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

APPENDIX A

Date Stamp Application Number

PRODUCER ASSIGNMENT PROGRAM (PAP)
Producer Application

Producer License Reference #

Name of Applicant (must be same as on license)

Contact Person if Applicant is Corp. or Partnership

(_____) Telephone Number

Main Business Address of Applicant—No. & Street (no Post Office Box #)

City NJ Zip

Rating Territory of Main Business Address _____ SS or Tax ID#_____

Does the applicant have a valid New Jersey producer license? Yes _____ No _____

Did the applicant have a valid Association producer contract on 9/30/90? Yes _____ No _____

Does the applicant have a current appointment with a voluntary market insurer for the placement of automobile insurance? Yes _____ No _____

Did the applicant have an appointment with a voluntary insurer for the placement of automobile insurance that was terminated by the insurer after 12/31/80? Yes _____ No _____ If yes, list the insurers with the date and reason for termination below.

Insurer	Date	Reason for Termination

Total commission income earned by applicant from JUA/MTF business in 1990? $_____

Total commission earned on voluntary market auto insurance policies, if any? $_____
Attach copies of IRS 1099 forms.

If the answer to any of the questions below is YES, attach copies of relevant documents and explain in the Remarks section below. Add additional sheets if necessary.

Has the applicant or any officer, partner, director or owner of 5% or more have any unsatisfied judgments against them? Yes _____ No _____

Has the applicant or any officer, partner, director or owner of 5% or more ever been indicted or convicted of a crime, misdemeanor or disorderly persons offense in this State, other state or by the federal government? Yes _____ No _____

Has the applicant or any officer, partner, director or owner of 5% or more ever been the subject of any administrative action initiated by the Department of Insurance of this State or any other licensing authority of this or any other state, that resulted in the revocation or suspension of license privileges? Yes _____ No _____

Certification—I/We hereby certify that:

1. I/We give the Department of Insurance permission to verify any information supplied with any federal, state or local government agency, insurance company, JUA or MTF.
2. All the information submitted on this application and all attachments are true and complete. I am/We are aware that submitting false information in connection with this application is grounds for exclusion from the Producer Assignment Program and may subject me/us to administrative including revocation of license.

Signature of Applicant or Officer of Corporation

Print Name

Return to: NJ Department of Insurance
ARM Unit/PAP Applications
20 W. State Street CN 325
Trenton, NJ 08625

APPENDIX B

COVERAGE DETERMINATION EXAMPLES

The following examples are provided for illustration purposes only:

Example 1: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. However, the member company only writes combined single limit of liability coverage and only has rules and rates filed and approved by the Department for this type coverage. Therefore, the member company must offer the MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrences limit and the property damage occurrence limit added together or the next broadest available coverage (for example, $75,000, but in no event less than $60,000).

Example 2: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company only writes combined single limit of liability coverage and offers $100,000 combined single limit of liability coverage as the minimum coverage to its voluntary insureds. However, the member company has rates and rules filed and approved by the Department for combined single limit of liability coverage for amounts less than $100,000. Therefore, the member company must offer the MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrence limit and the property damage occurrence limit added together or the next broadest available coverage, but less than $100,000 (for example, $75,000, but in no event less than $60,000).

Example 3: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company only writes combined single limit of liability coverage and offers $100,000 combined single limit of liability of coverage as the minimum coverage to is voluntary insureds. The member company does not have any rates and rules filed and approved by the Department for amounts of combined single limit of liability coverage less than $100,000. Therefore, the member company must offer the MTF policyholder $100,000 combined single limit of liability coverage.

Example 4: The MTF policyholder presently has $75,000 combined single limits of liability coverage. The member company writes both split limits and combined single limit of liability coverage and has rates and rules filed and approved by the Department for both types of coverage. Therefore, the member company must offer the MTF policyholder $75,000 combined single limit of liability coverage and not a split limits policy.

Example 5: The MTF policyholder presently has $100,000 combined single limit of liability coverage. The member company only writes split limits of liability coverage and only has rates and rules filed and approved by the Department for this type of coverage. Therefore, the member company must offer the MTF policyholder split limits of liability coverage with a bodily injury per person limit equal to the combined single limit of liability coverage or the next broadest available coverage (for example, $100,000/$300,000/$50,000). (Note: All conversions of combined single limit of liability coverage should be handled in the same manner, except a $35,000 combined single limits policy. In this particular case, the member company shall offer $15,000/$30,000/$5,000 split limits of liability coverage.)

APPENDIX C

PRODUCER ASSIGNMENT PROGRAM—REFUSAL OF PRODUCER APPOINTMENT
(Please print or type)

---------- Company Information ----------

_____ _____
Name of Company or Group NAIC #

Address: _____

_____ _____
Company Contact Person Title

Phone No.: (____)_____ FAX No.: (____)_____

---------- Producer Information ----------

_____ | | | | | | | | | |
Name of JEA/MIF Contractholder DOI Producer Reference No.

Contact Person: _____
Individual Licensee if above is Partnership or Corporation

_____
Main Business Address—No. and Street (P.O. Box not permitted)

_____ NJ _____ (____)_____
City Zip Phone

---------- Refusal Information ----------

Date of Refusal of Appointment: Mo. _____ Day _____ Yr. _____

Comment: _____

_____

_____

_____

_____

CERTIFICATION

I certify that the above information is correct to the best of my knowledge information and belief. I understand that if I have knowingly made any false statements I will be subject to penalties.

_____ _____
Signature of Company Representative Print Name

_____ _____
Title Date

PUBLIC NOTICES

EDUCATION

(a)

THE COMMISSIONER

Notice of Availability of the 1992-93 Directory of Federal and State Programs

Take notice that the N.J. Department of Education has available for the general public the 1992-93 edition of the *Directory of Federal and State Programs* which gives information regarding the availability of the federal and state grant funds pursuant to Chapter 7, laws of 1987, supplementing Title 52 of the Revised Statutes. A copy of this directory has been given to each Local Education Agency and County Office of Education. **Copies may be obtained by writing to:**

Bureau of Budget, Accounting and Contracts
N.J. Department of Education
CN 500
Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

HAZARDOUS SITE SCIENCE UNIT

Notice of Receipt of Petition for Rulemaking: Standard for Cleanup of Chromium Contamination in Soil

Petitioner: Interfaith Community Organization.

Take notice that on August 20, 1992, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning the standard for cleanup of chromium contamination.

The petitioner, Interfaith Community Organization, represents residents of the Hudson County community concerned with chromium contamination near or at their homes, worksites and educational institutions.

Petitioner seeks adoption of a rule establishing a cleanup standard for chromium contamination in the soil of 75mg/kg Total Chromium for both residential and non-residential sites using as a technical basis for that rule the Department publication entitled, *Derivation of a Risk Based Chromium Cleanup Level in Soil Contaminated with Chromite Ore Processing Residue in Hudson County.*

(c)

BUREAU OF HAZARDOUS SUBSTANCES INFORMATION

Notice of Action on Petition for Rulemaking: List of Environmental Hazardous Substances under N.J.A.C. 7:1G and 7:1G-2.1

Petitioner: Dry Color Manufacturers' Association.

Take notice that on June 25, 1992, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking concerning an amendment to the Department's rules (N.J.A.C. 7:1G) implementing the Worker Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. (see 24 N.J.R. 2636(a)).

Petitioner, the Dry Color Manufacturers' Association ("DCMA") is a trade association representing pigment color manufacturers throughout the United States and Canada. A number of petitioner's members have manufacturing facilities located in New Jersey, and are subject to the Worker and Community Right to Know Act and rules promulgated under that Act.

N.J.A.C. 7:1G establishes reporting requirements concerning substances designated as "Environmental Hazardous Substances" under N.J.A.C. 7:1G-2.1 (the "EHS List"). The EHS list includes "copper and compounds." The petitioner is seeking to have the department remove the following organic copper compounds from the EHS list, on the grounds that they pose no adverse health or environmental effects:

1. C.I. Pigment Blue 15, Phthalocyanine Blue CAS No. 147-14-8
2. C.I. Pigment Green 7, Phthalocyanine Green CAS No. 1328-53-6
3. C.I. Pigment Green 36, Phthalocyanine Green CAS No. 14302-13-7

The Department has reviewed the information submitted by the petitioner and concurs that the three phthalocyanine pigments should be deleted from reporting requirements under the category "Copper Compounds." The United States Environmental Protection Agency (EPA) has removed these three copper compounds from the Federal Superfund Amendments and Reauthorization Act (SARA) Title III, Section 313 reporting requirements; in evaluating the petition, the Department applied EPA's analysis supporting the removal of these compounds from the SARA list. **See** Federal Register Vol. 56, No. 100, Thursday, May 23, 1991. EPA concluded that the levels at which copper ion exhibits toxicity far exceed the expected limited availability of copper ion from these pigments. This is due to the extreme stability of the pigments to chemically and biologically induced transformations. In addition, EPA found no evidence that the three chemicals cause, or can reasonably be anticipated to cause, adverse human health or environmental effects under the guidelines of Section 313 of SARA. The Department agrees with EPA's reasoning, and therefore is granting the petitioner's request.

N.J.S.A. 34:5A-4(a) requires that the EHS list include all substances on the list developed and used by the Department in connection with the Industrial Survey Project, N.J.A.C. 7:1F Appendix A. This list includes the three phthalocyanine pigments, because it includes copper, and all chemical compounds and/or complexes containing copper. Accordingly, to remove the phthalocyanine pigments from the EHS list, the Department must also remove them from the Industrial Survey Project list. The Department expects to propose amendments removing the phthalocyanine pigments from both lists by December 31, 1992.

(d)

POLICY AND PLANNING

Notice of Public Hearing and Notice of Action on Petition for Rulemaking Motor Vehicle Race Track Noise N.J.A.C. 7:29-1.4(a)5

Petitioners: Township of Waterford and Manalapan.

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on whether it should propose rules to control motor vehicle race track noise. All persons are invited to submit comments.

At NJDEPE's request, the Noise Control Council will hold **a public hearing** on this issue at The War Memorial Building located at 23 E. State Street, Trenton in the Ball Room on the first floor, on Tuesday, October 13, 1992, at 1:00 P.M. until closing of testimony.

Persons who want to speak at this public hearing are encouraged to notify NJDEPE in advance. Such persons should submit a request in writing by October 2, 1992 to:

Edward J. DiPolvere, Chief
Office of Noise Control
New Jersey Department of Environmental Protection and Energy
CN 418
Trenton, NJ 08625

The speaker should indicate on the request his or her organizational affiliation or the interest he or she represents. Persons who submit requests in advance will be allowed to speak for up to 15 minutes during the first segment of the public hearing. All others who wish to speak will be allowed to do so, but their presentations will be limited to five minutes and they will be allowed to speak only after the scheduled speakers have completed their presentations. After each presentation, the speaker may be asked to address questions posed by members of the Noise Control Council or representatives of NJDEPE.

In addition, **any person may submit written comments** to NJDEPE on this issue. Written comments should be submitted to Chief DiPolvere

at the address given above. A docket will remain open for 30 days after this public hearing for the submission of written testimony. In reaching its determination as to whether to proceed to propose rules, the Department will take into consideration all presentations made at the public hearing and all written comments it receives on or before November 13, 1992.

The Township of Waterford and the Township of Manalapan have submitted petitions for rulemaking to NJDEPE asking that NJDEPE promulgate reasonable rules and regulations respecting noise levels and noise control pertaining to motor vehicle race tracks in the State (see 24 N.J.R. 304(b), 1908(b) and 2299(a)). The Noise Control Council has established these opportunities for public comment to help assemble the information needed to assist NJDEPE in its deliberations on these petitions.

Other information that NJDEPE intends to take into consideration in determining how to act on these petitions includes technical data on level and character of sounds emitted by race track vehicles, public complaints and investigations conducted by NJDEPE regarding race track noise, and voluntary noise mitigation actions that racing organizations and race track operators have taken or may take.

Topics which presenters may wish to address include one or more of the following:

1. The noise characteristics of various types of race track operations (drag and/or oval) and race vehicles;
2. Community demographics and land-use patterns;
3. The community and/or legal history of any race track noise problems;
4. Race track and race car noise emissions data;
5. Community sound level data, near the race track and at other locations;
6. Race track noise mitigation history, including degree of success;
7. Regulatory actions of other states and localities;
8. Race track operator self-enforcement suggestions; and
9. Possible State enforcement actions and penalties.

(a)

THE DIRECTOR OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS

Notice of Availability of State Grant Funds Matching Grants Program for Local Environmental Agencies

Take notice that in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Environmental Protection and Energy hereby announces the availability of State grant funds.

A. Name of program: Matching Grants Program for Local Environmental Agencies.

B. Purpose: The purpose of this matching grants program is to assist local environmental agencies in inventorying and documenting environmental resources; preparing policy recommendations to protect those resources; and preparing and disseminating information to the public concerning the ways in which the public can participate in protecting the environment.

C. Amount of money in the program: Approximately $200,000 will probably be available for this program, but the exact amount is not known at this time. The maximum grant will be $2,500. Applicant must agree to fund at least 50 percent of the cost of the eligible project.

D. Organizations which may apply for funding under this program: Any municipal environmental commission, joint environmental commission established by two or more municipalities, county environmental commission or soil conservation district.

E. Qualifications needed by an applicant to be considered for the program: Applicant must be a "local environmental agency" as defined in N.J.S.A. 13:H-1 et seq. Applicant must use funds for a project having the purposes described in section B above. Detailed specifications of eligible projects and costs will be provided with the Application, as defined below.

F. Procedure for eligible organizations to apply: Request a copy of the Matching Grants Program Procedural Guide and Application Form ("Application") from:

New Jersey Department of Environmental Protection
and Energy
Office of Environmental Services
CN-402, 401 East State Street, 7th Floor
Trenton, New Jersey 08626
(609) 984-0828

Complete the Application.

G. Address for Application to be submitted: Completed Application should be submitted to the address listed directly above.

H. Deadline by which completed Applications must be submitted: Applications must be delivered to the Office of Environmental Services or postmarked by December 11, 1992.

I. Date by which applicants shall be notified of approval or disapproval: On or about March 1, 1993.

(b)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing Proposed Deer Hunts at Monmouth Battlefield State Park

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) has proposed a three-day controlled deer hunt for this year and a continuing deer population control program. The purpose of these proposed controlled hunts is to manage the deer population in the park. This year's hunt is proposed to be conducted on January 15, 16, and 23, 1993 and other continuing hunts will be scheduled in the State Fish and Game Code in future years.

This notice is being given to advise the public that a nonadversarial **public hearing** will be held by NJDEPE to solicit comments on the 1993 proposed hunt and the continuing deer population control program. The hearing will be held on Wednesday, October 21, 1992, from 6:30 to 9:00 P.M. at the Monouth County Library Headquarters, 125 Symmes Road, Manalapan, New Jersey, 07726.

Persons wishing to make oral presentations are asked to reserve a three to five minute time period by telephoning the State Park Service Region 2 Office located on Monmouth Battlefield State Park (908) 462-5868 by 12:00 Noon, Tuesday, October 20, 1992. Presenters should bring a copy of their remarks to the hearing for use by NJDEPE. The hearing record will be kept open for two weeks following the date of the public hearing so that additional written testimony can be received.

Submit written comments by Wednesday, November 4, 1992 to:

Paul Sedor, Regional Superintendent
Region 2 Office
275 Freehold Englishtown Road
Englishtown, New Jersey 07726

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that on August 19, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Ocean County Water Quality Management Plan was adopted by the Department. This amendment would increase the capacity of the treatment facility serving Great Adventure from 0.34 MGD to 0.425 MGD. The treatment facility is owned and operated by the JTMUA under NJPDES permit No. NJ0026263. The method of discharge, spray irrigation, will not change.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. This amendment, proposed by the Western Monmouth Utilities Authority (WMUA) and the Bayshore Regional Sewerage Authority (BRSA), would amend the sewer service areas of both WMUA and BRSA in the northern part of Marlboro Township, known as Morganville, in accordance with the recent agreement between the two authorities. With the exception of the area zoned as a Senior Citizen Residential—Single Family District (RSCS) located on the northerly side of Wooleytown Road—Falsom Lane, the area will be served by BRSA. The RSCS zone will be served by WMUA. There will be no flow restrictions from the service area. Any changes to the service areas of the two authorities under this agreement will require amendment of the Monmouth County WQMP.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, Third Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. A copy of the comments should be sent to Russell Nerlick, Western Monmouth Utilities Authority, P.O. Box 390, Englishtown, New Jersey 07726. 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 NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Ed Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the date of the public hearing.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that on August 19, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment adds the site of the AT&T-Bell Laboratories on Crawfords Corner Road to the sewer service area of the Bayshore Regional Sewerage Authority (BRSA) as delineated in the Holmdel Township Wastewater Management Plan adopted January 31, 1990. The site is presently served by two on-site treatment facilities under NJPDES Permit NJ0000477. One, treats an average flow of 0.095 MGD of sanitary wastewater; the second, treats an average flow of 0.120 MGD of laboratory wastewater. The surface water discharge to Hop (Ramanessin) Brook will be eliminated. The laboratory wastewater treatment plant will be upgraded as required to serve as a pretreatment facility. The connection to the BRSA system will be by a dedicated force main outside of the existing BRSA service area and by gravity sewer within the existing BRSA service area.

This amendment proposal was a notice in the New Jersey Register on June 15, 1992. Comments were received during the comment period and are summarized below with the Department's responses.

COMMENT: The Preliminary Notice incorrectly assigned the permit number (NJ0000485) of the AT&T Crawford Hill facility located on Holmdel-Keyport Road in Holmdel Township to the subject AT&T facility located on Crawfords Corner Road. The Crawfords Corner Road facility for which this amendment was requested, discharges only under Permit NJ0000477, not under both permits.

RESPONSE: The Department has deleted the incorrect permit citation in the present notice. This amendment does not affect in any way the AT&T Crawford Hill facility located on Holmdel-Keyport Road, discharging under Permit NJ0000485.

COMMENT: One commenter requested that the Township of Holmdel consider adding to the sewer service area the region along the route of the dedicated force main between the AT&T facility and the existing BRSA sewer service area in order to provide sewer service to existing and proposed development.

RESPONSE: As this is a local issue, the Department requested that the Township of Holmdel respond to the comment letter. In a letter to the Department with a copy sent to the commenter, the township replied that it was the intention of the township in proposing the amendment that the force main servicing the AT&T facility be a dedicated line. Additionally, the township states that the area in question is zoned R40A, which allows single family lots with an average lot area of one acre. Based on the large lot zoning the Township Committee does not believe it is appropriate to provide sewer service to this area. In addition, there have been no reports of malfunctioning septic systems in the area.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on August 24, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment adopts the Frankford Township Wastewater Management Plan (WMP). The WMP allows for a new sewage treatment plant discharging to groundwater, to serve the proposed 72,000 square foot High Point Financial Corporation building and a new treatment facility to serve the Branchville Water Supply Treatment Facility in Frankford Township. The WMP also specifies the non-surface discharge service areas for facilities with design capacities of less than 20,000 gallons per day (gpd) with wastewater flows not to exceed 340 gpd/acre in the Paulinskill Watershed, and not to exceed 390 gpd/acre in the Papakating (Wallkill) Watershed.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on August 24, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. The Sussex County Board of Chosen Freeholders approved the amendment on July 22, 1992. This amendment which was submitted by the Sussex County Department of Planning and Development, amends the Montague Township Wastewater Management Plan to change the proposed discharge of the High Point Country Club sewage treatment plant from surface water (Delaware River) to ground water. The projected wastewater flow from this proposed development will remain at 720,000 gallons per day and the service area will remain the same.

(a)

ENVIRONMENTAL REGULATION

Notice of Permit Extension Act Provisions

Take notice that, pursuant to the "Permit Extension Act," (Act) P.L. 1992, c.82, approvals as defined in §3 of the Act, including any Department authorization in the form of a permit, approval, license, certification, waiver, letter of interpretation, agreement, or any other executive or administrative decision, except for administrative consent orders, which expire during the period of January 1, 1989 through December 31, 1994, are hereby extended through December 31, 1994. This Act automatically extends any approvals granted by the Department of Environmental Protection and Energy, including, but not limited to, the following statutes:

(A) Waterfront Development Permits, N.J.S.A. 12:5-1 et seq.

(B) "Coastal Area Facility Review Act," P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.)

(C) Septic Approvals, Title 26 of the Revised Statutes, N.J.S.A. 27:7-1 et seq. or any supplement thereto.

(D) "Water Supply Management Act," P.L. 1981, c.262 (N.J.S.A. 58:1A-1 et seq.)

(E) Well Drilling Permits, P.L. 1947, c.377 (N.J.S.A. 58:4A-5 et seq.)

(F) "Water Pollution Control Act," P.L. 1977, c.74 (N.J.S.A. 58:10A-1 et seq.)

(G) "The Realty Improvement Sewerage and Facilities Act (1954)," P.L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.); P.L. 1971, c.386 (N.J.S.A. 58:11-25.1 et seq.)

(H) "Water Quality Planning Act," P.L. 1977, c.75 (N.J.S.A. 58:11A-1 et seq.)

(I) "Safe Drinking Water Act," P.L. 1977, c.224 (N.J.S.A. 58:12A-1 et seq.)

(J) "Flood Hazard Area Control Act," P.L. 1962, c.19 (N.J.S.A. 58:16A-50 et seq.)

(K) Wetlands Act of 1970, P.L. 1970, c.272 (N.J.S.A. 13:9A-10 et seq.)

Nothing in this Act shall have the effect of extending any project exemption granted pursuant to subsection 4d. of the Freshwater Wetlands Protection Act, P.L. 1987, c.156 (N.J.S.A. 13:9B-1 et seq.).

In addition, under the Freshwater Wetlands Protection Act, the only exemptions that are extended are those for transition areas adjacent to intermediate resource value wetlands. Therefore, once an exemption expires during the time period from January 1, 1989 through December 31, 1994 (either because the underlying approval expires or the State assumes Federal delegation of section 404 of the Clean Water Act program), all wetlands, and all transition areas for exceptional resource value wetlands, will be subject to the Freshwater Wetlands Protection Act and will be regulated by the Department; the transition areas adjacent to intermediate resource value wetlands for such projects will remain exempt through December 31, 1994.

Any person wishing to confirm an extension of their intermediate resource value transition area exemption, due to the Act, may submit an application to the Department of Environmental Protection and Energy to determine the resource value classification. The application shall be limited to a description of the location of the project by lot and block, a delineation of the wetlands on the site, and accompanied by a fee pursuant to N.J.A.C. 7:7A-16.2. If the Department does not make a determination within 90 days of the receipt of a complete application, the wetlands delineation shall be deemed to be accurate and the wetlands not to be of exceptional resource value. Those persons interested in confirming should write to:

NJDEPE
Land Use Regulation Program
Application Support Unit
CN 401
Trenton, NJ 08625-0401

In the event that the Department of Environmental Protection and Energy obtains additional information clearly and convincingly demonstrating that a wetlands previously determined by the Department not to be of exceptional resource value are actually wetlands of exceptional resource value, the Department may within one year after the date of its original determination reclassify the wetlands as exceptional resource value. These areas will then be regulated to the full extent of the Freshwater Wetlands Protection Act. This provision shall not apply to any project for which construction has commenced at the time the Department provides notice to the applicant that the wetlands resource value classification may be changed.

Nothing in the Act shall be deemed to extend or purport to extend any permit issued by the government of the United States or any agency or instrumentality thereof, or to any permit by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the Federal government or any of its agencies or instrumentalities.

The Act does not affect any administrative consent order issued by the Department of Environmental Protection and Energy in effect or issued during the period of the economic emergency, nor shall it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L. 1985, c.38 (N.J.S.A. 13:1E-137).

In the event that any permit extended pursuant to the Act was based upon the connection to a sanitary sewer system, the permit's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose permits have been extended shall have priority with regard to the further allocation of gallonage over those permit holders who have not received approval of a hookup prior to the enactment of the Act. Priority regarding the distribution of further gallonage to any permit holder who has received the extension of a permit pursuant to the Act shall be allocated in order of the granting of the original approval of the connection.

Any person wishing a written confirmation of the extension of a specific permit may write to the Office of Permit Information and Assistance. The applicant's request should include: permit type, number, expiration date of the permit, and project location.

Any questions regarding the applicability of this law should be submitted in writing to:

NJDEPE
Office of Permit Information and Assistance
CN 423
Trenton, New Jersey 08625-0423
(609) 292-3600

LAW AND PUBLIC SAFETY

(b)

CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Notice of Receipt of Petition for Rulemaking and Action Thereon
Notice of Delayed Operative Date
N.J.A.C. 13:35-6.17(e)

Petitioner: New Jersey Academy of Ophthalmology and Otolaryngology.

Take notice that on July 7, 1992, the Board of Medical Examiners received a petition for rulemaking concerning N.J.A.C. 13:35-6.17(e).

This subsection of the Board's corporate practice regulations addresses fees which a licensee may charge for prescribing and then selling to a patient medications, vitamins and food supplements and medical goods and devices. Specifically, this subsection directs the Board licensee to use the invoice price when setting fees for an item and permits the licensee to charge an administrative cost not to exceed 10 percent of the cost of the item.

Petitioner states that a licensee should be permitted to include office overhead costs in the fee for the item. However, because such costs cannot readily be ascertained, petitioner requests the Board to rescind this subsection or to exempt ophthalmologists from these requirements.

At its July 8, 1992 meeting, the Board determined that additional time was needed to study and evaluate the petition for rulemaking and supporting materials. Accordingly, the Board voted to stay the operative date of N.J.A.C. 13:35-6.17(e) until August 15, 1992.

In accordance with the provisions of N.J.A.C. 1:30-3.6, upon the conclusion of the Board's deliberations, the Board's decision will be mailed to the petitioner and published in a future issue of the New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

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 August 3, 1992 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.1992 d.1 means the first rule adopted in 1992.

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 JULY 20, 1992

NEXT UPDATE: SUPPLEMENT AUGUST 17, 1992

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
23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 3679 and 3840	December 16, 1991
24 N.J.R. 1 and 164	January 6, 1992
24 N.J.R. 165 and 318	January 21, 1992
24 N.J.R. 319 and 508	February 3, 1992
24 N.J.R. 509 and 672	February 18, 1992
24 N.J.R. 673 and 888	March 2, 1992
24 N.J.R. 889 and 1138	March 16, 1992
24 N.J.R. 1139 and 1416	April 6, 1992
24 N.J.R. 1417 and 1658	April 20, 1992
24 N.J.R. 1659 and 1840	May 4, 1992
24 N.J.R. 1841 and 1932	May 18, 1992
24 N.J.R. 1933 and 2102	June 1, 1992
24 N.J.R. 2103 and 2314	June 15, 1992
24 N.J.R. 2315 and 2486	July 6, 1992
24 N.J.R. 2487 and 2650	July 20, 1992
24 N.J.R. 2651 and 2752	August 3, 1992
24 N.J.R. 2753 and 2970	August 17, 1992
24 N.J.R. 2971 and 3202	September 8, 1992
24 N.J.R. 3203 and 3454	September 21, 1992

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-1.5, App. A	Conduct of administrative law judges	24 N.J.R. 2755(a)		
1:6A-9.2, 14.1, 14.4, 18.1, 18.3, 18.5	Special Education Program	24 N.J.R. 1936(a)	R.1992 d.331	24 N.J.R. 3091(a)
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
1:31-3.1	Conduct of administrative law judges	24 N.J.R. 2755(a)		
	Most recent update to Title 1: TRANSMITTAL 1992-3 (supplement May 18, 1992)			
AGRICULTURE—TITLE 2				
2:5-1	Equine entry restriction	Emergency (expires 9-18-92)	R.1992 d.321	24 N.J.R. 2737(a)
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:69-1.11	Commercial values of primary plant nutrients	24 N.J.R. 2318(a)		
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program	24 N.J.R. 2318(b)		
2:71-2.28, 2.29	Inspection and grading charges for fruits and vegetables	24 N.J.R. 2321(a)		
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands	24 N.J.R. 893(b)	R.1992 d.325	24 N.J.R. 2831(a)
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing uses of enrolled lands	24 N.J.R. 2831(a)		
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted	24 N.J.R. 896(a)	R.1992 d.324	24 N.J.R. 2833(a)
2:76-6.15	Farmland Preservation Program: pre-existing uses on lands permanently deed restricted	24 N.J.R. 2833(a)		
	Most recent update to Title 2: TRANSMITTAL 1992-3 (supplement July 20, 1992)			
BANKING—TITLE 3				
3:1-2.1–2.9, 2.18, 2.20, 2.21	Branch and charter application procedures for banks, savings banks, and savings and loan associations	24 N.J.R. 3034(a)		
3:1-19	Consumer checking accounts	24 N.J.R. 1662(b)	R.1992 d.305	24 N.J.R. 2710(a)
3:4-1	Capital requirements for depository institutions	24 N.J.R. 1665(a)	R.1992 d.326	24 N.J.R. 2834(a)
3:18-1, 2.1, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 7.4, 7.5, 8.1, 8.2, 9, 10.5, 10.7, 10.8, 11	Secondary Mortgage Loan Act rules	24 N.J.R. 2760(a)		
3:23	Department license fees	24 N.J.R. 1667(a)	R.1992 d.303	24 N.J.R. 2712(a)
3:25	Debt adjustment and credit counseling	24 N.J.R. 2106(a)	R.1992 d.323	24 N.J.R. 2836(a)
3:38	Mortgage bankers and brokers	24 N.J.R. 2653(a)		
3:38-1.9, 5.2, 5.3	Branch offices; mortgage services licensure exemption; solicitor registration	24 N.J.R. 1937(a)		
	Most recent update to Title 3: TRANSMITTAL 1992-5 (supplement June 15, 1992)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
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4A:2	Appeals, discipline, separations	24 N.J.R. 2491(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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4A:4-3.7, 7.10, 7.12	Reinstatement of permanent employee following disability retirement	24 N.J.R. 2107(a)	R.1992 d.338	24 N.J.R. 3091(b)
4A:4-7.11	Transfers and retention of employee rights in a consolidation	24 N.J.R. 2494(a)		
4A:5	Veterans and disabled veterans preference	24 N.J.R. 2495(a)		
4A:6-1, 2, 3, 4, 5	Leaves, hours of work, and employee development: preproposed readoption	24 N.J.R. 2496(b)		
4A:6-6	Awards program: preproposed readoption	24 N.J.R. 2496(a)		
4A:6-16	Sick leave injury (SLI) benefits: carpal tunnel syndrome and asbestosis	24 N.J.R. 2108(a)		
4A:7	Equal employment opportunity and affirmative action	24 N.J.R. 2496(c)		
4A:9-1	Political subdivision	24 N.J.R. 2498(a)		
4A:10	Violations and penalties	24 N.J.R. 2499(a)		
	Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
COMMUNITY AFFAIRS—TITLE 5				
5:4-2	Debarment and suspension from Department contracting	24 N.J.R. 2322(a)		
5:10-25	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)		
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.5, 2.4A, 2.4B, 2.7, 2.8	Uniform Fire Code: life hazard uses and permits	24 N.J.R. 2654(a)		
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system requirement	24 N.J.R. 1938(a)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.7, 3.8, 4.20	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)		
5:23-3.14	Uniform Construction Code: tent permits	24 N.J.R. 2656(a)		
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5, 4.19–4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19, 12.5, 12.6	UCC: State Training Fee Report; fees	24 N.J.R. 2657(a)		
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-4.18, 4.20	Uniform Construction Code: gas service entrances	24 N.J.R. 1846(a)	R.1992 d.313	24 N.J.R. 2712(b)
5:23-5.7	UCC: subcode official requirements	24 N.J.R. 2661(a)		
5:23-5.19	UCC: elevator inspector H.H.S. requirements	24 N.J.R. 2662(a)		
5:25-5.4	State new home warranty plan contributions	24 N.J.R. 2663(a)		
5:26-2.3, 2.4	Planned real estate development full disclosure: fees	24 N.J.R. 2657(a)		
5:30-8.2	Unbudgeted school aid	24 N.J.R. 2766(a)		
5:33-1.2, 1.3, 1.5–1.8	Municipal tax collection procedures	24 NJ.R. 2766(a)		
5:33-4	Property tax and mortgage escrow account transactions	24 N.J.R. 2664(a)		
5:34-7	Cooperative purchasing by local contracting units	24 N.J.R. 2667(a)		
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91	Council on Affordable Housing: procedural rules	24 N.J.R. 2671(a)		
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6:8	Thorough and efficient system of public schools	24 N.J.R. 3039(a)		
6:8-9	Educational improvement plans in special needs districts	24 N.J.R. 2323(a)		
6:12-1.2, 1.7–1.10, 1.14	Governor's Teaching Scholars Program	24 N.J.R. 3050(a)		
6:20-9.2	Policy and agreement for School Nutrition Programs: administrative correction	———	———	24 N.J.R. 2712(c)
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 2109(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:21-6A.6	Pupil transportation: administrative correction to N.J.A.C. 6:21-6A.6 regarding school bus color	24 N.J.R. 2325(a)		
6:26	Establishment of pupil assistance committees	24 N.J.R. 1670(a)	R.1992 d.307	24 N.J.R. 2713(a)
6:29-2.4	Attendance at school by pupils or adults infected by HIV	24 N.J.R. 2124(a)		
6:29-8	Nonpublic school nursing services	24 N.J.R. 2325(b)		
6:64	Public, school, and college libraries	24 N.J.R. 2126(a)		
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7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 1968(a)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(b)	R.1992 d.318	24 N.J.R. 2926(a)
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
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7:26-4.6	Solid waste program fees: extension of comment period	24 N.J.R. 1458(a)		
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7:26-8.16	Hazardous constituents in waste streams: reopening of comment period	24 N.J.R. 2003(a)		
7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
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7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
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8:33H	Long-term care services: Certificate of Need policy manual	24 N.J.R. 2014(a)	R.1992 d.344	24 N.J.R. 3144(a)
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8:71	Interchangeable drug products (see 24 N.J.R. 947(b), 1897(a), 2560(a))	24 N.J.R. 61(a)	R.1992 d.349	24 N.J.R. 3173(b)
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10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)	R.1992 d.327	24 N.J.R. 2898(a)
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10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	24 N.J.R. 2160(a)	R.1992 d.340	24 N.J.R. 3092(a)
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10:86	Family Development Program Manual	24 N.J.R. 2161(a)	R.1992 d.369	24 N.J.R. 3357(a)
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13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
13:30-8.6	Board of Dentistry: professional advertising	24 N.J.R. 2801(a)		
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:32	Rules of Board of Examiners of Master Plumbers	24 N.J.R. 2334(a)		
13:34-1.1	Board of Marriage Counselor Examiners: annual license fees and charges	24 N.J.R. 2522(b)		
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)	R.1992 d.332	24 N.J.R. 3094(a)

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13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6.17	Corporate medical practice: petition for rulemaking and notice of delayed operative date regarding allowable fees for medications and health aids	———	———	24 N.J.R. 3443(b)
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)	R.1992 d.309	24 N.J.R. 2731(c)
13:36-5.12, 5.20	Mortuary Science: licensee advertising; referral fee prohibition	24 N.J.R. 3016(a)		
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:38-2.4, 4, 5.1	Board of Optometrists: issuing prescriptions; certification by examination; fees	24 N.J.R. 2802(a)		
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:44-2.5, 2.7, 2.11	Veterinary Medical Examiners: referral fee prohibition; product endorsements; licensee advertising	24 N.J.R. 3017(a)		
13:44B	Per diem compensation for members of professional and occupational licensing boards	24 N.J.R. 3019(a)		
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)		
13:44F	Rules of State Board of Respiratory Care	24 N.J.R. 2336(a)		
13:44G-14.1	Board of Social Work Examiners: fees for licensure, certification, and services	24 N.J.R. 2523(a)		
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-24	Toy and bicycle safety	24 N.J.R. 3019(b)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)	R.1992 d.357	24 N.J.R. 3316(a)
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47A-1–8, 10, 11	Bureau of Securities rules	24 N.J.R. 2524(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:54-1.15	Confidentiality of information regarding firearms permits, ID cards, licenses and registration	24 N.J.R. 3022(a)		
13:59-1.1, 1.2, 1.3, 1.4, 1.8	State Police: release of criminal history information	24 N.J.R. 1963(a)	R.1992 d.308	24 N.J.R. 2735(a)
13:71-10.5	Harness racing: programmed trainer	24 N.J.R. 2340(a)		
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14:3-3.2, 7.12	Discontinuance of fire protection service by water utility	24 N.J.R. 2341(a)		
14:3-5.1	Relocation or closing of utility office	24 N.J.R. 2132(a)		
14:3-6.5	Public records	24 N.J.R. 1966(a)		
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-11	Solid waste collection regulatory reform	24 N.J.R. 1459(a)		
14:5A	Nuclear generating plant decommissioning: periodic cost review and trust funding reporting	23 N.J.R. 3239(b)		
14:6-5	Natural gas service: preproposal on inspection and operation of master meter systems	24 N.J.R. 1862(b)		
14:9B	Private domestic wastewater treatment facilities	24 N.J.R. 1863(a)		
14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:11	Board of Regulatory Commissioners: administrative orders	24 N.J.R. 1684(b)		
14:12-1.2, 3.6, 4.1–4.3, 5.3	Demand side management	24 N.J.R. 2804(a)		
14:18-3.19	Cable television: interest on uncorrected billing errors	24 N.J.R. 1470(b)	R.1992 d.319	24 N.J.R. 2925(a)
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14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		
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15:10-1.5, 7	Distribution of voter registration forms through public agencies	24 N.J.R. 736(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies: extension of comment period	24 N.J.R. 1688(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies: extension of comment period	24 N.J.R. 2531(a)		
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16:28-1.41	Speed limit zones along Route U.S. 9 in Atlantic County	24 N.J.R. 2806(a)		
16:28A-1.1, 1.2, 1.3, 1.7, 1.97, 1.106	Restricted parking and stopping along U.S. 1, U.S. 1 and 9, and Route 3 in northern and central counties, and U.S. 9 in Atlantic County	24 N.J.R. 2807(a)		
16:28A-1.4, 1.5, 1.6, 1.13, 1.30	Restricted parking and stopping zones along Routes 4 and 5 in Bergen County; Route 7 in Kearny, Jersey City, Nutley and Belleville; U.S. 22 in Readington; and Route 44 in Greenwich and West Deptford	24 N.J.R. 3024(a)		
16:28A-1.8	Bus stop zones along Route 10 in Parsippany-Troy Hills	24 N.J.R. 1967(a)	R.1992 d.304	24 N.J.R. 2736(a)
16:28A-1.57	Parking along U.S. 206 in Lawrence Township	24 N.J.R. 2342(a)	R.1992 d.336	24 N.J.R. 3097(a)
16:41	Permits for work or activities involving State highway rights-of-way	24 N.J.R. 2237(a)	R.1992 d.341	24 N.J.R. 3097(b)
16:53D-1.1	Zone of Rate Freedom for regular route autobus carriers: 1993 percentage maximums	24 N.J.R. 2343(a)	R.1992 d.355	24 N.J.R. 3097(c)
16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
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17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)	Expired	
17:9-4.2	State Health Benefits Program: part-time deputy attorneys general	24 N.J.R. 2345(a)		
17:20-2.1, 4.3, 4.4	Background checks and training of lottery agents and employees	24 N.J.R. 2238(a)		
17:20-4.8	Sale of lottery tickets at specific locations licensed	24 N.J.R. 2239(a)		
17:20-6.2	Redemption of winning lottery tickets	24 N.J.R. 2239(b)		
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)		
17:29-4.7	Charitable fund-raising among employees of local government units: administrative correction	———	———	24 N.J.R. 2925(b)
17:42-1	Lottery prize offset against overdue child support and public assistance overpayments	24 N.J.R. 2343(b)	R.1992 d.337	24 N.J.R. 3098(a)
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18:7-3.18	Corporation Business Tax: recycling tax credit	24 N.J.R. 2809(a)		
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		
18:22-1.3, 3.3, 6.1, 6.2, 6.3, 8.1, 9.2, 9.6, 10.1	Public utility corporations	24 N.J.R. 2531(b)		
18:26-3.2, 6.4, 11.20–11.28	Transfer Inheritance and Estate Tax: State death tax credit; tenancy by the entirety in personal property; release of safe deposit box contents	24 N.J.R. 2533(a)		
18:35-1.27	Gross Income Tax: interest on overpayments	24 N.J.R. 2419(a)		
18:35-2.11	Gross income tax refunds and homestead rebates: priorities in claims to setoff	24 N.J.R. 1967(b)		
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19:4-6.28	Official Zoning Map: redesignation of site in Kearny	24 N.J.R. 2346(a)		
19:9-1.1	Definition of "New Jersey Turnpike"	24 N.J.R. 2692(a)		
19:25-3.1, 12.7, 16.3, 16.5, 16.16, 16.18, 16.24, 16.25, 16.27–16.30, 16.39, 16.43, 16.48	ELEC: Pre-candidacy activity; independent expenditures; public financing of gubernatorial primary candidates	24 N.J.R. 3026(a)		
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19:41-14	Renewal of employee licenses	24 N.J.R. 2133(a)		
19:42-10	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)		
19:43-1.1–1.5, 1.8, 1.12, 1.13, 1.14	Junkets; casino service industries	24 N.J.R. 2695(b)		
19:44-8.3	Implementation of pai gow	24 N.J.R. 558(a)		
19:44-8.3	Implementation of pai gow poker	24 N.J.R. 569(a)		
19:44-9.4	Gaming school tables	24 N.J.R. 1471(a)	R.1992 d.333	24 N.J.R. 3099(a)
19:45-1.1, 1.2, 1.9, 1.9B, 1.9C, 1.46	Complimentary cash and noncash gifts	24 N.J.R. 2692(b)		
19:45-1.1, 1.2, 1.16, 1.18, 1.20, 1.33, 1.46	Exchange of coupons at gaming tables for gaming chips	24 N.J.R. 2536(a)		
19:45-1.1, 1.36A, 1.38, 1.41	Hopper storage areas in slot machines	24 N.J.R. 2137(a)	R.1992 d.360	24 N.J.R. 3336(a)
19:45-1.8	Licensee records retention and destruction	24 N.J.R. 2348(b)	R.1992 d.361	24 N.J.R. 3332(a)
19:45-1.11, 1.12	Implementation of pai gow	24 N.J.R. 558(a)		
19:45-1.11, 1.12	Implementation of pai gow poker	24 N.J.R. 569(a)		
19:45-1.12	Supervision of table games	24 N.J.R. 1249(b)	R.1992 d.335	24 N.J.R. 3099(c)
19:45-1.12	Baccarat staffing requirements	24 N.J.R. 2136(a)	R.1992 d.334	24 N.J.R. 3099(b)
19:45-1.14	Coin vault security	24 N.J.R. 2136(b)	R.1992 d.358	24 N.J.R. 3335(a)
19:45-1.16, 1.17, 1.36	Internal design and operation of bill changers	24 N.J.R. 1472(b)	R.1992 d.359	24 N.J.R. 3335(b)
19:45-1.19	Implementation of game of pokette	24 N.J.R. 2140(a)		
19:45-1.42	Slot drop and slot cash storage box procedures	24 N.J.R. 2695(a)		
19:46-1.1, 1.13D, 1.17, 1.18, 1.20	Implementation of game of pokette	24 N.J.R. 2140(a)		
19:46-1.7	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:46-1.7, 1.9	Single zero roulette	24 N.J.R. 3033(a)		
19:46-1.10	Double exposure blackjack table layout	24 N.J.R. 2350(a)	R.1992 d.362	24 N.J.R. 3338(a)
19:46-1.10, 1.17, 1.20	Use of card reader device in blackjack	24 N.J.R. 2351(a)		
19:46-1.13B, 1.15–1.19	Implementation of pai gow poker	24 N.J.R. 569(a)		
19:46-1.13C, 1.15, 1.16, 1.19A, 1.19B, 1.20	Implementation of pai gow	24 N.J.R. 558(a)		
19:46-1.25	Internal design and operation of bill changers	24 N.J.R. 1472(b)	R.1992 d.359	24 N.J.R. 3335(b)
19:46-1.27	Slot machine density	24 N.J.R. 2138(a)	R.1992 d.363	24 N.J.R. 3338(b)
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19:47-2.11	Splitting pairs in blackjack	24 N.J.R. 1872(a)	R.1992 d.320	24 N.J.R. 2925(c)
19:47-5.2	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:47-5.2	Single zero roulette	24 N.J.R. 3033(a)		
19:47-8.2, 10	Game of pai gow	24 N.J.R. 558(a)		
19:47-8.2, 11	Pai gow poker	24 N.J.R. 569(a)		
19:47-8.2, 11	Pai gow poker: temporary adoption of new rules and amendments	———	———	24 N.J.R. 1517(a)
19:47-8.2, 12	Implementation of game of pokette	24 N.J.R. 2140(a)		
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